

1(13/06/14)

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### 3Bill in connection with the setting-up of the Nuclear Safety and Radiation Protection

#### 4Authority

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#### 6Explanatory Memorandum

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#### 8I. General Part

9

##### 101. Introduction

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12The object of this Bill is:

131. to set up the Nuclear Safety and Radiation Protection Authority (hereinafter referred to as the  
14'NSRPA') as an independent administrative authority (hereinafter referred to as 'IAA') and

152. to transfer statutory duties and powers to it.

16The NSRPA will pool the expertise and knowledge within central government in the area of nuclear  
17safety and radiation protection as far as possible.

18This Bill amends the Nuclear Energy Act and the Economic Offences Act to that end. It is also  
19necessary to revise various aspects of rules and regulations based upon the Nuclear Energy Act.

20This will be done by means of a separate amending decree and a separate amending regulation.

21

22In the motion by MPs Jan Vos and Leegte, passed virtually unanimously, the House of  
23Representatives asked the government to pool the duties and powers in the area of nuclear safety  
24and radiation protection in a nuclear safety and radiation protection authority and to ensure that  
25that authority is independent (Parliamentary Papers II, 2012/13, 32 645, No. 48).

26

27In his letter of 19 April 2013 to the Speaker of the House of Representatives (Parliamentary Papers  
28II, 2012/13, 32 645, No. 51, p. 1) on the implementation of the Jan Vos/Leegte motion the Minister  
29of Economic Affairs wrote that he considered it important for there to be a good, independent  
30authority with sufficient critical mass:

31– that can ensure that nuclear safety and radiation protection are guaranteed in the Netherlands,

32– that meets the requirements laid down in international legislation, and

33– that pools government expertise in this area as far as possible.

34

35As part of the preparatory work for decision-making on the NSRPA the International Atomic Energy  
36Agency (hereinafter referred to as the 'IAEA') was asked for advice, as also requested by Mrs Van  
37Veldhoven MP. She had asked for a thorough-going legal analysis of the application of the  
38International Atomic Energy Agency Convention on Nuclear Safety as regards the setting-up of the  
39NSRPA (Proceedings II 2012/13, No. 58, item 14). The Autonomous Administrative Bodies Enabling  
40Act (hereinafter referred to as the 'IAAs Enabling Act' or the 'Enabling Act') and the Agencies  
41Regulation were submitted along with the request for a recommendation. A number of optional  
42features with which IAAs could be equipped were also suggested in case this proves necessary to  
43meet the IAEA requirements (Annex 1 to Parliamentary Papers II, 2013/14, 32 645, No. 58 and  
44Parliamentary Papers I, 2013/14, 32 645, B; hereinafter referred to as the IAEA recommendation).

45

46Taking this recommendation into account, the Council of Ministers decided on 24 January 2014 to  
47constitute the NSRPA as an IAA and place it under the Minister of Infrastructure and the  
48Environment. The Minister of Economic Affairs is to prepare the legislation required for this, and the  
49Minister of Infrastructure and the Environment is to prepare an organizational decision  
50(Parliamentary Papers II, 2013/14, 32 645, No. 58, p. 2 and Parliamentary Papers I, 2013/14, 32  
51645, B, p. 2).

52

53This Bill is signed by the Minister of Economic Affairs because of his responsibility for the Nuclear  
54Energy Act (Article 1 (1) of the Decree of 11 November 2010 on Departmental Restructuring in  
55relation to Energy and the Dutch Emissions Authority, Government Gazette 2010, 18531) and  
56because he is responsible for most of the duties and powers that will be transferred to the NSRPA  
57once this Act enters into force. The Minister of Infrastructure and the Environment is a co-  
58signatory, as once this Bill enters into force the NSRPA will fall under his responsibility as an IAA.  
59Lastly, the IAAs Enabling Act lays down that an Act entrusting public authority to an IAA must be  
60co-signed by the Minister of Housing and Central Government (Enabling Act, Section 6).<sup>1</sup>

1<sup>1</sup> It is assumed here that the Amendment to the Non-Departmental Public Bodies Framework Act in connection with the linking-up of  
2independent administrative authorities to the central government infrastructure and some technical modifications (Parliamentary Papers  
3II, 2013/14, 33 912, No. 2, p. 1) will enter into force before this Bill is submitted to the House of Representatives. If not, this text will

61The Minister of Economic Affairs signs this Explanatory Memorandum also on behalf of the Ministers  
62of Infrastructure & the Environment and Housing & Central Government.

63

#### 64*Organization of this document*

65Chapter 2 discusses the policy reasons behind and need for the setting-up of the NSRPA in more  
66depth and explains the decision to constitute it as an IAA placed under the Minister of  
67Infrastructure and the Environment. Chapter 3 discusses the relationship between this Bill and the  
68relevant international legislation, in particular the consequences for this Bill of a new European  
69Union nuclear safety directive. Chapter 4 discusses the relationship between this Bill and the IAAs  
70Enabling Act and the Nuclear Energy Act. Chapter 5 outlines the substance of the Bill. The last  
71three chapters deal with the implementation and enforcement of the Bill, its consequences, and an  
72overview of the advisory and consultation process on the Bill respectively.

73

## 74**2. Background and Need**

75

76This chapter comprises two sections. The first discusses the policy reasons behind and need for the  
77setting-up of the NSRPA, and the second explains the decision by the Council of Ministers to  
78constitute it as an IAA placed under the Minister of Infrastructure and the Environment.

79

### 80**a. Policy reasons behind and need for the NSRPA**

81

82The policy need for an NSRPA arises from the fact that the nuclear industry faces a number of  
83substantial challenges. This requires the proper organization of those parts of central government  
84that are responsible for nuclear safety and radiation protection. (It should be noted that primary  
85responsibility for nuclear safety and radiation protection always rests with the person operating a  
86nuclear facility or carrying out operations with fuels or radioactive materials. The government is  
87responsible inter alia for policy and legislation and regulations on nuclear safety and radiation  
88protection, the licensing and the enforcement of the legislation and regulations.) The current  
89organization of duties, powers and responsibilities is vulnerable, however, as explained below.

90

91The Dutch nuclear industry is relatively small but very varied. There is one medium-sized nuclear  
92power plant in Borssele, a small nuclear power plant in Dodewaard that has already been  
93decommissioned, and there are two research reactors (in Petten and Delft). The Petten reactor is  
94responsible for some 60% of European and 30% of worldwide production of medical isotopes. The  
95company Covidien in Petten processes them into medical products. URENCO has an enrichment  
96plant in Almelo where, as well as uranium, various isotopes are enriched for the medical and  
97industrial sectors. The Central Organisation for Radioactive Waste (COVRA) in Borssele is the  
98central facility for the storage of all Dutch radioactive waste. Also, a wide variety of radioactive  
99sources and accelerators are used in the Netherlands for medical applications, research and  
100industrial purposes (there are about a thousand licensees under the Nuclear Energy Act), and  
101radioactive materials and fuels, irradiated or otherwise, are transported.

102EPZ has been granted a licence to extend the design lifetime of the Borssele nuclear power plant  
103and is currently implementing the measures required for this. Lessons have been learnt from the  
104Fukushima disaster, resulting in modifications to the Borssele nuclear power plant. There are also  
105plans to build a new research reactor 'Pallas' in Petten, to modify the research reactor in Delft and  
106to build four proton clinics. Lastly, safety, security and radiation protection need to be improved on  
107an ongoing basis. This requires the government among other things to grant new, complex  
108licences, raise safety standards and develop new inspection protocols.

109

110The current organization in central government as regards nuclear safety and radiation protection,  
111however, is vulnerable to the fragmentation of duties, responsibilities, powers, capabilities and  
112resources, and it has low critical mass and an unacceptably complicated coordination burden.

113Berenschot's report of 7 December 2012, Radiation Protection from a System Perspective,  
114Evaluation of Dutch Radiation Protection Policy, concludes that coordination between policy and  
115implementation, between implementation and supervision, and between supervision and policy  
116could be optimized. Access to knowledge and information is less than optimal at present.  
117Berenschot also concludes that the capacity of government inspectorates to enforce radiation  
118protection policy is very thinly spread and it is therefore important for the inspectorates to work  
119together properly. This report was presented to the Speaker of the House of Representatives along  
120with the government's response in a letter of 23 April 2013 (Parliamentary Papers II, 2012/13, 32

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<sup>5</sup>need to be revised in the Minister's report.

121645, No. 52, p. 2). The government's response already indicates that the setting-up of the NSRPA  
122will help to improve this.

