

31.10.2006

Eduskunnan suuri valiokunta

**EURATOMIN LIITTYMINEN YLEISSOPIMUKSEEN YDINAINOITA JA YDINLAITOKSIA
KOSKEVISTA TURVAJÄRJESTELYISTÄ
(Euratomin liittymisen muutettuun ydinalan turvajärjestelyjä koskevaan yleissopimukseen)**

Perustuslain 97 §:n mukaisesti lähetetään Eduskunnan suurelle valiokunnalle Euroopan komission ehdotus neuvoston päätökseksi, jolla hyväksytään Euroopan atomienergiayhteisön (EURATOM) liittymisen muutettuun yleissopimukseen ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä. Lisäksi ohessa toimitetaan kyseinen yleissopimus sekä asiaa koskeva muistio.

Helsingissä 31 päivänä lokakuuta 2006

Mauri Pekkarinen
Kauppa- ja teollisuusministeri

Kim Fyhr
Ylitarkastaja

LIITTEET

- Kauppa- ja teollisuusministeriön muistio 31.10.2006
- Komission asiakirjat KOM(2006) 518 lopullinen ja 13286/06 ADD1
- Komissionens dokument KOM(2006) 518 slutlig och 13286/06 ADD1

EUROOPAN ATOMIENERGIAYHTEISÖN (EURATOM) LIITTYMINEN YLEISSOPIMUKSEEN YDINAINETIA JA YDINLAITOKSIA KOSKEVISTA TURVAJÄRJESTELYISTÄ

1. Yleistä

Vuonna 1980 allekirjoitettiin kansainvälisen atomienergiajärjestön (IAEA) puitteissa neuvoteltu yleissopimus ydinaineiden turvajärjestelyjä koskevista toimista. Sopimuspuolia ovat mm. kaikki EU-jäsenvaltiot ja Euroopan atomienergiayhteisö (Euratom). Yleissopimus ydinaineiden turvajärjestelyjä koskevista toimista (903/1989, SopS 72/89) esittää ydinaineiden turvajärjestelyjä koskevat vaatimukset. Sopimuksen taustalla on tarve huolehtia ydinaseiden leviämisen rajoittamisesta. Turvajärjestelyillä tarkoitetaan kaikkia toimia ydinaineisiin kohdistuvan lainvastaisen toiminnan estämiseksi.

Kesällä 2005 järjestetyssä diplomaattikonferenssissa saatettiin päätökseen sopimuksen vuosia kestänyt muutostyö, jonka lopputulos oli yleissopimus ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä. Yleissopimukseen tehdyt muutokset koskevat lähinnä seuraavia ydinalan turvajärjestelyihin liittyviä osa-alueita: Ensinnäkin, yleissopimuksen soveltamisalaa laajennettiin siten, että sopimuksen määräykset kattavat ydinaineiden lisäksi myös ydinlaitokset. Tästä johtuen myös yleissopimuksen nimi on muutettu. Lisäksi soveltamisalaa laajennettiin kotimaassa tapahtuvaan ydinmateriaalin käyttöön, varastointiin ja kuljetuksiin. Yleissopimukseen on otettu mukaan myös turvajärjestelyjä koskevat peruseriaatteet, jotka käyvät ilmi sopimuksen 2A artiklasta. Niin ikään ympäristövahingot ja ydinsabotaasi sisällytettiin rikostunnusmerkistöihin. Sopimuksen voidaankin katsoa kuuluvan YK:n terrorisminvastaisiin mekanismeihin. Yleissopimuksen muutokset tulevat kansainvälisesti voimaan, kun 2/3 sopimusosapuolista on sen hyväksynyt.

Suomi osallistui myös aktiivisesti kyseiseen diplomaattikonferenssiin ja valmistelee parhaillaan omalta osaltaan sopimusmuutosten hyväksymistä. Asiasta laaditaan hallituksen esitystä, joka tullaan antamaan uudelle eduskunnalle.

Euroopan komissio antoi 21.9.2006 ehdotuksen Euratomin liittymisestä yleissopimukseen [KOM(2006) 518 lopullinen], jonka käsittely neuvoston ydinalatyöryhmässä on alkanut Suomen puheenjohtajakaudella.

2. Ehdotuksen tavoitteet ja pääasiallinen sisältö

Komission ehdottamalla neuvoston päätöksellä annettaisiin hyväksyntä Euratomin liittymiselle muutettuun yleissopimukseen. Yleissopimuksessa on olemassa määräys (18 artikla), joka mahdollistaa myös alueellisen yhdentymisen järjestön tulon sopimuspuoleksi. Saman artiklan nojalla edellä kuvatun kaltaisen järjestön tulee ilmoittaa, mitä yleissopimuksen artikloja ei sovelleta siihen. Kyseinen ilmoitus sisältyy päätösehdotuksen liitteeseen.

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Koska Euratom on voimassaolevan ydinaineiden turvajärjestelyjä koskevan sopimuksen sopimuspuoli, voidaan komission päätösehdotus nähdä luonnollisena jatkumona yhteisön tähänastiselle osallistumiselle ydinalan turvajärjestelyjä koskevaan toimintaan. Komissio viittaa sekä perustelumuihistiossaan että varsinaisessa päätösehdotuksessaan asianmukaisesti EY-tuomioistuimen tuomioon 1/78, jonka mukaan jäsenvaltioiden osallistuminen ydinaineiden turvajärjestelyjä koskevaan yleissopimukseen on Euratom-sopimuksen määräysten mukaista vain jos yhteisö on itse omaan toimivaltaansa kuuluvien alojen osalta yleissopimuksen sopimuspuoli samalla tavoin kuin jäsenvaltiot.

Oikeusperustaksi komissio esittää perustellusti Euratom-sopimuksen 101 artiklaa ja erityisesti sen toista kohtaa, jossa määrätään, että: ”Komissio neuvottelee sopimukset neuvoston direktiivien mukaisesti; neuvoston on hyväksyttävä komission tekemät sopimukset; neuvosto päättää hyväksymisestä määräenemmistöllä”. Samaa oikeusperustaa on käytetty myös muissa tapauksissa, joissa Euratom-yhteisö on liittynyt IAEA:n puitteissa neuvoteltuihin kansainvälisiin sopimuksiin.

3. Asian käsittely EU:ssa ja Suomessa

Komissio esitteli ehdotukset ensimmäisen kerran neuvoston ydinalatyöryhmälle lokakuussa 2006 ja vaikuttaa siltä, että jäsenvaltiot yleisesti ottaen kannattavat Euratomin liittymistä muutettuun yleissopimukseen. EU-puheenjohtajavaltiona Suomi pyrkii viemään ehdotusta nopeasti eteenpäin työryhmässä.

Tällä kirjelmällä annetaan komission ehdotus tiedoksi Eduskunnalle.

4. Alustava kokonaisarvio Suomen kannalta

Euratomin liittyminen yleissopimukseen ei aiheuttaisi tarpeita lainsäädännön muuttamiseen Suomessa. Taloudellisia vaikutuksia Suomeen ei Euratomin liittymisellä ole.

Kauppa- ja teollisuusministeriö katsoo, että Euratomin liittyminen muutettuun yleissopimukseen on hyvin perusteltua. Euratom on myös voimassaolevan ydinaineiden turvajärjestelyjä koskevan sopimuksen sopimuspuoli ja siksi on tarpeellista, että Euratom liittyy myös asiaa koskevaan muutettuun sopimukseen komission ehdotuksen mukaisesti.



**EUROOPAN UNIONIN
NEUVOSTO**

**Bryssel, 27. syyskuuta 2006 (28.09)
(OR. en)**

13286/06

**ATO 104
CONOP 52**

EHDOTUS

Lähettiläjä: Euroopan komissio

Päivä: 22. syyskuuta 2006

Asia: Ehdotus neuvoston päätökseksi, jolla hyväksytään Euroopan atomienergiayhteisön liittyminen yleissopimukseen ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä

Valtuuskunnille toimitetaan oheisena komission ehdotus, joka on saapunut pääsihteeri, korkea edustaja Javier Solanalle johtaja Jordi Ayet Puigarnaun lähettämällä kirjeellä.

Liite: KOM(2006) 518 lopullinen



EUROOPAN YHTEISÖJEN KOMISSIO

Bryssel 21.9.2006
KOM(2006) 518 lopullinen

Ehdotus

NEUVOSTON PÄÄTÖS

**jolla hyväksytään Euroopan atomienergiayhteisön liittyminen yleissopimukseen
ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä**

(komission esittämä)

PERUSTELUT

1. JOHDANTO

Yleissopimus ydinaineiden turvajärjestelyjä koskevista toimista (The Convention on the Physical Protection of Nuclear Materials, CPPNM, jäljempänä 'yleissopimus') allekirjoitettiin vuonna 1980 Kansainvälisen atomienergiajärjestön (IAEA) puitteissa, ja se tuli voimaan vuonna 1987. Yleissopimuksen sopimuspuolina on 118 valtiota ja Euroopan atomienergiayhteisö (jäljempänä 'Euratom')¹. Kaikki Euroopan unionin jäsenvaltiot ovat yleissopimuksen sopimuspuolia.

Euratom allekirjoitti yleissopimuksen sen 18 artiklan 4 kappaleen a kohdan nojalla 13. kesäkuuta 1980 ja liittyi siihen 6. lokakuuta 1991².

Yleissopimuksen tavoitteena on erityisesti turvajärjestelyjä koskevien toimenpiteiden toteuttaminen ydinaineiden kansainvälisten kuljetusten aikana.

