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PUBLIC BILL COMMITTEE: 31 OCTOBER 2017 OUTLINE OF VIEWS ON NUCLEAR SAFEGUARDS BILL

Context

The Nuclear Safeguards Bill (<https://services.parliament.uk/bills/2017-19/nuclearsafeguards.html>) represents an important but limited step in the process of withdrawal from Euratom, and this article focuses on the context and effects of that step.

Background

If the UK is to maintain involvement in the international nuclear community, it must have in place an internationally acceptable safeguards regime. Detailed regulations and adequate resource within the Office for Nuclear Regulation will be needed to operate and enforce that regime.

An acceptable safeguards regime is the first step towards replacement of the existing Euratom and bilateral nuclear cooperation agreements (NCAs) on which the UK relies. It will not be possible to conclude or even make meaningful progress with the negotiation of replacement NCAs until the UK can demonstrate that it will have an acceptable replacement safeguards regime in place on withdrawal from Euratom.

In context of the challenging withdrawal timetable, the replacement UK safeguards regime will need to be such that no reasonable counterparty to any NCA negotiation can delay or disagree on the basis of inadequate safeguarding. To avoid any perceived competitive advantage and to facilitate agreement of replacement NCAs, the new regime is likely to need to carry forward the full scope of the Euratom safeguards regime, which goes beyond the current UK Voluntary Offer Safeguards Agreement (VOSA) and Additional Protocol.

To maintain international acceptance, the UK will also need to conclude negotiations with the IAEA on a replacement VOSA and Additional Protocol, both of which are currently predicated on Euratom membership. The new UK domestic safeguarding regime must then fulfil those agreements.

Purpose of Nuclear Safeguards Bill

Within its limited ambit, the Nuclear Safeguards Bill is broadly an effective but small step towards implementation of an internationally acceptable safeguards regime (<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0109/18109.pdf>).

The Bill is limited to the creation of enabling powers for subsequent safeguards regulations. To avoid a disruptive hiatus in international nuclear cooperation, primary focus should already be on:

- preparation of those regulations;
- ensuring that ONR has sufficient resources to take over full responsibility for safeguards in 2019; and

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- detailed proposals and assurances surrounding negotiations with Euratom and IAEA, and with states with which the UK will need to enter into replacement NCAs.

Crucially, the Nuclear Safeguards Bill cannot be regarded as a “contingency” (as stated by Greg Clark in the second reading debate <https://hansard.parliament.uk/commons/2017-10-16/debates/84828D23-EAA6-4855-99D0-4C47BD5D3633/NuclearSafeguardsBill>) to be used only if the UK is not able to conclude a satisfactory agreement with Euratom.

- (a) Unless the UK remains a full member of Euratom (whether permanently or during any transitional phase following exit from the EU), the legislative powers and additional ONR responsibilities set out in the Bill are required as a matter of urgency. Any delay in relation to the above tasks on the basis that the Bill may not be required would be an extremely high-risk strategy.
- (b) In the absence of full Euratom membership, continued reliance on Euratom safeguarding arrangements would entail acceptance and payment for full application of relevant treaty obligations, regulations (including Commission Regulation (Euratom) 302/2005), inspections, enforcement powers and ECJ jurisdiction. Even then, it is likely that the UK could continue to operate within Euratom NCAs only with the agreement of each state counterparty to those NCAs. The UK would still need to replace the IAEA VOSA and Additional Protocol to reflect the UK’s changed status in relation to Euratom, so amendments to Section 93 of the Energy Act and other legislation referred to in the Bill would remain necessary.

If in referring to the Nuclear Safeguards Bill as a “contingency”, government is indicating a desire to continue full Euratom membership, at least during a transitional phase, this is to be welcomed (although unnecessary express reference to Euratom in the UK’s notification of withdrawal under Article 50 will not have assisted in achieving this).

Contrary to the government’s stated position, there are good legal arguments against any necessity to exit Euratom at the same time as exiting the EU. The Commission statement in its recommendation for a European Council decision authorising opening of negotiations on UK withdrawal simply acknowledges that Article 50 applies to Euratom. This is correct, but does not address the question as to what application of Article 50 means in context of the Euratom Treaty.

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