123The recommendation by the Court of Audit on the proposed setting-up of the Stichting  
124Voorbereiding Pallas-reactor (Foundation for the preparation of the Pallas reactor) expresses the  
125desire to guarantee the independence of licensing under the Nuclear Energy Act and organize it  
126independently. In this recommendation the Court of Audit noted that, following the setting-up of  
127the foundation, the Minister of Economic Affairs would be both the co-funder of the Pallas reactor in  
128the preparatory phase and the licensing authority under the Nuclear Energy Act. The Minister of  
129Economic Affairs refers to this recommendation in his letters of 23 April 2013 on the setting-up of  
130the Stichting Voorbereiding Pallas-reactor to the Speakers of the House of Representatives and the  
131Senate. In response to the recommendation he refers to the setting-up of an independent Nuclear  
132Safety and Radiation Protection Authority (Parliamentary Papers I/II, 2012/13, 33 626, A/No. 1, p.  
1335).

134  
135Lastly, this Bill anticipates Commission Proposal 15030/13 ATO 119, Draft proposal for a Council  
136Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear  
137installations, of 16 May 2014 (hereinafter referred to as the 'nuclear safety amending directive')  
138insofar as it relates to the competent regulatory authority (Articles 5 (2) and (3) and 8 (3)),<sup>2</sup> given  
139the close relationship between these provisions and the NSRPA. The NSRPA will thus from the  
140outset meet the latest international requirements regarding a competent regulatory authority in its  
141area. This also fulfils the pledge given by the Minister of Economic Affairs on the subject to the  
142House of Representatives (Parliamentary Papers II, 2012/13, 21 501-33, No. 435, pp. 8-9).

143  
144**b. Decision to give the NSRPA IAA status**

145  
146This section discusses the arguments underlying the decision by the Council of Ministers to  
147constitute the NSRPA as an IAA placed under the Minister of Infrastructure and the Environment. It  
148considers first the various international requirements that exist as regards the independence of a  
149nuclear safety and radiation protection authority, then the various options there are in the  
150Netherlands for putting this into effect, then the IAEA recommendation, and lastly the decision  
151made by the Council of Ministers.

152  
153*International requirements*

154International legislation lays down requirements for the independence of a nuclear safety and  
155radiation protection authority (regulatory body (IAEA) or competent regulatory authority  
156(Euratom)). Article 8 (2) of the IAEA Convention on Nuclear Safety adopted in Vienna on 20  
157September 1994 (Treaty Series 1994, 284; hereinafter referred to as the Nuclear Safety  
158Convention), for instance, reads as follows:

159  
160 *Each Contracting Party shall take the appropriate steps to ensure an effective separation*  
161 *between the functions of the regulatory body and those of any other body or organization*  
162 *concerned with the promotion or utilization of nuclear energy.*

163  
164Similar obligations are laid down in the following provisions:  
165- Article 5 (2) of Council Directive 2009/71/Euratom of 25 June 2009 establishing a Community  
166framework for the nuclear safety of nuclear installations (OJEU 2009, L 172; hereinafter referred to  
167as the 'nuclear safety directive')  
168- Article 20 (2) of the Joint Convention on the Safety of Spent Fuel Management and on the Safety  
169of Radioactive Waste Management adopted in Vienna on 5 September 1997 (Treaty Series 1999,  
170164)  
171- Article 6 (2) of Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community  
172framework for the responsible and safe management of spent fuel and radioactive waste (OJEU  
1732011, L 199)  
174- Article 2A (3), basic principle D, of the Convention on the Physical Protection of Nuclear Material  
175adopted in Vienna/New York on 3 March 1980 (Treaty Series 1980, 166), as amended and  
176supplemented on 8 July 2005 (Treaty Series 2006, 81)  
177- Article 76 (1)(a) of Council Directive 2013/59/Euratom of 5 December 2013 laying down basic  
178safety standards for protection against the dangers arising from exposure to ionising radiation, and  
179repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and  
1802003/122/Euratom (OJEU 2014, L 13).

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<sup>2</sup> Update once the directive has been passed. Situation as of 25/06/14: Draft directive ready for the Council to pass on 8 July 2014.

181The IAEA Code of Conduct on the Safety and Security of Radioactive Sources 2004 also contains a  
182similar provision (Article 19 (a)), but this provision is not legally binding. The Netherlands has  
183however complied with the call of the IAEA General Conference to make a political commitment to  
184observe the Code of Conduct  
185([http://www.iaea.org/Publications/Documents/Treaties/codeconduct\\_status.pdf](http://www.iaea.org/Publications/Documents/Treaties/codeconduct_status.pdf)).

186

187The IAEA discusses the required independence of the regulatory body in more detail in various  
188documents, in particular:

189- IAEA Safety Standards No. SF-1, Fundamental Safety Principles, principle 2, Role of government  
190(Vienna 2006)

191- IAEA Safety Standards Series No. GSR Part 1, Governmental, Legal and Regulatory Framework  
192for Safety, requirements 3, 4 and 17 concerning 'Establishment of a regulatory body',  
193'Independence of the regulatory body' and 'Effective independence in the performance of  
194regulatory functions' respectively (Vienna 2010)

195- IAEA Safety Standards Series No. GS-G-1.1, Organization and Staffing of the Regulatory Body for  
196Nuclear Facilities, Chapter 2, 'Regulatory Independence and Funding of the Regulatory Body'  
197(Vienna 2002)

198

199The picture that emerges from these as regards the required independence of the regulatory body  
200is as follows.

201The main reason for independence is to ensure that the regulatory body's decisions on nuclear  
202safety can be taken without pressure from interests that could conflict with nuclear safety or  
203radiation protection, as nuclear safety and radiation protection can involve complex – sometimes  
204very complex – technical matters. Specialist knowledge and expertise are required for good  
205decision-making on these matters. Also, the accidents at the nuclear power plants in Chernobyl and  
206Fukushima have shown that these accidents can have major consequences. This further  
207emphasizes the need for decision-making on nuclear safety and radiation protection to be  
208meticulous and based on correct knowledge and expertise and without undue influence from other  
209interests, i.e. independent.

210The IAEA goes on to identify six aspects for which the nature of the independence needs to be  
211specified: political, legislative, financial, capability, information and international.

2121. The political aspect of independence involves the regulatory body being clearly and effectively  
213separated from organizations that promote nuclear energy. This means that the regulatory body  
214must not be subject to political influence or pressure when taking decisions on nuclear safety. This  
215is however without prejudice to the fact that the regulatory body can be called to account for the  
216fulfilment of its duties.

2172. The legislative aspects of independence mean inter alia that:

218- the duties and independence of the regulatory body must be laid down by law,

219- the regulatory body must have the power to lay down or draft general rules on nuclear safety in  
220implementation of formal legislation,

221- the regulatory body has the power to make decisions, including enforcement decisions.

2223. The financial aspects of independence mean that it must be ensured that the regulatory body  
223has adequate staff and funding to fulfil its duties satisfactorily.

2244. As regards the 'capability' aspect, the regulatory body must have at its disposal the independent  
225technical expertise needed to fulfil its nuclear safety responsibilities. The management of the  
226regulatory body must have the responsibility and power to employ the staff required for this  
227purpose. The regulatory body must also have the power to set up independent advisory bodies,  
228take out contracts for research and development for the fulfilment of its duties, and obtain advice.

2295. The information aspect means that the regulatory body must have the power to communicate  
230independently with the public on its rules, requirements, decisions and opinions.

2316. The international aspects of independence mean that the regulatory body must have the power  
232to maintain contacts with other countries' regulatory bodies and international organizations so as to  
233promote cooperation and exchange relevant information.

234It should be noted that the regulatory body cannot be fully independent of the rest of government  
235in every way; just like other government departments and private-sector organizations it will need  
236to operate within its national system of laws and budgets.

237It is also clear from this that the regulatory body's independence will be closely related to the  
238duties that need to be entrusted to it, and that its independence will be dependent on the options  
239available under public law for framing its duties independently. Below is an overview of the national  
240options.

241

242*National options*

243The main public-law options in the Netherlands for framing a central government function more  
244independently are an agency and an independent administrative authority. We shall now discuss  
245the nature of these two types of organization respectively.

246

#### 247Agency

248An agency is a department of a Ministry that operates with internal independence and has its own  
249management model and financial administration (Article 1 (a) of the Agencies Regulation

250(hereinafter referred to as the 'AR'). An agency can be set up if it:

2511. has an expected turnover or expected revenue of over 50 million euros per year,

2522. has a results-driven management model,

2533. will operate more efficiently than as a department of the Ministry concerned,

2544. is able to establish a relationship between expenditure and performance such that performance-  
255based funding is possible, and

2565. is able to guarantee financial functions and financial management of adequate quality.

257An additional requirement for the setting-up of a cost-benefit agency is that the predicted average  
258depreciation costs per annum must exceed 5% of its total expenditure (RA, Articles 4 (1) and 5).