Vuonna 1999 useat maat ilmoittivat, että yleissopimuksen soveltamisala ei ole riittävän laaja ja että yleissopimusta on muutettava. Erityisenä puutteena pidettiin sitä, ettei yleissopimuksessa käsitellä tiettyjä turvajärjestelyihin liittyviä merkittäviä näkökohtia. Puutteita mainittiin olevan turvajärjestelyissä, jotka liittyvät kotimaisessa käytössä, varastoituna ja kuljetettavana olevaan ydinaineeseen. Lisäksi katsottiin, ettei yleissopimuksessa käsitellä riittävästi ydinlaitosten suojelua vihamielisiltä teoilta. Edellä mainituista syistä Kansainvälisen atomienergiajärjestön IAEA:n pääjohtaja perusti kesäkuussa 2001 oikeudellisten ja teknisten asiantuntijoiden tilapäisen ryhmän valmistelemaan luonnosta yleissopimuksen muuttamiseksi. Ryhmän tarkoituksena oli keskustella siitä, onko yleissopimusta syytä muuttaa.

Muuttamista käsittelevä konferenssi pidettiin Wienissä IAEA:n päämajassa 4.–8. heinäkuuta 2005. Konferenssissa hyväksyttiin 8. heinäkuuta yleissopimuksen muuttaminen.

Neuvosto valtuutti 28. kesäkuuta 2005 tekemällään päätöksellä³ komission neuvottelemaan yleissopimuksen muutoksista, jotka koskevat yhteisön toimivaltaan kuuluvia asioita. Euratom osallistui siis täysipainoisesti muuttamista käsittelevään konferenssiin. Komission edustaja allekirjoitti Euratomin puolesta muutoskonferenssin päätösasiakirjan 8. heinäkuuta 2005.

¹ Tilanne 27. kesäkuuta 2006.

² Neuvoston päätös, tehty 9 päivänä kesäkuuta 1980, sen hyväksymisestä, että komissio tekee kansainvälisen yleissopimuksen ydinaineiden turvajärjestelyistä (EYVL L 149, 17.6.1980, s. 41).

³ Asiakirja 1024/05 ATO 62 CONOP 33 =C 438

2. YLEISSOPIMUKSEEN EHDOTETUT MUUTOKSET

Yleissopimuksen muutosten on määrä tehostaa yleissopimusta merkittävästi.

Tämä käy selväksi jo tavoitteiden kuvauksesta yleissopimuksen uudessa 1 a artiklassa: ”Tämän yleissopimuksen päämääränä on saada aikaan maailmanlaajuisesti tehokkaat turvajärjestelyt rauhanomaisiin tarkoituksiin käytettäviä ydinaineita ja rauhanomaisiin tarkoituksiin käytettäviä ydinlaitoksia varten ja ylläpitää niitä, estää ja torjua näihin aineisiin ja laitoksiin liittyviä rikoksia maailmanlaajuisesti sekä helpottaa valtioiden välistä yhteistyötä näiden päämäärien saavuttamiseksi.”

Muutoksilla laajennetaan yleissopimuksen soveltamisalaa ydinaineiden kansainvälisistä kuljetuksista kattamaan ydinaineet maan rajojen sisällä sekä käytössä, kuljetuksissa että varastoinnissa.

Jotta ydinaineiden turvajärjestelyt olisivat vielä kattavammat, yleissopimuksen muutokset kattavat ydinaineiden lisäksi vastaavat ydinlaitokset. Yleissopimuksen nimi on sen vuoksi muutettu, ja se on nyt ”Yleissopimus ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä”.

Muutetussa yleissopimuksessa selostetaan yksityiskohtaisesti, mitä ’ydinlaitoksella’ tarkoitetaan: ”ydinlaitos” tarkoittaa laitosta (mukaan lukien siihen liittyvät rakennukset ja laitteistot), jossa ydinaineita tuotetaan, jalostetaan, käytetään, käsitellään, varastoidaan tai loppusijoitetaan, jos tällaiselle laitokselle aiheutuvan vahingon tai sen toiminnan häiriintymisen vuoksi ympäristöön voi päästä huomattavia määriä säteilyä tai radioaktiivisia aineita (1 artiklan d kohta).

Uudessa tekstissä vaaditaan myös, että perustetaan asianmukainen turvajärjestelmä (2 a artiklan 1 kohta), lainsäädäntö- ja sääntelykehys (2 a artiklan 2 kohdan a alakohta) ja toimivaltaiset viranomaiset vastaamaan lainsäädäntö- ja sääntelykehyksen täytäntöönpanosta (2 a artiklan 2 kohdan b alakohta).

Siinä vahvistetaan myös 12 ”ydinaineiden ja ydinlaitosten turvajärjestelyjä koskevaa perusperiaatetta”, joita uuteen yleissopimukseen liittyvien valtioiden on noudatettava (2 a artiklan 3 kohta).

Muutetulla yleissopimuksella on suoria vaikutuksia Euratomin perustamissopimuksen VII luvussa määriteltyyn ydinmateriaalivalvontaan⁴. Erityisesti olisi korostettava, että valtio vastaa turvajärjestelmän perustamisesta, täytäntöönpanosta ja ylläpitämisestä (perusperiaate A); ydinaineita koskevien asianmukaisten turvajärjestelyjen varmistamisesta myös niiden kansainvälisessä kuljetuksessa tarvittaessa siihen saakka, kun tämä vastuu siirretään asianmukaisesti toiselle valtiolle (perusperiaate B); turvajärjestelyjen sääntelemiseksi tarvittavan lainsäädäntö- ja sääntelykehyksen perustamisesta ja ylläpitämisestä (perusperiaate C) sekä lainsäädäntö- ja sääntelykehyksen täytäntöönpanosta vastaavan toimivaltaisen viranomaisen perustamisesta ja nimeämisestä (perusperiaate D). Lisäksi vastuut valtion sisäisten turvajärjestelyjen eri osatekijöiden täytäntöönpanosta on määriteltävä selvästi (perusperiaate E), ja on laadittava valmiussuunnitelmat

⁴ Euratomin perustamissopimuksen 77–85 artiklat.

(häätäsuunnitelmat) ydinaineiden luvattoman siirtämisen tai ydinlaitoksiin taikka ydinaineisiin kohdistuvan sabotaasin tai näiden yrityksen varalta, ja kaikkien luvanhaltijoiden ja asianomaisten viranomaisten on noudatettava näitä suunnitelmia asianmukaisesti (perusperiaate K).

Muutetussa yleissopimuksessa vaaditaan myös sopimusvaltioilta erityisesti suojaa varkauden, salakuljetuksen ja sabotaasin varalta (2 a artiklan 1 kohta).

Lisäksi yleissopimuksessa määrätään yhteistyön laajentamisesta valtioiden välillä ja niiden kesken sekä kansainvälisestä yhteistyöstä nopeissa toimenpiteissä, joilla pyritään paikantamaan ja hankkimaan takaisin varastettu tai salakuljetettu ydinaine, lieventämään sabotaasin radiologisia seurauksia sekä estämään ja torjumaan asiaan liittyviä rikoksia (5 artikla).

Erittäin tärkeä muutos on myös yleissopimuksen uusi vaatimus, että tietyt tahalliset teot, uhat ja yritykset ”on jokaisen sopimuspuolen kansallisessa lainsäädännössä säädettävä rangaistaviksi teoiksi” (7 artiklan 1 kohta).

3. EURATOMIN TEHTÄVÄT JA TOIMIVALTA YLEISSOPIMUKSEN PUITTEISSA JÄSENVALTIOIDEN RINNALLA

Euratomin perustamissopimuksen 101 artiklan 1 kohdassa määrätään, että ”yhteisö voi toimivaltansa rajoissa tehdä sopimuksia [...] kansainvälisen järjestön [...] kanssa.”

Euroopan yhteisöjen tuomioistuin⁵ on vuonna 1978 selkeästi määritellyt yhteisön tehtävät ja toimivallan yleissopimuksen puitteissa:

”(Euratomin perustamissopimuksen) 2 artiklan e kohdassa annetaan yhteisön tehtäväksi taata asianmukaisella valvonnalla, että ydinaineita ’ei siirretä käytettäväksi muuhun kuin siihen käyttöön, johon ne on tarkoitettu’, erottelematta siirtämisen laatua tai olosuhteita, joissa siirtämistä voisi tapahtua; lisäksi ilmaisulla ’turvavalvonta’, jota perustamissopimuksessa käytetään VII luvun määräyksiä luonnehdittaessa, on laajempi merkitys kuin se, että ydinaineiden käyttäjän ilmoittama käyttötarkoitus korvataan toisella käyttötarkoituksella. Perustamissopimuksessa tarkoitetaan tässä yhteydessä kaikkea sellaista käyttötarkoituksen vastaista ydinaineiden siirtoa, mikä merkitsee turvallisuusriskiä eli väestön ja valtion elintärkeiden etujen vaarantamisriskiä. Näin ollen perustamissopimuksen mukainen ’turvavalvonnan’ käsite on niin kattava, että siihen sisältyvät myös turvajärjestelyt.”

Tuomioistuin totesi lopuksi, että ”jäsenvaltioiden osallistuminen ydinaineiden [...] turvajärjestelyjä koskevaan yleissopimukseen [...] on Euratomin perustamissopimuksen määräysten mukaista vain jos yhteisö on itse omaan toimivaltansa kuuluvien alojen osalta yleissopimuksen sopimuspuolena samalla tavoin kuin jäsenvaltiot”. Tietyt yleissopimuksen sitoumukset voidaan panna täytäntöön yhteisöä koskevissa asioissa ainoastaan siten, että yhteisö ja jäsenvaltiot

⁵ Tuomioistuimen tuomio 1/78, 14. marraskuuta 1978. Tuomio perustuu Euratomin perustamissopimuksen 103 artiklaan. Kok. 1978, s. 2151, erityisesti tuomion 21 ja 34 kohta sekä ensimmäinen operatiivinen osa.

toimivat tiiviissä yhteistyössä sekä sopimuksen neuvottelu- ja tekovaiheessa että sovittujen sitoumusten täyttämässä.