259

#### 260Independent administrative authority

261An IAA is 'a central government administrative body that is invested by law with public authority  
262and is not hierarchically subordinate to a Minister' (IAAs Enabling Act, Section 1 (a)). As there is at  
263present no provision in any law that makes it possible to set up an IAA for nuclear safety and  
264radiation protection by administrative order or Ministerial Regulation, an Act is needed to set up the  
265NSRPA.

266An IAA can only be set up if one of the three justifications set out in the IAAs Enabling Act is met  
267(Enabling Act, Section 3 (1)). It should be noted that the existence of one of these justifications  
268alone is not regarded as sufficient to decide to set up an IAA.

269In the case of the NSRPA the first of the three reasons for setting up an IAA applies, namely the  
270fact that there is a need for politically independent judgment based on special expertise, as  
271independent judgment is required inter alia under Article 8 of the Nuclear Safety Convention. Also,  
272nuclear safety and radiation protection requires highly specialized expertise that is in short supply  
273in the Netherlands. The other two justifications do not play a role here.

274

275As regards the setting-up of the NSRPA, there are then two questions:

2761. What is the most suitable form for the NSRPA, an IAA or an agency (or part of an agency)?

2772. What should the NSRPA's position be?

278

#### 279The form of the NSRPA

##### 280Agency

281With an expected turnover of 25 million euros the NSRPA certainly cannot meet the first  
282requirement for an agency. The management model required for the setting-up of an agency, with  
283the roles of owner, client and contractor in one hierarchical column, is incompatible with the  
284independence of the NSRPA required by the IAEA (AR, Articles 9-12, 30 and 31). Nor are there any  
285reasons to expect that the NSRPA would operate more efficiently as an agency than it would as a  
286government department. In view of the activities of the NSRPA, in the case of the majority of its  
287activities no relationship can be established between expenditure and performance such that  
288performance-based funding would be possible. This means that the NSRPA cannot meet four of the  
289five justifications for setting up an agency.

290In all probability it would also not meet the supplementary condition for the setting-up of a cost-  
291benefit agency.

292Lastly, the subordinate position of an agency would limit the NSRPA's independence. Even if we  
293assume that its duties and powers as an agency would be laid down by law, the Minister  
294concerned, because of that subordinate position, would retain the power to issue instructions for  
295the exercise of those duties and powers on a case-by-case basis or in general (General  
296Administrative Law Act, Section 10:22 (1)).

297

##### 298Part of an agency

299Making the NSRPA part of an existing agency was considered. In that case a new organization  
300would not to be set up.

301This solution, however, does not tally with the previous conclusion that the NSRPA cannot meet the  
302justifications for setting up an agency. The requirement regarding turnover is the only one that  
303would not be a problem if the NSRPA were to form part of an agency; the other three requirements  
304would still not be met.

305Also, the international trend as regards nuclear safety and radiation protection authorities during  
306the past ten years has in fact been to make them separate, distinctive organizations. The  
307Netherlands would set itself apart unfavourably internationally by having the NSRPA form part of  
308another agency.

309Lastly, the fact that the management model for an agency is unacceptable as regards the  
310independence of the NSRPA would be an even stronger factor if it were to form part of an agency,  
311since as part of an agency it would also be hierarchically subordinate to the agency's senior  
312executive.

313

#### 314Independent administrative authority

315An IAA provides the most independence, as it is not subordinate to a Minister and its members  
316cannot be officials subordinate to a Minister (Enabling Act, Sections 1 (a) and 9).

317An argument against deciding to constitute the NSRPA as an IAA could be that current government  
318policy is to be circumspect with IAAs. This is not to say, however, that there is a moratorium on  
319setting up new IAAs, though it does mean that more importance is attached than before to  
320additional reasons – in addition to a justification – for setting up an IAA. In the case of the NSRPA  
321the additional reason lies in the fact that its independence is not only a national desire (see the  
322parliamentary motion referred to at the start) but also an international obligation that the  
323Netherlands is required to meet under the aforementioned IAEA conventions and Euratom  
324directives. Furthermore, meeting international obligations must take precedence over any Dutch  
325rules or policy that may be in conflict with them (cf. Dutch Constitution, Article 94).

326

#### 327Position of the NSRPA

328The IAEA recommendation is important when it comes to deciding on the position of the NSRPA.

329

#### 330The IAEA recommendation

331The following two options were put to the IAEA for a recommendation:

3321. The NSRPA would be part of the Human Environment and Transport Inspectorate under the  
333responsibility of the Minister of Economic Affairs.

3342. The NSRPA would be a separate organization (an IAA) under the responsibility of the Minister of  
335Economic Affairs.

336

337The IAEA recommendation included the following conclusions:

338

339 *'in response to your request to identify which variant provides "the best guarantee for*  
340 *independence" the result of the assessment indicates that for both variants, compliance with*  
341 *IAEA Safety Standard does not appear to be fully achieved. The most significant concern is*  
342 *related to the position of the future regulatory body; the two options place the regulatory*  
343 *body under the Minister of Economic Affairs, which is responsible for the national energy policy*  
344 *and this may result in potential conflicts between energy supply issues and safety*  
345 *considerations.'*

346

347 *From the assessment the IAEA concluded that the variant where the NSRPA will be established*  
348 *as an "Independent Administrative Authority" (IAA) is preferable, given that the deviations on*  
349 *the Framework Act on IAA's, described in your table attached to your letter dated 24 October,*  
350 *are implemented. Even if this option is chosen, the main concern regarding the position of the*  
351 *regulatory body under the Minister of Economic Affairs remains, if this minister retains*  
352 *responsibilities for the national energy policy. In addition, it would be necessary to conduct a*  
353 *comprehensive assessment of the IAEA option once finalized (including, a review of the*  
354 *implementing documents/legal provisions).*

355

356 *The conduct of an IRRS mission at the end of 2014 will constitute a good opportunity to*  
357 *further analyse the compliance of the Netherlands' existing nuclear regulatory Framework with*  
358 *the IAEA Safety Standards.*

359 *We are looking forward to our future cooperation and providing support as necessary for the*  
360 *establishment of an independent regulatory body in the Netherlands.'*

361

362It follows from this that:

363- neither an agency nor an IAA would fully meet the IAEA requirements, though it should be noted  
364that the recommendation assumes it would be placed under the Minister of Economic Affairs.

365- the IAEA regards placing it under the Minister of Economic Affairs as a cause for concern, as this  
366Minister is also responsible for energy policy and a potential conflict between energy supply and  
367safety considerations could arise.

368- the IAEA's preference is for an IAA, if the additions to the IAAs Enabling Act as set out in the joint  
369supplementary request for a recommendation are implemented.

370- the IAEA envisages the necessity, if its preference is developed, to make a further assessment of  
371implementation and legal form.

372- the IAEA regards the IRRS mission at the end of 2014 as a good opportunity for a further  
373assessment of the extent to which the Netherlands then meets the requirements.

374- the IAEA is keen to collaborate and offer the necessary support in developing an independent  
375authority.

376

### 377 *Conclusion*

378In view of the fact that the international requirement of the independence of the NSRPA can best  
379be achieved in the Netherlands with an IAA, and in view of the IAEA's preference in its

380recommendation for an IAA, and given the IAEA's concern about placing the NSRPA under the

381Minister of Economic Affairs, the government has decided to place the NSRPA under the Minister of  
382Infrastructure and the Environment as an IAA.

383

### 384 **3. Relationship with international legislation**

385

386The preceding chapter has already discussed in detail the relevant international legislation, the  
387requirement of the independence of the regulatory body laid down there, and the significance this  
388has had for the decision to set up the NSRPA as an IAA.

389

390For the rest, the nuclear safety amending directive is also important in this connection.<sup>3</sup> Recital 7 of  
391that directive emphasizes the importance of the competent regulatory authority's independence as  
392follows. A strong competent regulatory authority with effective independence in its decision-making  
393is regarded as a fundamental requirement for the European nuclear safety regulatory framework. It  
394is also regarded as being of the utmost importance that the competent regulatory authority be able  
395to exercise its powers impartially, transparently and without undue influence on its decision-  
396making, so as to ensure a high level of nuclear safety. The directive therefore reinforces the  
397importance of the regulatory body's independence. Under the nuclear safety amending directive  
398member states must ensure that the competent regulatory authority is effectively independent of  
399undue influence on its regulatory decision-making (Article 5 (2)). At present the functional  
400separation from other bodies or organizations involved in the promotion or utilization of nuclear  
401energy is still adequate. The proposed decision to set up the NSRPA as an IAA and place it under  
402the Minister of Infrastructure and the Environment meets the strengthened requirement under the  
403amending directive regarding the independence of the competent regulatory authority.

404A few provisions have been included in the Bill in connection with the implementation of the nuclear  
405safety amending directive insofar as it relates to the competent regulatory authority (Articles 5 (2)  
406and (3) and 8 (3) of the directive), namely the proposed Sections 8 and 9 (1) and (2) of the  
407Nuclear Energy Act on procedures relating to conflicts of interest and funding. These provisions  
408implement Article 5 (2)(c) and (e) of the directive. These sections will be dealt with in Chapters 4  
409and 5.

410Article 5 (2)(a, second part) of the directive lays down that the competent regulatory authority  
411shall seek or accept instructions. The implementation of this provision in the directive, insofar as  
412instructions from Ministers are concerned, is already adequately ensured by existing legislation.

413Constituting the NSRPA as an independent administrative authority places it at arm's length.

414Section 1 (a) of the IAAs Enabling Act lays down that an independent administrative authority must  
415not be hierarchically subordinate to a Minister. An independent administrative authority thus acts  
416independently of the responsible Minister, and vis-à-vis the independent administrative authority  
417the Minister can only exercise those powers granted to him under the IAAs Enabling Act. The  
418Minister cannot give instructions in individual cases. Other Ministers have no power whatsoever to  
419give instructions. The same applies to any instructions from users of nuclear energy. Furthermore,  
420the proposed Section 3 (2) of the Nuclear Energy Act lays down that the NSRPA must carry out its  
421duties independently. This means that the NSRPA can neither seek nor accept such instructions.

422It is also not necessary to revise the legislation in order to implement the other parts of Articles 5

423(2) and (3) and 8 (3) of the nuclear safety amending directive. Part III of this Memorandum

424contains a transposition table indicating how these passages in the directive are to be implemented  
425for the NSRPA using existing legislation.

426

### 427 **4. Relationship with existing legislation**

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<sup>12</sup> Update once the directive has been passed.

429This chapter discusses the relationship between this Bill and existing national legislation. In this  
430context the IAAs Enabling Act and the Nuclear Energy Act are particularly important.

431

#### 432IAAs Enabling Act

433The IAAs Enabling Act will apply to the NSRPA. This means that the provisions of the IAAs Enabling  
434Act on public-law IAAs without separate legal personality will in principle apply to the NSRPA.

435Insofar as is relevant here, this concerns the following points:

436- The meeting of obligations under the IAAs Enabling Act by another IAA forming part of the same  
437legal person (Enabling Act, Section 7)

438- Approval of the mandate given to the IAA (Enabling Act, Section 8)

439- Staff working for the IAA being under the authority of that IAA (Enabling Act, Section 16)

440- The drawing-up of an annual report (Enabling Act, Section 18 (1))

441- Meticulousness in the exercise by the IAA of its duties and powers (Enabling Act, Section 19)

442- Submission of a draft budget by the IAA to the Minister concerned (Enabling Act, Section 25)

443- Immediately notifying the Minister concerned of substantial differences in the IAA's revenue or  
444expenditure (Enabling Act, Section 30)

445- The recording of certain data on the IAA in a public register (Enabling Act, Section 40)

446- Ensuring the security of the IAA's data (Enabling Act, Section 41)

447

448The IAAs Enabling Act is a general act, but unlike e.g. the General Administrative Law Act it does  
449not distinguish between binding/semi-binding and regulatory rules. As a result the legislature can  
450regulate a particular matter differently in specific legislation than is the case in the IAAs Enabling  
451Act. This can be achieved by including a different substantive provision or explicitly stating that a  
452particular provision in the IAAs Enabling Act does not apply in whole or in part. The Explanatory  
453Memorandum to the specific Act should indicate to what extent its provisions differ from the IAAs  
454Enabling Act and the reasons for the difference (Parliamentary Papers II, 2000/01, 27 426, No. 3,  
455pp. 5-6).

456On a number of matters this Bill takes advantage of the opportunity to add to provisions in the  
457IAAs Enabling Act and in a few cases to derogate from provisions in that Act.

458

#### 459Additions

460The additions relate to the following:

461- Financial and other interests of board members (Enabling Act, Section 13 and Nuclear Energy Act,  
462Section 5 (5))

463- Membership of the board of the NSRPA is designated as a position of trust in the meaning of  
464Section 1 (1)(a) of the Security Screening Act (Nuclear Energy Act, Section 5 (7)).

465- Board members must not be officials subordinate to any Minister (Enabling Act, Section 9 and  
466Nuclear Energy Act, Section 5 (6)).

467- Appointment, suspension and dismissal of NSRPA board members (Enabling Act, Section 12 (1)  
468and Nuclear Energy Act, Section 6 (1))

469- Remuneration or compensation of board members (Enabling Act, Section 14 (1) and Nuclear  
470Energy Act, Section 7)

471- Procedures for conflicts of interest (Nuclear Energy Act, Section 8)

472- Funding and staff (Nuclear Energy Act, Sections 9 and 10)

473- The sending-in of the annual report (Enabling Act, Section 18 (2) and Nuclear Energy Act, Section  
47411)

475- The obtaining of information from the IAA by various Ministers (Enabling Act, Section 20 and  
476Nuclear Energy Act, Section 12 (1))

477- The option of drawing up rules on the furnishing of information by a [Minister?] to the NSRPA  
478(Nuclear Energy Act, Section 12 (3))

479- laying down management regulations (Enabling Act, Section 11 and Nuclear Energy Act, Section  
48012b)

481- Rules on neglect of duties (Enabling Act, Section 23 and Nuclear Energy Act, Section 12d)

482- The five-yearly report to the States General on the functioning of the IAA (Enabling Act, Section  
48339 and Nuclear Energy Act, Section 12e)

484

485The rule under the IAAs Enabling Act that the board members of an IAA must not occupy any  
486additional posts that are undesirable with a view to the proper performance of their office or the  
487maintenance of their independence, or confidence therein, is supplemented in this Bill. A board  
488member of the NSRPA must also not have any financial or other interests that could jeopardize his  
489impartiality. This has been done because under the international regulations referred to in Section  
4902 at b. the NSRPA also needs to be independent inter alia of nuclear energy users and others  
491carrying out operations with fuels or radioactive materials, as this independence could also be



492jeopardized by financial or other interests. An example of a financial or other interest of this kind is  
493being a shareholder in a holder of a licence under the Nuclear Energy Act.

494

495Membership of the board of the NSRPA is designated as a position of trust because this post offers  
496the possibility of harming national security. It would not be so appropriate for the Minister  
497responsible for the policy area to which a position of trust belongs, given its nature, to designate  
498this post as a position of trust, first and foremost because a person who is also an official  
499subordinate to a Minister cannot be a member of the NSRPA board (Nuclear Energy Act, Section 5  
500(6)). Also, any such designation must be reassessed every five years (Security Screening Act,  
501Section 3 (4)). In view of the subject matter that board members of the NSRPA will or could have  
502to deal with there is no need for this.

503

504Under Section 9 of the IAAs Enabling Act a board member of the NSRPA is not permitted to be an  
505official subordinate to the Minister of Infrastructure and the Environment. Since the NSRPA could  
506have policy dealings with virtually any Minister, in particular the Ministers of Economic Affairs,  
507Social Affairs & Employment and Health, Welfare & Sport, it is not desirable for a board member of  
508the NSRPA to be an official subordinate to any Minister. Also, because of the fact that officials are  
509no longer in the employ of a particular Ministry but of the civil service, to increase the NSRPA's  
510independence it is laid down that board members cannot be officials subordinate to any Minister.

511

512In the case of the NSRPA the rules on appointment, suspension and dismissal and on the  
513remuneration or compensation of board members under the IAAs Enabling Act are set out in the  
514Nuclear Energy Act. The Minister of Infrastructure and the Environment is designated as the  
515competent Minister in this case, as the IAAs Enabling Act refers in this connection to the 'Minister  
516concerned'. As regards the NSRPA's independence, it is important to make it clear that these  
517powers are held solely by the Minister of Infrastructure and the Environment.

518

519In implementation of Article 5 (2)(e) of the nuclear safety amending directive a provision has been  
520included requiring the NSRPA to draw up procedures to prevent or resolve conflicts of interest in  
521the exercise of its duties. These procedures can relate to both the board and the staff of the  
522NSRPA.

523

524In implementation of Article 5 (2)(c) of the nuclear safety amending directive a provision has been  
525included requiring the Minister of Infrastructure and the Environment to make adequate funding for  
526its duties available to the NSRPA and to include the NSRPA as a separate item in his budget. The  
527Minister of Infrastructure and the Environment must state reasons in the notes to his budget for  
528any departures from the draft budget. It is also laid down that the Minister of Infrastructure and  
529the Environment must make adequate qualified staff available to the NSRPA for the exercise of its  
530duties.