Kun otetaan huomioon, että yleissopimuksen muuttamisen yleisenä tavoitteena on sen uudenaikaistaminen siten, että voidaan paremmin reagoida uusiin uhkiin ja saavuttaa parempi ydinasioiden turvataso torjumalla, estämällä ja myös rankaisemalla niitä, jotka syyllistyvät ydinaineiden varkauksiin, sabotaasiin tai jopa terroritekoihin, tuomioistuimen päätelmiä on tulkittava uudessa valossa, mikä merkitsee, että myös yleissopimuksen soveltaminen Euratomiin on mukautettava asianmukaisesti. Samoin kuin todettiin hiljattain annetussa ympäristönsuojelua koskevassa tuomioistuimen tuomiossa⁶, ei Euratomin toimivallasta voi sinänsä sulkea pois sitä, että jäsenvaltioita vaaditaan säätämään seuraamuksista. Tässä tuomiossaan tuomioistuin vahvisti, että yhteisöllä on periaatteessa toimivalta vaatia, että jäsenvaltiot säätävät rikosoikeudellisista seuraamuksista suojellakseen olennaisia yhteisön tavoitteita.

On selvää, että ydinmateriaalien turvajärjestelyt ovat yksi yhteisön olennainen tavoite. Se ilmenee kattavasta, oikeudellisesti sitovasta ja täytäntöönpanokelpoisesta Euratomin ydinmateriaalivalvonnasta.

Tältä osin Euratomin perustamissopimuksen 2 e artiklassa määrätään, että yhteisön tehtävä on ”taata, että ydinaineita ei siirretä käytettäväksi muuhun kuin siihen käyttöön, johon ne on tarkoitettu”.

Sen vuoksi voi olla tarpeen, että Euratom toteuttaa korkeatasoisen ydinmateriaalivalvonnan varmistamiseksi jäsenvaltioiden rikosoikeuteen liittyviä toimenpiteitä.

Sen vuoksi ei ole sinänsä poissuljettua, että yleissopimuksen 7 artiklan 1 kappaleeseen lisättyä tärkeää muutosta, jonka mukaan tietyt tahalliset teot, uhat ja yritykset ”on jokaisen sopimuspuolen kansallisessa lainsäädännössä säädettyä rangaistaviksi teoiksi”, sovelletaan myös Euratomiin.

Kun komissio liittyy yleissopimukseen, sen on ilmoitettava yhteisön puolesta tallettajalle, mitä artikloja ei sovelleta siihen. Yleissopimuksen 18 artiklan 4 kappaleen c kohta edellyttää alueellisilta yhdentymis- tai muilta organisaatioilta tällaista ilmoitusta.

Edellä mainittujen tuomioistuimen ohjeiden mukaisesti ilmoituksessa on todettava, ettei 8–13 artiklaa⁷ sovelleta yhteisöön, vaikka niitä sovelletaan jäsenvaltioihin.

⁶ Tuomioistuimen 13. syyskuuta 2005 antama tuomio asiassa C-176/03, Euroopan yhteisöjen komissio vastaan Euroopan unionin neuvosto, erityisesti 47 ja 48 kohdat.

⁷ Yleissopimuksen 8–13 artiklassa määrätään rikoksiin, rikoksentekijöiden kiinniottamiseen ja luovuttamiseen ja muihin näihin liittyviin asioihin sovellettavista oikeudellisista järjestelyistä.

4. PÄÄTELMÄT

Edellä esitettyjen yleissopimukseen ehdotettujen muutosten ja edellä mainitun Euroopan yhteisöjen tuomioistuimen tuomion perusteella on tarpeen, että yhteisö osallistuu edelleen täysimääräisesti tähän yleissopimukseen varmistaakseen erityisesti yhdenmukaisuuden yleissopimuksen täytäntöönpanon ja Euratomin perustamissopimuksen ja siihen perustuvan johdetun oikeudentäytäntöönpanon välillä.

Komissio ehdottaa sen vuoksi, että neuvosto tekee Euratomin perustamissopimuksen 101 artiklan 2 kohdan mukaisesti seuraavassa esitettävän päätöksen, jolla hyväksytään, että komissio liittyy yleissopimukseen.

NEUVOSTON PÄÄTÖS

jolla hyväksytään Euroopan atomienergiayhteisön liittyminen yleissopimukseen ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä

EUROOPAN UNIONIN NEUVOSTO, joka

ottaa huomioon Euroopan atomienergiayhteisön perustamissopimuksen ja erityisesti sen 101 artiklan toisen kohdan,

ottaa huomioon komission ehdotuksen⁸,

sekä katsoo seuraavaa:

- (1) Euratomin perustamissopimuksen 2 artiklan e alakohdassa määrätään, että yhteisö takaa asianmukaisella valvonnalla, että ydinaineita ei siirretä käytettäväksi muuhun kuin siihen käyttöön, johon ne on tarkoitettu.
- (2) Yleissopimus ydinaineiden turvajärjestelyjä koskevista toimista (The Convention on the Physical Protection of Nuclear Materials, CPPNM), jäljempänä 'yleissopimus', tehtiin vuonna 1979, ja se tuli voimaan vuonna 1987. Yleissopimuksen sopimuspuolina on 118 valtiota ja Euroopan atomienergiayhteisö⁹. Kaikki jäsenvaltiot ovat sopimuspuolia yleissopimuksessa.
- (3) Yleissopimuksen 20 artiklan nojalla kokoon kutsuttu yleissopimuksen muuttamista käsittelevä konferenssi kokoontui 4 päivänä heinäkuuta 2005 IAEA:n yhteydessä. Euroopan komissio allekirjoitti 8 päivänä heinäkuuta 2005 Euroopan atomienergiayhteisön puolesta päätösasiakirjan ydinaineiden turvajärjestelyjä koskevista toimista tehtyyn yleissopimukseen tehtävistä muutoksista.
- (4) Kun "alueellisen yhdentymisen tai muunlainen organisaatio" liittyy yleissopimukseen, sen on ilmoitettava mainitun yleissopimuksen 18 artiklan mukaisesti tallettajalle, mitkä ovat sen jäsenvaltiot ja mitä yleissopimuksen artikloja siihen ei sovelleta.
- (5) Euroopan yhteisöjen tuomioistuin on päättänyt¹⁰, että jäsenvaltioiden osallistuminen ydinaineiden turvajärjestelyjä koskevaan yleissopimukseen on Euratomin perustamissopimuksen määräysten mukaista vain jos yhteisö on itse omaan toimivaltaansa kuuluvien alojen osalta yleissopimuksen sopimuspuolena samalla tavoin kuin jäsenvaltiot. Tietyt yleissopimuksen sitoumukset voidaan panna täytäntöön

⁸ EUVL C [...], [...], s. [...].

⁹ Tilanne 27. kesäkuuta 2006.

¹⁰ Tuomioistuimen tuomio 1/78, 14. marraskuuta 1978. Tuomio perustuu Euratomin perustamissopimuksen 103 artiklan 3 kohtaan. Kok. 1978, s. 2151, erityisesti tuomion ensimmäinen operatiivinen osa ja 34 kohta.

yhteisöä koskevista asioista ainoastaan siten, että yhteisö ja jäsenvaltiot toimivat tiiviissä yhteistyössä sekä sopimuksen neuvottelu- ja tekovaiheessa että sovittujen sitoumusten täyttämiseksi.

- (6) Tuomioistuin on edelleen vahvistanut¹¹, että Euratomin perustamissopimuksen 2 artiklan e kohdassa annetaan yhteisön tehtäväksi taata asianmukaisella valvonnalla, että ydinaineita ei siirretä käytettäväksi muuhun kuin siihen käyttöön, johon ne on tarkoitettu, erottelematta siirtämisen laatua tai olosuhteita, joissa siirtämistä voisi tapahtua; lisäksi ilmaisulla 'turvavalvonta', jota perustamissopimuksessa käytetään VII luvun määräyksiä luonnehdittaessa, on laajempi merkitys kuin se, että ydinaineiden käyttäjän ilmoittama käyttötarkoitus korvataan toisella käyttötarkoituksella.
- (7) Sen vuoksi olisi hyväksyttävä Euroopan atomienergiayhteisön liittyminen muutettuun yleissopimukseen ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä,

ON PÄÄTTÄNYT SEURAAVAA:

Ainoa artikla

Hyväksytään Euroopan atomienergiayhteisön liittyminen yleissopimukseen ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä, sellaisena kuin se on muutettuna 8 päivänä heinäkuuta 2005 allekirjoitetulla päätösasiakirjalla.

Muutetun yleissopimuksen ja yleissopimuksen 18 artiklan 4 kappaleen määräysten mukaisen Euratomin julistuksen teksti on tämän päätöksen liitteenä.

Tehty Brysselissä päivänä kuuta .

*Neuvoston puolesta
Puheenjohtaja*

¹¹ Sama 21 kohta.