531

532

533The rules under the IAAs Enabling Act on the annual report, obtaining information from the NSRPA  
534by the Minister concerned, the rules on neglect of duties and the five-yearly report to the States  
535General on the NSRPA's functioning are supplemented in that the Ministers of Economic Affairs,  
536Health, Welfare & Sport and Social Affairs & Employment are concerned, as well as the Minister of  
537Infrastructure and the Environment. It is proposed, for instance, that these three Ministers:

538- shall be sent the NSRPA's annual report and

539- may obtain from the NSRPA all the information required for their duties and may demand access  
540to all the information reasonably necessary for the fulfilment of their duties.

541The Minister of Infrastructure and the Environment must also consult with these three Ministers  
542before making use of the rules on neglect of duties or before drawing up the five-yearly report to  
543the States General on the NSRPA.

544Involving them in this way reflects their role as clients of the NSRPA.

545

546In addition to the rules under the Enabling Act, the Ministers of Infrastructure & the Environment,  
547Economic Affairs, Health, Welfare & Sport and Social Affairs & Employment have the option of  
548drawing up rules jointly on the data or information to be furnished to them by the NSRPA.

549Conversely, they can also lay down what data or information these Ministers should furnish to the  
550NSRPA.

551

552The Bill includes an obligation upon the NSRPA to lay down management regulations. It follows  
553from the IAAs Enabling Act that the management regulations then require the approval of the  
554Minister concerned (Enabling Act, Sections 1 (b) and 11 (1)). The Bill specifies that as regards

555approval of the NSRPA's management regulations this is the Minister of Infrastructure and the  
556Environment.

557It also lays down that the NSRPA's management regulations must only contain rules on the method  
558of decision-making, financial management, administrative organization, replacement of members,  
559power of representation and procedures with a view to the proper and meticulous exercise of the  
560NSRPA's duties. The management regulations cannot therefore contain any rules on its modus  
561operandi insofar as they relate to the independent exercise of its duties. This is to meet the  
562international requirements, referred to in Chapter 2 at b., of not interfering with the independent  
563exercise of the NSRPA's duties.

564

#### 565*Derogations*

566The Bill derogates from the rules under the IAAs Enabling Act in that:

567- the Minister of Infrastructure and the Environment cannot lay down any policy rules on the NSRPA  
568(Enabling Act, Section 21 (1) and Nuclear Energy Act, Section 12a).

569- the power to annul decisions of the NSRPA is limited (Enabling Act, Section 22 (1) and Nuclear  
570Energy Act, Section 12c).

571The Minister of Infrastructure and the Environment cannot lay down any policy rules concerning the  
572NSRPA. The purpose of this is to reflect the NSRPA's independence in its decision-making in the  
573area of nuclear safety and radiation protection, and the associated security, and crisis preparation,  
574and safeguards.

575The power to annul decisions of the NSRPA, in derogation from Section 10:35 of the General  
576Administrative Law Act, is restricted to decisions taken that are incompatible with the law. It is  
577therefore not possible for the Minister of Infrastructure and the Environment to annul decisions by  
578the NSRPA on account of conflict with the public interest and thus to enter into substantive  
579assessment of decisions taken by the NSRPA. The possibility of suspending a decision is linked to  
580the possibility of annulling a decision (General Administrative Law Act, Section 10:43). With the  
581restriction on the possibility of annulling decisions by the NSRPA, the possibility of suspending  
582those decisions is thus also restricted.

583The normal objection and appeal facilities against decisions of the NSRPA remain fully available, for  
584that matter.

585These restrictions maintain a careful balance between the interests of the Minister of Infrastructure  
586and the Environment, as the Minister politically responsible for the NSRPA, in having adequate  
587supervisory tools at his disposal to fulfil that responsibility and the interest of allowing the NSRPA  
588to carry out its duties in the area of nuclear safety and radiation protection, and the associated  
589security and crisis preparation, and safeguards independently.

590

#### 591*Nuclear Energy Act*

592As the matters on which the NSRPA is given duties and powers (nuclear safety and radiation  
593protection, and the associated security, and safeguards) all lie within the scope of the Nuclear  
594Energy Act, it has been decided to include the setting-up of the NSRPA as an IAA in the Nuclear  
595Energy Act instead of in a separate establishing Act.

596

### 597**5. The broad thrust of the Bill**

598

599This Bill is essentially in two parts:

6001. A part setting up and constituting the NSRPA as an IAA (Section I, C). This deals in particular  
601with administrative setup, organization and supervision of the NSRPA.

6022. A part transferring statutory powers to the NSRPA (Section I, (D), (E), (G)-(K), (M)-(Q)). The  
603amending decree and amending regulation referred to at the start of Chapter 1 also relate to this.  
604Lastly, Sections II, III and IV set out an amendment to the Economic Offences Act, transitional  
605arrangements and a provision on entry into force respectively.

606

607The changes as a result of this Bill have been kept policy-neutral as far as possible. This means  
608that the Bill does not in principle contain any changes other than those necessary for the setting-up  
609of the NSRPA and the transfer of powers to the NSRPA.

610This principle has been disregarded on one point, namely one of the grounds for refusing a licence  
611under the Nuclear Energy Act. The reasons for this are set out at c.

612

#### 613**a. Administrative setup and organization**

614

##### 615*The form of the IAA*

616The reasons for constituting the NSRPA as an IAA have already been discussed in detail in Chapter  
6172 at a.

618In line with the VVD-PvdA coalition agreement (Building Bridges, 29 October 2012, p. 44) it is  
619proposed that the NSRPA be constituted as a public-law IAA forming part of the legal entity of the  
620State of the Netherlands. This means that the IAA will comprise solely the board of the NSRPA; the  
621staff made available to the board to support it will be a department of the Ministry of Infrastructure  
622and the Environment. This will be the department that became operational on 1 January 2015 as  
623the temporary NSRPA organization (see Chapter 6, Temporary Organization).

624

#### 625*Board*

626The Board of the NSRPA will consist of three members including the chair. The members of the  
627board will be appointed for a period of five years and may be reappointed once for another such  
628period. Appointment/reappointment will be based on expertise or experience needed for the  
629exercise of the NSRPA's duties (Nuclear Energy Act, Section 5 (1)–(3)). Membership of the board of  
630the NSRPA is a position of trust in the meaning of Section 1 (1)(a) of the Security Screening Act  
631(Nuclear Energy Act, Section 5 (7)).

632Suspension and dismissal of members of the board will only take place on account of unsuitability  
633or incapability for the post occupied or other compelling reasons lying in the person of the member  
634concerned. A member may also resign at his own request (Enabling Act, Section 12 (2)).

635The Public and Semi-Public Sector Executives' Pay (Standards) Act (hereinafter referred to as the  
636'Executives' Pay Act') applies to the board of the NSRPA (Executives' Pay Act, Sections 1.1 and  
6371.2).

638The board of the NSRPA is responsible inter alia for:

639- taking independent expert decisions in the area of the NSRPA,

640- accounting directly to and making proposals to the government (the Minister),

641- representing the NSRPA and the Netherlands in national and international forums in its area,

642- developing the NSRPA into an autonomous, distinctive, authoritative organization,

643- deploying the NSRPA's legal tools,

644- spending the NSRPA's budget,

645- the NSRPA's HRM policy and

646<sup>4</sup>- having management regulations and mandate regulations for its staff.

647

#### 648*Funding*

649The Minister of Infrastructure and the Environment must make adequate funding available to the  
650NSRPA for the exercise of its duties and include the NSRPA as a separate item in the budget of the  
651Ministry of Infrastructure and the Environment (Nuclear Energy Act, Section 9 (1) and (2)). For this  
652purpose the NSRPA must send the Minister of Infrastructure and the Environment a draft budget  
653for the next year annually before 1 April (Enabling Act, Section 25). Our Minister of Infrastructure  
654and the Environment must state reasons for any departures from the draft budget, e.g. generic  
655cutbacks, in the notes to his budget (Nuclear Energy Act, Section 9 (3)).

656The NSRPA is required to furnish the Minister of Infrastructure and the Environment periodically  
657with information on its past and future performance (Government Accounts Act 2001, Section 44a).

658

#### 659*Staff*

660Although the staff will not be officially in the employ of the NSRPA, they will be under its authority  
661and account solely to it for their activities (Enabling Act, Section 16). The Minister of Infrastructure  
662and the Environment must make adequate qualified staff available to the NSRPA for the exercise of  
663its duties (Nuclear Energy Act, Section 10).

664The Minister of Economic Affairs, as the Minister responsible for the policy area in which the staff of  
665the NSRPA operate, may, in agreement with Our Minister of the Interior and Kingdom Relations,  
666designate certain staff NSRPA posts as positions of trust (Security Screening Act, Section 3 (1)).