LIITE

Ilmoitus, jonka Euroopan atomienergiayhteisö antaa yleissopimuksen 18 artiklan 4 kappaleen mukaisesti

Seuraavat valtiot ovat tällä hetkellä Euroopan atomienergiayhteisön jäseniä: Belgian kuningaskunta, Tšekin tasavalta, Tanskan kuningaskunta, Saksan liittotasavalta, Viron tasavalta, Helleenien tasavalta, Espanjan kuningaskunta, Ranskan tasavalta, Irlanti, Italian tasavalta, Kyproksen tasavalta, Latvian tasavalta, Liettuan tasavalta, Luxemburgin suurherttuakunta, Unkarin tasavalta, Maltan tasavalta, Alankomaiden kuningaskunta, Itävallan tasavalta, Puolan tasavalta, Portugalin tasavalta, Slovenian tasavalta, Slovakian tasavalta, Suomen tasavalta, Ruotsin kuningaskunta ja Ison-Britannian ja Pohjois-Irlannin yhdistynyt kuningaskunta,

Yhteisö julistaa, että ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä tehdyn yleissopimuksen 8–13 artikloja ei sovelleta siihen.



**EUROOPAN UNIONIN
NEUVOSTO**

**Bryssel, 27. syyskuuta 2006 (28.09)
(OR. en)**

**13286/06
ADD 1**

**ATO 104
CONOP 52**

LISÄYS EHDOTUKSEEN

Lähettiläjä: Euroopan komissio

Päivä: 22. syyskuuta 2006

Asia: Yleissopimus ydinaineita ja ydinlaitoksia koskevista turvajärjestelyistä

Valtuuskunnille toimitetaan oheisena muutettu yleissopimus, joka mainitaan komission ehdotuksessa (asiak. 13286/06), joka on saapunut pääsihteeri, korkea edustaja Javier Solanalle johtaja Jordi Ayet Puigarnaun lähettämällä kirjeellä.

Liite: KOM(2006) 518 FV 1

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and co-operation among States,

CONSIDERING that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,"

RECALLING the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

BELIEVING that physical protection plays an important role in supporting nuclear nonproliferation and counter-terrorism objectives,

DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities use for peaceful purposes,

CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

RECOGNIZING also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

Article 1

For the purposes of this Convention:

- (a) “nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;
- (b) “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination;
- (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
- (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.

Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.
2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.

4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.

(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

Article 2A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:

(a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;

(b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;

(c) protecting nuclear material and nuclear facilities against sabotage; and

(d) mitigating or minimizing the radiological consequences of sabotage.

2. In implementing paragraph 1, each State Party shall:

(a) establish and maintain a legislative and regulatory framework to govern physical protection;

(b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and

(c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.

3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

FUNDAMENTAL PRINCIPLE A: *Responsibility of the State*

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport*

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework*

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

FUNDAMENTAL PRINCIPLE D: *Competent Authority*

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders*

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g. operators or shippers).

FUNDAMENTAL PRINCIPLE F: *Security Culture*

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

FUNDAMENTAL PRINCIPLE G: *Threat*

The State's physical protection should be based on the State's current evaluation of the threat.

FUNDAMENTAL PRINCIPLE H: *Graded Approach*

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

FUNDAMENTAL PRINCIPLE I: *Defence in Depth*

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

FUNDAMENTAL PRINCIPLE J: *Quality Assurance*

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

FUNDAMENTAL PRINCIPLE K: *Contingency Plans*

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

FUNDAMENTAL PRINCIPLE L: *Confidentiality*

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

(b) Nuclear material which is not subject to the provisions of this article pursuant to subparagraph (a) should be protected in accordance with prudent management practice.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;

(b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:

(a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;

(b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;

(c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify

the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;

(d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.

4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

5. A State Party may consult and co-operate as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.

2. State Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

Article 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances,

unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;

f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(g) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in subparagraph (e), or

(ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(h) an attempt to commit any offence described in sub-paragraphs (a) to (e);

(i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);

(j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and

(k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:

(i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or

(ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:

(a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is presented in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Parties in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

Article 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State,
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

Article 11A

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 11B

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceeding. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 13A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure,
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organization shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties,

(c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty-first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

Annex I

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
 - a. For Category III materials, storage within an area to which access is controlled;
 - b. For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
 - c. For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
 - a. For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
 - b. For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
 - c. For natural uranium other than in the form of ore or ore-residue; transportation protection for quantities exceeding 500 kilograms uranium shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III ^{c/}
1. Plutonium ^{a/}	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated ^{b/}	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	Uranium enriched to 20% ²³⁵ U or more		10 kg or more	Less than 10 kg but more than 1 kg
	Uranium enriched to 10% ²³⁵ U but less than 20%			10 kg or more
3. Uranium-233	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{d/ e/}	

^{a/} All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

^{b/} Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (1 00 rads/hour) at one metre unshielded.

^{c/} Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

^{d/} Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

^{e/} Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.



**EUROPEISKA
UNIONENS RÅD**

**Bryssel den 27 september 2006 (28.9)
(OR. en)**

13286/06

**ATO 104
CONOP 52**

FÖRSLAG

från: Europeiska kommissionen

av den: 22 september 2006

Ärende: Förslag till rådets beslut om godkännande av Europeiska
atomenergigemenskapens anslutning till konventionen om fysiskt skydd av
kärnämne och kärnanläggningar

För delegationerna bifogas kommissionens förslag, som översänts per brev från
Jordi Ayet Puigarnau till Javier Solana, generalsekreterare/hög representant.

Bilaga: KOM(2006) 518 slutlig



EUROPEISKA GEMENSKAPERNAS KOMMISSION

Bryssel den 21.9.2006
KOM(2006) 518 slutlig

Förslag till

RÅDETS BESLUT

**om godkännande av Europeiska atomenergigemenskapens anslutning till konventionen
om fysiskt skydd av kärnämne och kärnanläggningar**

(framlagt av kommissionen)

MOTIVERING

1. INLEDNING

Konventionen om fysiskt skydd av kärnämne (nedan kallad "konventionen") undertecknades 1980 under överinseende av Internationella atomenergiorganet (IAEA) och trädde i kraft 1987. 118 stater och Europeiska atomenergigemenskapen (nedan kallad "Euratom") är parter i konventionen¹. Alla Europeiska unionens medlemsstater är parter i konventionen.

Enligt artikel 18.4 a i konventionen undertecknade Euratom konventionen den 13 juni 1980 och anslöt sig till den den 6 oktober 1991².

Konventionens syfte är främst att vidta åtgärder för fysiskt skydd vid internationell transport av kärnämne.

Ett flertal länder påpekade 1999 att konventionen inte var uttömmande och behövde ändras, främst eftersom den inte täckte vissa viktiga aspekter av fysiskt skydd. Brister upptäcktes i skyddet av kärnämne för inhemsk användning, lagring och transport. Konventionen befanns inte heller i tillfredsställande grad behandla skyddet av kärnanläggningar mot sabotage. Med anledning av dessa påpekanden upprättade generaldirektören för Internationella atomenergiorganet (IAEA) i juni 2001 en arbetsgrupp ("Open-Ended Group of Legal and Technical Experts to Prepare a draft Amendment of the CPPNM") som skulle diskutera behovet av att ändra konventionen.

En konferens om ändringen ägde rum i Wien i IAEA:s huvudkontor från måndagen den 4 till fredagen den 8 juli 2005. Den 8 juli antog konferensen ändringen av konventionen.

Rådet hade genom sitt beslut av den 28 juni 2005³ givit kommissionen befogenhet att förhandla om ändringar av konventionen i frågor där gemenskapen är behörig. Euratom deltog därför fullt ut i ändringskonferensen. Ändringskonferensens slutakt undertecknades av kommissionens företrädare på Euratoms vägnar den 8 juli 2005.

2. DE FÖRESLAGNA ÄNDRINGARNA AV KONVENTIONEN

Ändringarna av konventionen är avsedda att i betydande grad stärka dess effektivitet.

Detta framgår redan av beskrivningen av målen i den nya artikel 1a i konventionen: "Denna konvention syftar till att uppnå och vidmakthålla ett effektivt världsomspännande fysiskt skydd av kärnämne och kärnanläggningar som används i fredligt syfte, att förebygga och bekämpa brott som avser sådana ämnen och anläggningar i hela världen och att underlätta samarbete med detta mål mellan stater som är parter i konventionen."

¹ Avser situationen den 27 juni 2006.

² Rådets beslut av den 9 juni 1980, EGT L 149, 17.6.1980 s. 41 (svensk version saknas).

³ Dok. 1024/05 ATO 62 CONOP 33 =C 438.

Genom ändringarna utvidgas därför tillämpningsområdet för konventionen till att utöver kärnämnen under internationell transport även gälla kärnämnen som används, transporteras eller lagras inom ett lands gränser.

För att uppnå ett mer omfattande fysiskt skydd av kärnämne omfattar den ändrade konventionen inte endast kärnämnet i sig utan även relevanta kärnanläggningar. Konventionens namn har därför ändrats till *konventionen om fysiskt skydd av kärnämne och kärnanläggningar*.

I den ändrade konventionen beskrivs ingående vad som avses med ”kärnanläggning”: en anläggning inom vilken kärnämne produceras, behandlas, används, hanteras, lagras eller kvittblivs, om skador på eller störningar av en sådan anläggning skulle kunna leda till att betydande mängder av strålning eller radioaktivt material spreds samt tillhörande byggnader och utrustning som vid störning skulle kunna sprida strålning eller radioaktivt material (artikel 1 d).

Enligt den nya skrivningen krävs även att det upprättas en lämplig ordning för fysiskt skydd (artikel 2a.1), rättsliga ramar och rambestämmelser (artikel 2a.2 a) och behöriga myndigheter som ansvarar för genomförandet av dessa (artikel 2a.2 b).

Vidare redovisas tolv ”grundläggande principer för fysiskt skydd av kärnämne och kärnanläggningar” som stater som är parter i den nya konventionen skall tillämpa (artikel 2a.3).

Den ändrade konventionen påverkar direkt den ordning för säkerhetskontroll som fastställs genom kapitel VII i Euratomfördraget⁴. Särskilt skall framhållas uttalandet om ansvar för upprättande, genomförande och vidmakthållande av en ordning för fysiskt skydd (princip A), för säkerställande av att kärnämne är tillräckligt skyddat, vilket utvidgas till att gälla internationella transporter av kärnämne fram till dess att detta ansvar i tillämpliga fall har överförs i föreskrivna former till en annan stat (princip B), för att upprätta och vidmakthålla rättsliga ramar och rambestämmelser som reglerar det fysiska skyddet (princip C), för att upprätta eller utse en behörig myndighet som skall ansvara för att de rättsliga ramarna och rambestämmelserna genomförs (princip D), att klart fastställa ansvarsfördelningen för genomförandet av de olika aspekterna av det fysiska skyddet i en stat (princip E) och att upprätta beredskapsplaner (katastrofplaner) som skall verkställas för att ingripa mot otillåtet avlägsnande av kärnämne eller sabotage av kärnanläggningar eller kärnämne, eller försök till sådana handlingar och som alla berörda tillståndshavare och myndigheter skall tillämpa på lämpligt sätt (princip K).

I den ändrade konventionen krävs också uttryckligen att de stater som är parter i konventionen skall tillhandahålla skydd mot stöld, smuggling och sabotage (artikel 2a.1).

Det föreskrivs också utökat bilateralt och multilateralt samarbete mellan stater och internationellt samarbete kring snabba åtgärder för att lokalisera och återta stulet eller smugglat kärnämne, lindra eventuell strålningsrisker till följd av sabotage och förebygga och bekämpa därmed sammanhängande brottslighet (artikel 5).

⁴ Artiklarna 77–85 i Euratomfördraget.

Ytterligare en mycket viktig ändring är det nya krav som föreskrivs genom konventionen att avsiktligt genomförande av olika handlingar, hot eller försök skall klassificeras som straffbar handling i varje stat som är part i fördraget enligt dess nationella lagstiftning (artikel 7 första stycket).

3. EURATOMS UPPGIFT OCH BEHÖRIGHET VID SIDAN AV MEDLEMSSTATERNA NÄR DET GÄLLER KONVENTIONEN

Enligt artikel 101 första stycket i Euratomfördraget får gemenskapen ”inom ramen för sin kompetens åta sig förpliktelser genom att träffa avtal med [...] internationella organisationer”.

Euratoms uppgift och behörighet inom ramen för konventionen bekräftades av domstolen 1978⁵.

”I artikel 2 e [i Euratomfördraget] ges gemenskapen i uppdrag att genom lämplig kontroll garantera att ’kärnmaterial inte används för andra ändamål än sådana för vilka de är avsedda’, utan att det uppställs några åtskillnader vad gäller dessa andra ändamåls karaktär och under vilka förhållanden dessa skulle kunna förekomma. Slutligen har själva uttrycket ’säkerhetskontroll’, som i fördraget används som rubrik för bestämmelserna i kapitel 6, en betydligt större räckvidd än att enbart tillämpas då ett annat ändamål sätts i stället för det ändamål som förbrukaren av kärnmaterial uppgivit. Det som fördraget här har i sikte är varje annan användning av kärnmaterial som kan innebära en ”säkerhetsrisk, dvs. en risk för att befolkningarnas och staternas vitala intressen skadas. Det kan därför inte råda något tvivel om att begreppet ”säkerhetskontroll” enligt fördraget är tillräckligt omfattande för att även inbegripa åtgärder för fysiskt skydd av kärnmaterial.”

Domstolen kom till följande slutsats: ”Medlemsstaternas deltagande i en sådan konvention [...] är förenlig med bestämmelserna i Euratomfördraget endast under förutsättning att gemenskapen som sådan, på områdena för sin egen behörighet, deltar som part i konventionen med samma ställning som staterna” och att vissa skyldigheter som följer av konventionen endast kan genomföras av gemenskapen genom ett nära samarbete mellan gemenskapen och medlemsstaterna, både vad gäller förhandlandet om och ingåendet av konventionen och genomförandet av skyldigheterna.

Med hänsyn till att en modernisering är det övergripande målet för ändringen av konventionen, så att den bättre svarar upp till nya hot och så att större kärnsäkerhet skapas genom bekämpande och förebyggande av stöld av kärnämne, sabotage eller ren terrorism och slutligen genom sanktioner mot personer som begår sådan verksamhet, måste domstolens slutsats tolkas utifrån nya utgångspunkter som innebär att även konventionens tillämpning på Euratom måste anpassas till denna

⁵ Domstolens avgörande 1/78 av den 14 november 1978. Avgörande enligt artikel 103 andra stycket andra och tredje meningarna (motsvaras i den franska versionen av artikelns tredje stycke) i Euratomfördraget, rättsfallssamling 1978 s. 2151, särskilt skälen 21 och 34 och första delen av domslutet i avgörandet.

utveckling, Med analog tillämpning av en dom som domstolen meddelade nyligen⁶ i fråga om miljöskydd kan krav på sanktioner som skall upprättas av medlemsstaterna inte i sig undantas från Euratoms behörighet. I denna dom bekräftade domstolen att gemenskapen i princip är behörig att kräva att medlemsstaterna skall fastställa straffrättsliga påföljder till skydd för gemenskapens väsentliga mål.

Det är ostridigt att fysiskt skydd av kärnämne är ett av gemenskapens väsentliga mål, så som det framställs genom Euratoms omfattande, rättsligt bindande och tillämpliga system för säkerhetskontroll.

I detta avseende anges i artikel 2 e i Euratomfördraget att gemenskapen har till uppgift att ”garantera att kärnmaterial inte används för andra ändamål än sådana för vilka de är avsedda.”

För att uppnå en hög nivå på säkerhetskontrollen kan det därför visa sig nödvändigt för Euratom att vidta åtgärder som avser straffrätten i medlemsstaterna.

Därför kan den viktiga ändring som införts i artikel 7.1 i konventionen, att avsiktligt genomförande av olika handlingar, hot och försök ”skall klassificeras som straffbar handling i varje stat som är part i fördraget enligt dess nationella lagstiftning” inte i sig undantas från tillämpning på Euratom.

När kommissionen ansluter sig till konventionen måste den på gemenskapens vägnar överlämna en förklaring till depositarien, enligt vad som krävs av en regional organisation av integrerande eller annan karaktär genom artikel 18.4 c, om vilka artiklar som inte skall tillämpas för organisationen.

Med beaktande av domstolens vägledning, som redovisats ovan, skall det i förklaringen anges att artiklarna 8–13⁷ inte är tillämpliga på gemenskapen till skillnad från enskilda medlemsstater.

4. SLUTSATSER

Mot bakgrund av ovan beskrivna ändringar av konventionen och den citerade dom som avgivits av domstolen är det nödvändigt att gemenskapen fortsätter att delta fullt ut i konventionen, särskilt för att se till att genomförandet av konventionen förblir förenligt med Euratomfördraget och dess sekundärlagstiftning.

Kommissionen föreslår därför rådet att i enlighet med artikel 101 andra stycket i Euratomfördraget anta bifogade beslut om godkännande av att kommissionen ingår konventionen.

⁶ Domstolens dom i mål C-176/03 av den 13 september 2005, Europeiska kommissionen mot Europeiska unionens råd, särskilt skälen 47 och 48.

⁷ Artiklarna 8-13 i konventionen behandlar rättsordningar för brott, påföljder och utlämning av misstänkta samt frågor i samband med detta.

Förslag till

RÅDETS BESLUT

om godkännande av Europeiska atomenergigemenskapens anslutning till konventionen om fysiskt skydd av kärnämne och kärnanläggningar

EUROPEISKA UNIONENS RÅD HAR BESLUTAT FÖLJANDE

med beaktande av fördraget om upprättandet av Europeiska atomenergigemenskapen, särskilt artikel 101 andra stycket,

med beaktande av kommissionens förslag⁸, och

av följande skäl:

- (1) I artikel 2 e i Euratomfördraget anges att gemenskapen genom lämplig kontroll skall garantera att kärnmaterial inte används för andra ändamål än sådana för vilka de är avsedda.
- (2) Konventionen om fysiskt skydd av kärnämne (nedan kallad "konventionen") antogs 1979 och trädde i kraft 1987. 118 stater och Europeiska atomenergigemenskapen är parter i konventionen⁹. Alla medlemsstater är parter i konventionen.
- (3) En ändringskonferens enligt artikel 20 i konventionen sammankallades den 4 juli 2005 under överinseende av IAEA. Slutakten om ändringarna av konventionen om fysiskt skydd av kärnämne undertecknades av Europeiska kommissionen på Europeiska atomenergigemenskapens vägnar den 8 juli 2005.
- (4) När en "regional organisation av integrerande eller annan karaktär" blir part i konventionen måste den, i enlighet med artikel 18 i konventionen, till depositarien överlämna en förklaring med uppgift om vilka stater som är medlemmar i den och vilka artiklar i konventionen som inte är tillämpliga på denna organisation.
- (5) Domstolen¹⁰ har beslutat att medlemsstaternas deltagande i konventionen är förenlig med bestämmelserna i Euratomfördraget endast under förutsättning att gemenskapen som sådan, på områdena för sin egen behörighet, deltar som part i konventionen med samma ställning som medlemsstaterna, och att vissa skyldigheter som följer av konventionen endast kan genomföras av gemenskapen genom ett nära samarbete

⁸ EUT C [...], [...], s. [...].

⁹ Avser situationen den 27 juni 2006.