667

#### 668*Mission*

669The NSRPA is an internationally authoritative and independent authority that will monitor and  
670continuously promote nuclear safety and radiation protection for this and subsequent generations.

671

#### 672*Duties and powers*

673The duties and powers of the NSRPA lie in the area of nuclear safety and radiation protection, and  
674the associated security and crisis preparation, and safeguards (Nuclear Energy Act, Section 3 (3)).

675The meanings of the terms 'nuclear safety', 'radiation protection', 'the associated security', 'the  
676associated crisis preparation' and 'safeguards' are explained below.

677Nuclear safety relates to achieving good, suitable conditions for the operation of, prevention of  
678accidents involving, or reducing the consequences of accidents at, nuclear facilities (i.e. facilities  
679where nuclear energy can be released, or where fuels can be produced, processed, treated or

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17<sup>4</sup> To be revised if necessary in response to the decision of the second meeting of the Management Group.

680stored), resulting in the protection of workers, the public and the environment against undesirable  
681radiation risks.

682Radiation protection relates to protecting humans and the environment against the harmful effects  
683of exposure to ionizing radiation, and the means of achieving this protection. The ionizing radiation  
684may originate from e.g. nuclear facilities, fuels, radioactive materials/wastes or devices capable of  
685emitting ionizing radiation (e.g. X-ray devices, accelerators and cyclotrons).

686The associated security relates to preventing and detecting, and responding to, theft, sabotage,  
687unauthorized access to, illegal transfer of, or other malicious acts involving, nuclear facilities, fuels  
688or radioactive materials.

689The associated crisis preparation relates to what is referred to in the Nuclear Energy Act as an  
690accident involving a Category A or B object or a radiological emergency. An accident is an event as  
691a result of which radiation is released, or is in danger of being released, that results or could result  
692in an increased risk to humans or the environment, or that requires coordinated action to prevent  
693or reduce an increased radiation risk to humans or the environment. -An example of a Category A  
694object is a nuclear power plant or research reactor in the Netherlands or elsewhere. An example of  
695a Category B object is a facility where solely fuels or radioactive materials are stored, a uranium  
696enrichment facility, or a facility where radioactive materials are prepared or used. A radiological  
697emergency is a situation that requires urgent action to protect humans, animals, plants and  
698property against exposure to ionizing radiation (Nuclear Energy Act, Section 38 (b)-(e)).

699Preparation includes such things as:

700- maintaining and implementing the National Radiation Incidents Crisis Plan (formerly the National  
701Nuclear Emergency Plan),<sup>5</sup>

702- maintaining close ties with the ministries of Security & Justice (National Crisis Coordinator,  
703Security Regions) and Health, Welfare & Sport (health care, distribution of iodine prophylaxis),

704- setting standards for preparation for nuclear accidents and crises in proper consultation with the  
705neighbouring countries of Belgium and Germany,

706- ensuring the uninterruptible availability and training of experts who can be deployed in the crisis  
707organization,

708- maintaining an expertise and monitoring system that can be deployed in the event of a crisis and  
709scaled up if necessary, and

710- making a full and continuous contribution to the implementation of national crisis decision-making  
711in the event of a crisis on a national scale, with the Minister of Security and Justice coordinating the  
712crisis organization in line with the National Manual on Decision-Making in Crisis Situations.

713Safeguards are measures to prevent the utilization of nuclear material to make nuclear weapons.

714

715In line with the intention referred to in Chapter 1 at a. as far as possible to pool government  
716expertise in the areas of nuclear safety and radiation protection, and the associated security, and  
717safeguards in the NSRPA, the NSRPA also as far as possible has duties for which this expertise is  
718needed. These duties in the areas mentioned relate inter alia to the following:

7191. To carry out the duties entrusted to it by or pursuant to the law The NSRPA needs statutory  
720powers in order to carry out these duties. These powers are transferred to the NSRPA at various  
721places in the Nuclear Energy Act and the rules and regulations based upon it (see next section).

722They include such things as granting licences, exemptions and approvals and checking and  
723assessing documents required under the Nuclear Energy Act or the rules and regulations based  
724upon it in order to demonstrate the safety of a requested or authorized operation.

7252. To enforce rules laid down by or pursuant to this Act

7263. To evaluate, prepare and advise on policy and laws and regulations, based on its specific  
727knowledge and expertise

728

7294. To provide information

7305. To participate in activities of international organizations

7316. To maintain relations with similar foreign authorities and national and international organizations

732

7337. To support national organizations with knowledge

7348. Doing research in support of the exercise of its duties (Nuclear Energy Act, Section 3 (3)).

735

736Thus all duties in the area of nuclear safety and some in the area of radiation protection (of the  
737environment, integrated licensing and the technical drafting of legislation and regulations), and the  
738associated security and crisis protection, and safeguards are transferred to the NSRPA.

739The remaining responsibilities, in particular in the area of radiation protection, remain unchanged.

740The reason for this is that these responsibilities are exercised as part of a different system and so  
741intertwined with it that it would not be efficient to separate them off. The Customs Administration

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19<sup>5</sup> Check whether this will be ready on time for the new name to be used.

742controls the importation of radioactive materials as an integral part of its other customs activities,  
743and the Social Affairs and Employment Inspectorate, for instance, inspects the radiation protection  
744of workers as an integral part of inspecting other aspects of health and safety at work. Supervision  
745of the protection of workers against the risks of ionizing radiation at nuclear facilities, however, is  
746carried out by the Department of Nuclear Safety, Security and Safeguards (Appointment of  
747Inspectors and Fulfilment of Duties (Nuclear Energy Act) Decree 2013, Article 1 (2)) and will be  
748carried out by the NSRPA once this Bill enters into force.

#### 749Independence

750The independence of the NSRPA required under the international legislation has already been  
751discussed in detail in Chapter 2 at b. and Chapter 3. The proposal is to set out this requirement in  
752general in Section 3 (2) of the Nuclear Energy Act, which lays down that the NSRPA must carry out  
753its duties independently. The obligations set out in the various IAEA conventions (e.g. Article 8 (2)  
754of the Nuclear Safety Convention) and Euratom directives (e.g. Article 5 (2) of the Nuclear Safety  
755Directive) – see Chapter 2 at b. – to ensure that the competent regulatory body is effectively  
756independent of undue influence on its decision-making is thus implemented.

757The stipulation is formulated as a general standard, which means that it must be observed by  
758everyone concerned. When fulfilling its duties the NSRPA must ensure that it does so  
759independently. Both the board and the staff of the NSRPA must take this into account. Those  
760involved in the area of nuclear safety and radiation protection, e.g. applicants for licences and  
761licensees, must take this into account in their contacts with the NSRPA. Lastly, the Minister of  
762Infrastructure must take this into account in the exercise of the powers he has to fulfil his  
763ministerial responsibility for the NSRPA.

764The NSRPA's independence is further reflected in the fact that it is proposed to constitute the  
765NSRPA as an independent administrative authority, i.e. an administrative authority that is not  
766hierarchically subordinate to a Minister. Some of the additions proposed to the Enabling Act and  
767derogations from it also contribute to the NSRPA's independence (see Chapter 4). The Minister of  
768Infrastructure and the Environment nevertheless needs to have certain powers to fulfil his political  
769responsibility vis-à-vis the NSRPA (see below, Supervision of the NSRPA by the Minister of  
770Infrastructure and the Environment).

771

#### 772Demarcation from the duties of other organizations

773Despite the pooling of expertise, duties, powers and responsibilities that is brought about by the  
774NSRPA, other persons and organizations retain duties, powers and responsibilities in related areas,  
775in particular:

776- The Minister of Economic Affairs remains responsible for energy policy, including policy on nuclear  
777energy.

778- The Minister of Economic Affairs remains responsible for policy and legislation and regulations on  
779nuclear safety and some radiation protection (see above); the NSRPA does however have a role in  
780the preparation thereof (Nuclear Energy Act, Section 3 (3)(c)).

781- The Ministers of Economic Affairs, Social Affairs & Employment, Health, Welfare & Sport and  
782Defence remain responsible for policy and legislation and regulations on radiation protection insofar  
783as that responsibility already rests with them; the NSRPA does however have a role in the  
784preparation thereof (Nuclear Energy Act, Section 3 (3)(c)).

785- The Minister of Defence remains responsible for fuels, nuclear facilities and equipment,  
786radioactive materials and ionizing radiation-emitting devices intended for the use of the armed  
787forces that are exempt from the licensing requirements under the Nuclear Energy Act (Articles 2–7  
788and 9 of the Defence Exemption (Nuclear Energy Act) Decree).