¹⁰ Domstolens avgörande 1/78 av den 14 november 1978. Avgörande enligt artikel 103 andra stycket andra och tredje meningarna (motsvaras i den franska versionen av artikelns tredje stycke) i Euratomfördraget, rättsfallssamling 1978 s. 2151, särskilt första delen av domslutet och skäl 34 i avgörandet.

mellan gemenskapen och medlemsstaterna, både vad gäller förhandlandet om och ingåendet av konventionen och genomförandet av skyldigheterna.

- (6) Domstolen¹¹ bekräftade vidare att artikel 2 e i Euratomfördraget ger gemenskapen i uppdrag att genom lämplig kontroll garantera att kärnmaterial inte används för andra ändamål än sådana för vilka de är avsedda, utan att det uppställs några åtskillnader vad gäller dessa andra ändamåls karaktär och under vilka förhållanden dessa skulle kunna förekomma och slutligen att själva uttrycket 'säkerhetskontroll', som i fördraget används som rubrik för bestämmelserna i kapitel 6, har en betydligt större räckvidd än att enbart tillämpas då ett annat ändamål sätts i stället för det ändamål som förbrukaren av kärnmaterial uppgivit.
- (7) Europeiska atomenergigemenskapens anslutning till den ändrade konventionen om fysiskt skydd av kärnämne och kärnanläggningar bör därför godkännas.

HÄRIGENOM FÖRESKRIVS FÖLJANDE.

Enda artikel

Häri genom godkänns Europeiska atomenergigemenskapens anslutning till konventionen om fysiskt skydd av kärnämne och kärnanläggningar efter ändring genom den slutakt som undertecknades den 8 juli 2005.

Texterna till den ändrade konventionen och till Euratoms förklaring i enlighet med artikel 18.4 i konventionen bifogas detta beslut.

Utfärdat i Bryssel den

*På rådets vägnar
Ordförande*

¹¹ Skäl 21 i samma avgörande.

BILAGA

Förklaring av Europeiska atomenergigemenskapen i enlighet med artikel 18.4 i konventionen

Följande stater är för närvarande medlemmar i Europeiska atomenergigemenskapen: Konungariket Belgien, Republiken Tjeckien, Konungariket Danmark, Förbundsrepubliken Tyskland, Republiken Estland, Republiken Grekland, Konungariket Spanien, Republiken Frankrike, Irland, Republiken Italien, Republiken Cypern, Republiken Lettland, Republiken Litauen, Storhertigdömet Luxemburg, Republiken Ungern, Republiken Malta, Konungariket Nederländerna, Republiken Österrike, Republiken Polen, Republiken Portugal, Republiken Slovenien, Republiken Slovakien, Republiken Finland, Konungariket Sverige och Förenade konungariket Storbritannien och Nordirland.

Gemenskapen förklarar att artiklarna 8 till 13 i konventionen om fysiskt skydd av kärnämne och kärnanläggningar inte är tillämpliga på den.



**EUROPEISKA
UNIONENS RÅD**

**Bryssel den 27 september 2006 (29.9)
(OR. en)**

**13286/06
ADD 1**

**ATO 104
CONOP 52**

FÖRSLAG

från: Europeiska kommissionen

av den: 22 september 2006

Ärende: Konventionen om fysiskt skydd av kärnämne och kärnanläggningar

För delegationerna bifogas texten till den ändrade konvention som avses i kommissionens förslag (dok. 13286/06), som översänts per brev från Jordi Ayet Puigarnau till Javier Solana, generalsekreterare/hög representant.

Bilaga: KOM(2006) 518 FV 1

CONVENTION ON THE PHYSICAL PROTECTION OF NUCLEAR MATERIAL AND NUCLEAR FACILITIES

THE STATES PARTIES TO THIS CONVENTION,

RECOGNIZING the right of all States to develop and apply nuclear energy for peaceful purposes and their legitimate interests in the potential benefits to be derived from the peaceful application of nuclear energy,

CONVINCED of the need to facilitate international co-operation and the transfer of nuclear technology for the peaceful application of nuclear energy,

BEARING IN MIND that physical protection is of vital importance for the protection of public health, safety, the environment and national and international security,

HAVING IN MIND the purposes and principles of the Charter of the United Nations concerning the maintenance of international peace and security and the promotion of good-neighbourliness and friendly relations and co-operation among States,

CONSIDERING that under the terms of paragraph 4 of Article 2 of the Charter of the United Nations, "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations,"

RECALLING the Declaration on Measures to Eliminate International Terrorism, annexed to General Assembly resolution 49/60 of 9 December 1994,

DESIRING to avert the potential dangers posed by illicit trafficking, the unlawful taking and use of nuclear material and the sabotage of nuclear material and nuclear facilities, and noting that physical protection against such acts has become a matter of increased national and international concern,

DEEPLY CONCERNED by the worldwide escalation of acts of terrorism in all its forms and manifestations, and by the threats posed by international terrorism and organized crime,

BELIEVING that physical protection plays an important role in supporting nuclear nonproliferation and counter-terrorism objectives,

DESIRING through this Convention to contribute to strengthening worldwide the physical protection of nuclear material and nuclear facilities use for peaceful purposes,

CONVINCED that offences relating to nuclear material and nuclear facilities are a matter of grave concern and that there is an urgent need to adopt appropriate and effective measures, or to strengthen existing measures, to ensure the prevention, detection and punishment of such offences,

DESIRING to strengthen further international co-operation to establish, in conformity with the national law of each State Party and with this Convention, effective measures for the physical protection of nuclear material and nuclear facilities,

CONVINCED that this Convention should complement the safe use, storage and transport of nuclear material and the safe operation of nuclear facilities,

RECOGNIZING that there are internationally formulated physical protection recommendations that are updated from time to time which can provide guidance on contemporary means of achieving effective levels of physical protection,

RECOGNIZING also that effective physical protection of nuclear material and nuclear facilities used for military purposes is a responsibility of the State possessing such nuclear material and nuclear facilities, and understanding that such material and facilities are and will continue to be accorded stringent physical protection,

HAVE AGREED as follows:

Article 1

For the purposes of this Convention:

- (a) “nuclear material” means plutonium except that with isotopic concentration exceeding 80% in plutonium-238; uranium-233; uranium enriched in the isotope 235 or 233; uranium containing the mixture of isotopes as occurring in nature other than in the form of ore or ore-residue; any material containing one or more of the foregoing;
- (b) “uranium enriched in the isotope 235 or 233” means uranium containing the isotope 235 or 233 or both in an amount such that the abundance ratio of the sum of these isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature;
- (c) “international nuclear transport” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the State where the shipment originates beginning with the departure from a facility of the shipper in that State and ending with the arrival at a facility of the receiver within the State of ultimate destination;
- (d) “nuclear facility” means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material;
- (e) “sabotage” means any deliberate act directed against a nuclear facility or nuclear material in use, storage or transport which could directly or indirectly endanger the health and safety of personnel, the public or the environment by exposure to radiation or release of radioactive substances.

Article 1A

The purposes of this Convention are to achieve and maintain worldwide effective physical protection of nuclear material used for peaceful purposes and of nuclear facilities used for peaceful purposes; to prevent and combat offences relating to such material and facilities worldwide; as well as to facilitate co-operation among States Parties to those ends.

Article 2

1. This Convention shall apply to nuclear material used for peaceful purposes in use, storage and transport and to nuclear facilities used for peaceful purposes, provided, however, that articles 3 and 4 and paragraph 4 of article 5 of this Convention shall only apply to such nuclear material while in international nuclear transport.
2. The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State Party rests entirely with that State.
3. Apart from the commitments expressly undertaken by States Parties under this Convention, nothing in this Convention shall be interpreted as affecting the sovereign rights of a State.

4. (a) Nothing in this Convention shall affect other rights, obligations and responsibilities of States Parties under international law, in particular the purposes and principles of the Charter of the United Nations and international humanitarian law.

(b) The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention, and the activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by this Convention.

(c) Nothing in this Convention shall be construed as a lawful authorization to use or threaten to use force against nuclear material or nuclear facilities used for peaceful purposes.

(d) Nothing in this Convention condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

5. This Convention shall not apply to nuclear material used or retained for military purposes or to a nuclear facility containing such material.

Article 2A

1. Each State Party shall establish, implement and maintain an appropriate physical protection regime applicable to nuclear material and nuclear facilities under its jurisdiction, with the aim of:

(a) protecting against theft and other unlawful taking of nuclear material in use, storage and transport;

(b) ensuring the implementation of rapid and comprehensive measures to locate and, where appropriate, recover missing or stolen nuclear material; when the material is located outside its territory, that State Party shall act in accordance with article 5;

(c) protecting nuclear material and nuclear facilities against sabotage; and

(d) mitigating or minimizing the radiological consequences of sabotage.

2. In implementing paragraph 1, each State Party shall:

(a) establish and maintain a legislative and regulatory framework to govern physical protection;

(b) establish or designate a competent authority or authorities responsible for the implementation of the legislative and regulatory framework; and

(c) take other appropriate measures necessary for the physical protection of nuclear material and nuclear facilities.

3. In implementing the obligations under paragraphs 1 and 2, each State Party shall, without prejudice to any other provisions of this Convention, apply insofar as is reasonable and practicable the following Fundamental Principles of Physical Protection of Nuclear Material and Nuclear Facilities.

FUNDAMENTAL PRINCIPLE A: *Responsibility of the State*

The responsibility for the establishment, implementation and maintenance of a physical protection regime within a State rests entirely with that State.

FUNDAMENTAL PRINCIPLE B: *Responsibilities During International Transport*

The responsibility of a State for ensuring that nuclear material is adequately protected extends to the international transport thereof, until that responsibility is properly transferred to another State, as appropriate.

FUNDAMENTAL PRINCIPLE C: *Legislative and Regulatory Framework*

The State is responsible for establishing and maintaining a legislative and regulatory framework to govern physical protection. This framework should provide for the establishment of applicable physical protection requirements and include a system of evaluation and licensing or other procedures to grant authorization. This framework should include a system of inspection of nuclear facilities and transport to verify compliance with applicable requirements and conditions of the license or other authorizing document, and to establish a means to enforce applicable requirements and conditions, including effective sanctions.

FUNDAMENTAL PRINCIPLE D: *Competent Authority*

The State should establish or designate a competent authority which is responsible for the implementation of the legislative and regulatory framework, and is provided with adequate authority, competence and financial and human resources to fulfill its assigned responsibilities. The State should take steps to ensure an effective independence between the functions of the State's competent authority and those of any other body in charge of the promotion or utilization of nuclear energy.

FUNDAMENTAL PRINCIPLE E: *Responsibility of the License Holders*

The responsibilities for implementing the various elements of physical protection within a State should be clearly identified. The State should ensure that the prime responsibility for the implementation of physical protection of nuclear material or of nuclear facilities rests with the holders of the relevant licenses or of other authorizing documents (e.g. operators or shippers).

FUNDAMENTAL PRINCIPLE F: *Security Culture*

All organizations involved in implementing physical protection should give due priority to the security culture, to its development and maintenance necessary to ensure its effective implementation in the entire organization.

FUNDAMENTAL PRINCIPLE G: *Threat*

The State's physical protection should be based on the State's current evaluation of the threat.

FUNDAMENTAL PRINCIPLE H: *Graded Approach*

Physical protection requirements should be based on a graded approach, taking into account the current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities.

FUNDAMENTAL PRINCIPLE I: *Defence in Depth*

The State's requirements for physical protection should reflect a concept of several layers and methods of protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives.

FUNDAMENTAL PRINCIPLE J: *Quality Assurance*

A quality assurance policy and quality assurance programmes should be established and implemented with a view to providing confidence that specified requirements for all activities important to physical protection are satisfied.

FUNDAMENTAL PRINCIPLE K: *Contingency Plans*

Contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof, should be prepared and appropriately exercised by all license holders and authorities concerned.

FUNDAMENTAL PRINCIPLE L: *Confidentiality*

The State should establish requirements for protecting the confidentiality of information, the unauthorized disclosure of which could compromise the physical protection of nuclear material and nuclear facilities.

4. (a) The provisions of this article shall not apply to any nuclear material which the State Party reasonably decides does not need to be subject to the physical protection regime established pursuant to paragraph 1, taking into account the nature of the material, its quantity and relative attractiveness and the potential radiological and other consequences associated with any unauthorized act directed against it and the current evaluation of the threat against it.

(b) Nuclear material which is not subject to the provisions of this article pursuant to subparagraph (a) should be protected in accordance with prudent management practice.

Article 3

Each State Party shall take appropriate steps within the framework of its national law and consistent with international law to ensure as far as practicable that, during international nuclear transport, nuclear material within its territory, or on board a ship or aircraft under its jurisdiction insofar as such ship or aircraft is engaged in the transport to or from that State, is protected at the levels described in Annex I.

Article 4

1. Each State Party shall not export or authorize the export of nuclear material unless the State Party has received assurances that such material will be protected during the international nuclear transport at the levels described in Annex I.

2. Each State Party shall not import or authorize the import of nuclear material from a State not party to this Convention unless the State Party has received assurances that such material will during the international nuclear transport be protected at the levels described in Annex I.

3. A State Party shall not allow the transit of its territory by land or internal waterways or through its airports or seaports of nuclear material between States that are not parties to this Convention unless the State Party has received assurances as far as practicable that this nuclear material will be protected during international nuclear transport at the levels described in Annex I.

4. Each State Party shall apply within the framework of its national law the levels of physical protection described in Annex I to nuclear material being transported from a part of that State to another part of the same State through international waters or airspace.

5. The State Party responsible for receiving assurances that the nuclear material will be protected at the levels described in Annex I according to paragraphs 1 to 3 shall identify and inform in advance States which the nuclear material is expected to transit by land or internal waterways, or whose airports or seaports it is expected to enter.

6. The responsibility for obtaining assurances referred to in paragraph 1 may be transferred, by mutual agreement, to the State Party involved in the transport as the importing State.

7. Nothing in this article shall be interpreted as in any way affecting the territorial sovereignty and jurisdiction of a State, including that over its airspace and territorial sea.

Article 5

1. States Parties shall identify and make known to each other directly or through the International Atomic Energy Agency their point of contact in relation to matters within the scope of this Convention.

2. In the case of theft, robbery or any other unlawful taking of nuclear material or credible threat thereof, States Parties shall, in accordance with their national law, provide co-operation and assistance to the maximum feasible extent in the recovery and protection of such material to any State that so requests. In particular:

(a) a State Party shall take appropriate steps to inform as soon as possible other States which appear to it to be concerned, of any theft, robbery or other unlawful taking of nuclear material or credible threat thereof, and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations;

(b) in doing so, as appropriate, the States Parties concerned shall exchange information with each other, the International Atomic Energy Agency and other relevant international organizations with a view to protecting threatened nuclear material, verifying the integrity of the shipping container or recovering unlawfully taken nuclear material and shall:

(i) co-ordinate their efforts through diplomatic and other agreed channels;

(ii) render assistance, if requested;

(iii) ensure the return of recovered nuclear material stolen or missing as a consequence of the above mentioned events.

The means of implementation of this co-operation shall be determined by the States Parties concerned.

3. In the case of a credible threat of sabotage of nuclear material or a nuclear facility or in the case of sabotage thereof, States Parties shall, to the maximum feasible extent, in accordance with their national law and consistent with their relevant obligations under international law, co-operate as follows:

(a) if a State Party has knowledge of a credible threat of sabotage of nuclear material or a nuclear facility in another State the former shall decide on appropriate steps to be taken in order to inform that State as soon as possible and, where appropriate, the International Atomic Energy Agency and other relevant international organizations of that threat, with a view to preventing the sabotage;

(b) in the case of sabotage of nuclear material or a nuclear facility in a State Party and if in its view other States are likely to be radiologically affected, the former, without prejudice to its other obligations under international law, shall take appropriate steps to inform as soon as possible the State or the States which are likely to be radiologically affected and to inform, where appropriate, the International Atomic Energy Agency and other relevant international organizations, with a view to minimizing or mitigating the radiological consequences thereof;

(c) if in the context of sub-paragraphs (a) and (b), a State Party requests assistance, each State Party to which a request for assistance is directed shall promptly decide and notify

the requesting State Party, directly or through the International Atomic Energy Agency, whether it is in a position to render the assistance requested and the scope and terms of the assistance that may be rendered;

(d) co-ordination of the co-operation under sub-paragraphs (a) to (c) shall be through diplomatic or other agreed channels. The means of implementation of this co-operation shall be determined bilaterally or multilaterally by the States Parties concerned.

4. States Parties shall co-operate and consult, as appropriate, with each other directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining guidance on the design, maintenance and improvement of systems of physical protection of nuclear material in international transport.

5. A State Party may consult and co-operate as appropriate, with other States Parties directly or through the International Atomic Energy Agency and other relevant international organizations, with a view to obtaining their guidance on the design, maintenance and improvement of its national system of physical protection of nuclear material in domestic use, storage and transport and of nuclear facilities.

Article 6

1. States Parties shall take appropriate measures consistent with their national law to protect the confidentiality of any information which they receive in confidence by virtue of the provisions of this Convention from another State Party or through participation in an activity carried out for the implementation of this Convention. If States Parties provide information to international organizations or to States that are not parties to this Convention in confidence, steps shall be taken to ensure that the confidentiality of such information is protected. A State Party that has received information in confidence from another State Party may provide this information to third parties only with the consent of that other State Party.

2. State Parties shall not be required by this Convention to provide any information which they are not permitted to communicate pursuant to national law or which would jeopardize the security of the State concerned or the physical protection of nuclear material or nuclear facilities.

Article 7

1. The intentional commission of:

(a) an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property or to the environment;

(b) a theft or robbery of nuclear material;

(c) an embezzlement or fraudulent obtaining of nuclear material;

(d) an act which constitutes the carrying, sending, or moving of nuclear material into or out of a State without lawful authority;

(e) an act directed against a nuclear facility, or an act interfering with the operation of a nuclear facility, where the offender intentionally causes, or where he knows that the act is likely to cause, death or serious injury to any person or substantial damage to property or to the environment by exposure to radiation or release of radioactive substances,

unless the act is undertaken in conformity with the national law of the State Party in the territory of which the nuclear facility is situated;

f) an act constituting a demand for nuclear material by threat or use of force or by any other form of intimidation;

(g) a threat:

(i) to use nuclear material to cause death or serious injury to any person or substantial damage to property or to the environment or to commit the offence described in subparagraph (e), or

(ii) to commit an offence described in sub-paragraphs (b) and (e) in order to compel a natural or legal person, international organization or State to do or to refrain from doing any act;

(h) an attempt to commit any offence described in sub-paragraphs (a) to (e);

(i) an act which constitutes participation in any offence described in sub-paragraphs (a) to (h);

(j) an act of any person who organizes or directs others to commit an offence described in sub-paragraphs (a) to (h); and

(k) an act which contributes to the commission of any offence described in sub-paragraphs (a) to (h) by a group of persons acting with a common purpose; such act shall be intentional and shall either:

(i) be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence described in sub-paragraphs (a) to (g), or

(ii) be made in the knowledge of the intention of the group to commit an offence described in sub-paragraphs (a) to (g) shall be made a punishable offence by each State Party under its national law.