789- The National Mines Inspectorate, the Netherlands Food and Consumer Product Safety Authority,  
790the Social Affairs and Employment Inspectorate, the Health Care Inspectorate and the Military  
791Health Care Inspectorate remain responsible for the enforcement of the Nuclear Energy Act and  
792rules and regulations based upon it insofar as they already have that responsibility (mines, product  
793and food safety, workers, patients and defence respectively: Articles 2–6 of the Appointment of  
794Inspectors and Fulfilment of Duties (Nuclear Energy Act) Decree 2013); the NSRPA provides  
795support to them with knowledge (Nuclear Energy Act, Section 3 (2)(g)).

796- The Minister of Foreign Affairs remains responsible for policy on non-proliferation and for  
797international coordination.

798- The Minister of Security and Justice remains responsible for coordinating crisis management in  
799the event of nuclear accidents with potentially national consequences; the NSRPA makes its  
800knowledge available here within the existing frameworks as laid down in particular in the National  
801Manual on Decision-Making in Crisis Situations, where the NSRPA has a role in preparation (Nuclear  
802Energy Act, Section 3 (3, opening)).

803- The Ministers of Economic Affairs and Education, Culture & Science remain responsible for  
804supporting research into nuclear safety (e.g. grant aid to the NRG and scientific research at Delft  
805University of Technology respectively), unless this is research that the NSRPA needs for the  
806exercise of its duties (Nuclear Energy Act, Section 3 (2)(h)).

807- The Minister of Economic Affairs remains responsible for supporting companies or organizations,  
808or promoting particular activities, e.g. funding the Stichting Voorbereiding PALLAS-reactor.

809- The Ministers of Economic Affairs and Finance remain responsible for approving financial security  
810for the cost of decommissioning nuclear reactors (Nuclear Energy Act, Section 15f).

811- The Minister of Finance remains responsible for the Nuclear Accidents (Liability) Act (Wako).

812

813*Supervision of the NSRPA by the Minister of Infrastructure and the Environment*

814In order to fulfil his ministerial responsibilities vis-à-vis the NSRPA, the Minister of Infrastructure  
815and the Environment has the following powers:

816- He appoints, suspends and dismisses the members of the board (Nuclear Energy Act, Section 6  
817(1) and Enabling Act, Section 12 (1)).

818- He sets the remuneration or compensation of the members of the board (Nuclear Energy Act,  
819Section 7 and Enabling Act, Section 14 (2)).

820- He decides the amount of funding made available to the NSRPA and includes it in his budget  
821(Nuclear Energy Act, Section 9 (1) and (2)).

822- He receives the NSRPA's annual report (Nuclear Energy Act, Section 11).

823- He can ask the NSRPA for all the information he needs for the exercise of his duties and can  
824demand access to all factual data and documents of the NSRPA if this is needed for the fulfilment of  
825his duties (Nuclear Energy Act, Section 12 (1) and (2)).

826- The NSRPA's management regulations require his approval (Nuclear Energy Act, Section 12b).

827- He can annul decisions of the NSRPA if they are incompatible with the law (Nuclear Energy Act,  
828Section 12c).

829- He can take the necessary steps if the NSRPA seriously neglects its duties (Nuclear Energy Act,  
830Section 12d and Enabling Act, Section 23 (1)).<sup>6</sup>

831

### 832**b. Statutory powers**

833

834Various statutory powers are to be transferred to the NSRPA with regard to nuclear safety and  
835radiation protection, and the associated security and crisis preparation, and safeguards. These  
836powers can be divided into five groups:

8371. Regulation

8382. Issuing decisions

8393. Enforcing the Nuclear Energy Act and the rules and regulations based upon it

8404. Crisis preparation

8415. Other powers

842These are all existing powers, most of which are currently held by the Minister of Economic Affairs.

843The powers transferred to the NSRPA under this Bill are discussed below.

844

### 845*Regulatory powers*

846It is proposed to include in the Nuclear Energy Act the option of granting to the Authority by or  
847pursuant to administrative order the power to lay down further rules concerning organizational or  
848technical matters in the area of nuclear safety and radiation protection, and the associated security,  
849and safeguards (Nuclear Energy Act, Section 4 (1)). This will enable the NSRPA to lay down further  
850rules on these matters, on which it has expertise par excellence, and which are highly detailed.

851In the case of all administrative orders and Ministerial Regulations based upon the Nuclear Energy  
852Act it will be decided whether it is useful and desirable to give the NSRPA the power to lay down  
853further rules.

854Drafts of NSRPA regulations will be published in a suitable way. Everyone will thus have the  
855opportunity to submit objections on the matter to the NSRPA within a period of at least four weeks  
856(Nuclear Energy Act, Section 4 (2)).

857The power of the Minister of Infrastructure and the Environment to annul decisions of the NSRPA  
858that are incompatible with the law implies the option of annulling unauthorized decisions taken by  
859the NSRPA if necessary (Nuclear Energy Act, Section 12c).

860Under Section 4:81 (1) of the General Administrative Law Act the NSRPA in fact has the power to  
861lay down policy rules on its powers.

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22<sup>6</sup> To be supplemented if necessary with the approval of the management regulations, independently of the decision of the second meeting  
23 of the Management Group.

862Lastly, the NSRPA has the option of laying down non-binding guidelines such as guides. No  
863statutory basis is required for this. Non-binding guidelines of this kind occur especially in the  
864practice of supervision.

865

#### 866*Issuing decisions*

867The NSRPA is authorized to grant licences for operations involving fuels, nuclear facilities, nuclear  
868equipment or radioactive materials (Nuclear Energy Act, Sections 15 and 29 (1)). The associated  
869powers and obligations of the competent authority are also to be transferred to the NSRPA (Nuclear  
870Energy Act, Sections 15aa, 15b (2), 15d (2), 18a (1) and (2), 19, 20 (2), 20a (1) and (3), and 29a  
871(2)(c)). These include such things as the obligation to regularly review the restrictions and rules  
872applicable to existing licences and the power to revise these restrictions and rules (Nuclear Energy  
873Act, Section 18a (1) and (2)).

874Following on from this power, the NSRPA is authorized to grant permission for the transfer of a  
875licence in whole or in part (Nuclear Energy Act, Section 70 (2) and (3)).

876Lastly, the NSRPA is authorized to designate organizations or persons to which fuels, ores or  
877radioactive materials, and the objects being or having been used for their packaging or storage,  
878seized by the NSRPA under an administrative enforcement order are to be transferred (Nuclear  
879Energy Act, Sections 22 (4) and 33 (4)).

880

#### 881*Enforcement*

882The NSRPA is authorized to enforce the Nuclear Energy Act and the rules and regulations based  
883upon it (Nuclear Energy Act, Section 58 (1)(a)). In addition, the other inspectors referred to in  
884Articles 2–6 of the Appointment of Inspectors and Fulfilment of Duties (Nuclear Energy Act) Decree  
8852013 are authorized to carry out enforcement insofar as their areas of operation are concerned  
886(Nuclear Energy Act, Section 58 (1)(b)). These are the National Mines Inspectorate, the  
887Netherlands Food and Consumer Product Safety Authority, the Social Affairs & Employment  
888Inspectorate, the Public Health Supervisory Service and the Military Health Care Inspectorate.  
889In addition, the NSRPA is to be given a number of specific powers in the area of enforcement or  
890associated powers. These are the power to:

891- impose an order subject to a financial penalty in relation to the unauthorized presence of fuels,  
892ores or radioactive materials and the objects being or having been used for their packaging or  
893storage (Nuclear Energy Act, Sections 22 (3) and 33 (3)).

894- extend the period of an order forbidding persons access to a particular area for one week on  
895account of contravention of the Nuclear Energy Act (Nuclear Energy Act, Section 36 (3)).

896- take all the necessary steps if there are serious shortcomings in the operation of a nuclear facility  
897(Nuclear Energy Act, Section 37b (1) and (3)).

898- admit international inspectors checking for compliance with international rules (Nuclear Energy  
899Act, Section 65 (1)).

900

901The unauthorized presence of fuels, ores or radioactive materials is no longer to be reported to the  
902mayor of the municipality where these goods are located but to the NSRPA (Nuclear Energy Act,  
903Sections 22 (1) and 33 (1)). Advantage is being taken of this opportunity to bring the rules into  
904line with existing practice, as it has emerged that in the vast majority of cases such goods are  
905reported to the Reporting and Information Centre of the Human Environment and Transport  
906Inspectorate, of which the Department of Nuclear Safety, Security and Safeguards forms part. The  
907NSRPA will immediately notify the mayor of the municipality where the goods are located of the  
908report (Nuclear Energy Act, Sections 22 (2) and 33 (2)).

909

#### 910*Crisis preparation*

911For the purpose of crisis preparation, accidents involving a Category A object (e.g. a nuclear power  
912plant or a research reactor) or Category B object (e.g. a vehicle transporting fuels or radioactive  
913materials) must be reported to the NSRPA as well as to the mayor of the municipality where the  
914accident took place (Nuclear Energy Act, Section 39 (1)).

915The NSRPA, just like the mayor, must be furnished immediately with all the information needed for  
916the exercise of its duties (Nuclear Energy Act, Section 39 (3)).

917In the event of an accident involving a nuclear power plant, research reactor or nuclear-powered  
918vehicle, the NSRPA is authorized to order such measures to be taken as are necessary in its opinion  
919to limit and remedy the consequences of the accident (Nuclear Energy Act, Section 47 (1)). As this  
920includes situations in which the consequences are likely to be limited to safety within the facility  
921concerned, Section 47 (3) of the Nuclear Energy Act can be deleted. The mayor of the municipality  
922where the accident took place can ask the NSRPA to make use of its power to order measures  
923(Nuclear Energy Act, Section 47 (3)(new)).

924In addition to the Minister of Economic Affairs, the Minister concerned and the King's  
925Commissioner, the NSRPA must also be informed by the chair of the Security Region of the rules or  
926measures that he has laid down or taken in the case of an accident involving a Category A object  
927(Nuclear Energy Act, Section 49b (2)). The same applies to a mayor who has issued orders or  
928universally binding rules in the case of an accident involving a Category B object (Nuclear Energy  
929Act, Section 49c).

930Advantage is being taken of this opportunity to replace the incorrect mention of the Minister of the  
931Interior and Kingdom Relations in Section 48 (1) of the Nuclear Energy Act with that of the Minister  
932of Security and Justice, as the Royal Decree of 14 October 2010 concerning departmental  
933reorganization regarding security (Government Gazette 2010, 16528) transferred the power, in the  
934event of an accident involving a Category A object, to issue an Order requiring measures to be  
935taken to the Minister of Security and Justice.

936

#### 937*Other powers*

938Under the Bill the NSRPA is responsible for maintaining a register of fuels and ores and furnishing  
939information from it (Nuclear Energy Act, Section 13 (3)).

940The NSRPA is also to be responsible for maintaining the register of radiation experts and the NSRPA  
941will decide on applications for registration in that register (Nuclear Energy Act, Section 69 (2)–(4)).

942The power of the Ministers of Social Affairs & Employment, Economic Affairs and Health, Welfare  
943and Sport to designate a register for this purpose can therefore be rescinded. Sections 69a–69d of  
944the Nuclear Energy Act, which sets out this power and its consequences, will be redundant or will  
945duplicate the rules on the supervision of independent administrative authorities under the Enabling  
946Act. Advantage is being taken of this opportunity to delete these sections.

947

#### 948**c. Non-policy-neutral change**

949

#### 950*Grounds for refusal*

951Section 15b (1) of the Nuclear Energy Act sets out the grounds under which a licence application  
952for operations involving fuels, nuclear facilities or nuclear equipment (Nuclear Energy Act, Section  
95315) can be refused. One of these grounds for refusal is 'energy supply'. It is proposed to scrap this  
954ground, as it is not desirable in view of the required independence of the NSRPA for the NSRPA to  
955have to take considerations such as energy supply into account in its decisions. Also, this ground is  
956no longer appropriate in a situation in which the choice of 'fuel' is not made by the government but  
957left to the market.

958

#### 959**6. Implementation and enforcement**

960

#### 961*Workability and enforceability*

962The Bill does not make any changes to standards for industry or the public, hence there is no  
963change in the workability or enforceability of the Nuclear Energy Act and the rules and regulations  
964based upon it.

965

#### 966*Temporary organization*

967The temporary NSRPA organization started work on 1 January 2015. It forms part of the Ministry of  
968Infrastructure and the Environment. The following departments are absorbed into the NSRPA:

969- The Nuclear Installations and Safety Department of the Ministry of Economic Affairs

970- The Department of Nuclear Safety, Security and Safeguards and the Advisory Networks/Nuclear  
971of the Human Environment and Transport Inspectorate (ILT)

972- The Radiation Protection Team of the Netherlands Enterprise Agency

973For the time being the NSRPA is to carry out its duties based on the powers mandated to it by the

974Minister of Economic Affairs. Once this Bill becomes law the staff of the temporary NSRPA

975organization will be made available to the NSRPA IAA.

976

#### 977*Appointment of board members*

978The board members of the NSRPA will be appointed when this Bill enters into force.

979

#### 980**7. Consequences**

981

982This chapter considers the consequences of the Bill for the public, industry, the authorities and the  
983environment.

984

#### 985*Administrative burden*

986This Bill has no consequences for the administrative burden on industry or the public.



987

988*Effects on industry*

989The Bill is not expected to have any effects on industry.

990The creation of the NSRPA, however, will ensure that industry has a clearer point of contact with  
991government on matters of nuclear safety and radiation protection.

992

993*Financial consequences for central government*

994The creation of the NSRPA will result in an increase in the national budget for nuclear safety and  
995radiation protection. On the one hand the NSRPA will be given new duties, such as providing  
996information on nuclear safety and radiation protection and supporting other national organizations  
997with knowledge. On the other hand there are existing duties that will be stepped up, such as  
998enforcing the Nuclear Energy Act legislation and participating in activities of international  
999organizations and maintaining relations with similar foreign authorities and international  
1000organizations.

1001[Figures on consequences for the national budget]<sup>7</sup>

1002

1003*Effects on the environment*

1004The creation of the NSRPA as such will not have any effects on the environment. The expectation,  
1005however, is that the pooling of government expertise and knowledge in the area of nuclear safety  
1006and radiation protection will improve the quality and efficiency of government in these areas, which  
1007could indirectly have positive effects on the environment.

1008

1009**8. The advisory and consultation process**

1010

1011*Stakeholders*

1012Nucleair Nederland, the Dutch Society for Radiation Protection and Greenpeace have been  
1013consulted on the Bill.

1014[Response]

1015

1016*IAEA*

1017The Bill was submitted to the IAEA for a recommendation on \*.

1018[Recommendation]

1019

1020**II. Notes on individual sections**

1021

1022[...]

1023

1024**III. Transposition table**

1025

1026The transposition table below shows where Articles 5 (2) and (3) and 8 (3) of the nuclear safety  
1027amending directive are to be implemented, or how they have already been implemented. The  
1028following abbreviations are used in the table:

1029- NEA: Nuclear Energy Act

1030- Enabling Act: Independent Administrative Authorities Enabling Act

1031- GIPAA: Government Information (Public Access) Act

1032

| <b>Provision in nuclear safety amending directive</b> | <b>Provision in implementing regulation or existing legislation</b>                                    |
|---|--|
| Article 5 (2, first sentence)                         | NEA Sections 3 (1) and (2), 5 (5) and (6), 6 and 7 and Enabling Act Section 9                          |
| Article 5 (2)(a, first part)                          | ditto  |
| Article 5 (2)(a, second part)                         | NEA Section 3 (2) and Enabling Act Section 1 (a)   |
| Article 5 (2)(b)                                      | NEA Section 15b (1) in conjunction with 15d (1), 15e (1), 18a (1) and (2), 19 (1), 20a (1), and 31 (4) |
| Article 5 (2)(c)                                      | NEA Section 9  |
| Article 5 (2)(d, first sentence)                      | NEA Section 9 (1) and 10 and Enabling Act Section 16   |
| Article 5 (2)(d, second sentence)                     | NEA Section 3 (3)(h)   |

27<sup>7</sup> Will be available at the beginning of September 2014 at the earliest. To be furnished by the Temporary Organization Project Group.

|                               |  |
|-------------------------------|--|
| Article 5 (2)(e)              | NEA Section 8  |
| Article 5 (2)(f)              | NEA Sections 3 (3)(d), and GIPAA Sections 1a (1)(d), 2, 7, 8, 9, 10 and 11   |
| Article 5 (3, first sentence) | NEA Sections 13(3), 15, 15aa, 15b (2), 15d (2), 18a (1) and (2), 19, 20 (2), 20a (1) and (3), 22, 29 (1), 29a (2)(c), 33, 36, 37b (1) and (3), 58 (1)(a), 65 (1), 69 and 70 (2) and (3), 83 (1), 83a and 83b |
| Article 5 (3)(a)              | NEA Sections 3 (3)(c) and 4 (1)  |
| Article 5 (3)(b)-(d)          | NEA Sections 3 (3)(b), 36, 58 (1), 83 (1), 83a and 83b   |
| Article 8 (3)                 | NEA Section 3 (3)(f)   |

1033

1034

1035

1036The Minister of Economic Affairs,