2. Each State Party shall make the offences described in this article punishable by appropriate penalties which take into account their grave nature.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 7 in the following cases:

(a) when the offence is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) when the alleged offender is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is presented in its territory and it does not extradite him pursuant to article 11 to any of the States mentioned in paragraph 1.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

4. In addition to the States Parties mentioned in paragraphs 1 and 2, each State Party may, consistent with international law, establish its jurisdiction over the offences set forth in article 7 when it is involved in international nuclear transport as the exporting or importing State.

Article 9

Upon being satisfied that the circumstances so warrant, the State Parties in whose territory the alleged offender is present shall take appropriate measures, including detention, under its national law to ensure his presence for the purpose of prosecution or extradition. Measures taken according to this article shall be notified without delay to the States required to establish jurisdiction pursuant to article 8 and, where appropriate, all other States concerned.

Article 10

The State Party in whose territory the alleged offender is present shall, if it does not extradite him, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 11

1. The offences in article 7 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include those offences in every future extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those offences. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State,
4. Each of the offences shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties required to establish their jurisdiction in accordance with paragraph 1 of article 8.

Article 11A

None of the offences set forth in article 7 shall be regarded for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 11B

Nothing in this Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 7 or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 12

Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article 7 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the offences set forth in article 7, including the supply of evidence at their disposal necessary for the proceeding. The law of the State requested shall apply in all cases.
2. The provisions of paragraph 1 shall not affect obligations under any other treaty, bilateral or multilateral, which governs or will govern, in whole or in part, mutual assistance in criminal matters.

Article 13A

Nothing in this Convention shall affect the transfer of nuclear technology for peaceful purposes that is undertaken to strengthen the physical protection of nuclear material and nuclear facilities.

Article 14

1. Each State Party shall inform the depositary of its laws and regulations which give effect to this Convention. The depositary shall communicate such information periodically to all States Parties.
2. The State Party where an alleged offender is prosecuted shall, wherever practicable, first communicate the final outcome of the proceedings to the States directly concerned. The State Party shall also communicate the final outcome to the depositary who shall inform all States.
3. Where an offence involves nuclear material in domestic use, storage or transport, and both the alleged offender and the nuclear material remain in the territory of the State Party in which the offence was committed, or where an offence involves a nuclear facility and the alleged offender remains in the territory of the State Party in which the offence was committed, nothing in this Convention shall be interpreted as requiring that State Party to provide information concerning criminal proceedings arising out of such an offence.

Article 15

The Annexes constitute an integral part of this Convention.

Article 16

1. A conference of States Parties shall be convened by the depositary five years after the entry into force of the Amendment adopted on 8 July 2005 to review the implementation of this Convention and its adequacy as concerns the preamble, the whole of the operative part and the annexes in the light of the then prevailing situation.
2. At intervals of not less than five years thereafter, the majority of States Parties may obtain, by submitting a proposal to this effect to the depositary, the convening of further conferences with the same objective.

Article 17

1. In the event of a dispute between two or more States Parties concerning the interpretation or application of this Convention, such States Parties shall consult with a view to the settlement of the dispute by negotiation, or by any other peaceful means of settling disputes acceptable to all parties to the dispute.
2. Any dispute of this character which cannot be settled in the manner prescribed in paragraph 1 shall, at the request of any party to such dispute, be submitted to arbitration or referred to the International Court of Justice for decision. Where a dispute is submitted to arbitration, if, within six months from the date of the request, the parties to the dispute are unable to agree on the organization of the arbitration, a party may request the President of the International Court of Justice or the Secretary-General of the United Nations to appoint one or more arbitrators. In case of conflicting requests by the parties to the dispute, the request to the Secretary-General of the United Nations shall have priority.
3. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by either or both of the dispute settlement procedures provided for in paragraph 2. The other States Parties shall not be bound by a dispute settlement procedure provided for in paragraph 2, with respect to a State Party which has made a reservation to that procedure.
4. Any State Party which has made a reservation in accordance with paragraph 3 may at any time withdraw that reservation by notification to the depositary.

Article 18

1. This Convention shall be open for signature by all States at the Headquarters of the International Atomic Energy Agency in Vienna and at the Headquarters of the United Nations in New York from 3 March 1980 until its entry into force.
2. This Convention is subject to ratification, acceptance or approval by the signatory States.
3. After its entry into force, this Convention will be open for accession by all States.
4. (a) This Convention shall be open for signature or accession by international organizations and regional organizations of an integration or other nature, provided that any such organization is constituted by sovereign States and has competence in respect of the negotiation, conclusion and application of international agreements in matters covered by this Convention.

(b) In matters within their competence, such organization shall, on their own behalf, exercise the rights and fulfill the responsibilities which this Convention attributes to States Parties,

(c) When becoming party to this Convention such an organization shall communicate to the depositary a declaration indicating which States are members thereof and which articles of this Convention do not apply to it.

(d) Such an organization shall not hold any vote additional to those of its Member States.

5. Instruments of ratification, acceptance, approval or accession shall be deposited with the depositary.

Article 19

1. This Convention shall enter into force on the thirtieth day following the date of deposit of the twenty-first instrument of ratification, acceptance or approval with the depositary.

2. For each State ratifying, accepting, approving or acceding to the Convention after the date of deposit of the twenty-first instrument of ratification, acceptance or approval, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 20

1. Without prejudice to article 16 a State Party may propose amendments to this Convention. The proposed amendment shall be submitted to the depositary who shall circulate it immediately to all States Parties. If a majority of States Parties request the depositary to convene a conference to consider the proposed amendments, the depositary shall invite all States Parties to attend such a conference to begin not sooner than thirty days after the invitations are issued. Any amendment adopted the conference by a two-thirds majority of all States Parties shall be promptly circulated by the depositary to all States Parties.

2. The amendment shall enter into force for each State Party that deposits its instrument of ratification, acceptance or approval of the amendment on the thirtieth day after the date on which two thirds of the States Parties have deposited their instruments of ratification, acceptance or approval with the depositary. Thereafter, the amendment shall enter into force for any other State Party on the day on which that State Party deposits its instrument of ratification, acceptance or approval of the amendment.

Article 21

1. Any State Party may denounce this Convention by written notification to the depositary.

2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the depositary.

Article 22

The depositary shall promptly notify all States of:

(a) each signature of this Convention;

(b) each deposit of an instrument of ratification, acceptance, approval or accession;

(c) any reservation or withdrawal in accordance with article 17;

- (d) any communication made by an organization in accordance with paragraph 4(c) of article 18;
- (e) the entry into force of this Convention;
- (f) the entry into force of any amendment to this Convention; and
- (g) any denunciation made under article 21.

Article 23

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Director General of the International Atomic Energy Agency who shall send certified copies thereof to all States.

Annex I

Levels of Physical Protection to be Applied in International Transport of Nuclear Material as Categorized in Annex II

1. Levels of physical protection for nuclear material during storage incidental to international nuclear transport include:
 - a. For Category III materials, storage within an area to which access is controlled;
 - b. For Category II materials, storage within an area under constant surveillance by guards or electronic devices, surrounded by a physical barrier with a limited number of points of entry under appropriate control or any area with an equivalent level of physical protection;
 - c. For Category I material, storage within a protected area as defined for Category II above, to which, in addition, access is restricted to persons whose trustworthiness has been determined, and which is under surveillance by guards who are in close communication with appropriate response forces. Specific measures taken in this context should have as their object the detection and prevention of any assault, unauthorized access or unauthorized removal of material.
2. Levels of physical protection for nuclear material during international transport include:
 - a. For Category II and III materials, transportation shall take place under special precautions including prior arrangements among sender, receiver, and carrier, and prior agreement between natural or legal persons subject to the jurisdiction and regulation of exporting and importing States, specifying time, place and procedures for transferring transport responsibility;
 - b. For Category I materials, transportation shall take place under special precautions identified above for transportation of Category II and III materials, and in addition, under constant surveillance by escorts and under conditions which assure close communication with appropriate response forces;
 - c. For natural uranium other than in the form of ore or ore-residue; transportation protection for quantities exceeding 500 kilograms uranium shall include advance notification of shipment specifying mode of transport, expected time of arrival and confirmation of receipt of shipment.

ANNEX II

TABLE: CATEGORIZATION OF NUCLEAR MATERIAL

Material	Form	Category		
		I	II	III ^{c/}
1. Plutonium ^{a/}	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500g	500 g or less but more than 15 g
2. Uranium-235	Unirradiated ^{b/}	5 kg or more	Less than 5 kg but more than 1 kg	1 kg or less but more than 15 g
	Uranium enriched to 20% ²³⁵ U or more		10 kg or more	Less than 10 kg but more than 1 kg
	Uranium enriched to 10% ²³⁵ U but less than 20%			10 kg or more
3. Uranium-233	Unirradiated ^{b/}	2 kg or more	Less than 2 kg but more than 500g	500 g or less but more than 15 g
4. Irradiated fuel			Depleted or natural uranium, thorium or low-enriched fuel (less than 10% fissile content) ^{d/ e/}	

^{a/} All plutonium except that with isotopic concentration exceeding 80% in plutonium-238.

^{b/} Material not irradiated in a reactor or material irradiated in a reactor but with a radiation level equal to or less than 1 gray/hour (1 00 rads/hour) at one metre unshielded.

^{c/} Quantities not falling in Category III and natural uranium should be protected in accordance with prudent management practice.

^{d/} Although this level of protection is recommended, it would be open to States, upon evaluation of the specific circumstances, to assign a different category of physical protection.

^{e/} Other fuel which by virtue of its original fissile material content is classified as Category I and II before irradiation may be reduced one category level while the radiation level from the fuel exceeds 1 gray/hour (100 rads/hour) at one metre unshielded.