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This is a translation of the Statutes of the Nuclear Waste Management Commission (ESK). In case of discrepancies between the English translation and the German original, the original shall prevail.

Statutes of the Nuclear Waste Management Commission (ESK)

of 17th July 2008

Article 1

Establishment of the Nuclear Waste Management Commission

The Nuclear Waste Management Commission (ESK) shall be established within the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (short name: BMU).

Article 2

Subject matter

The Nuclear Waste Management Commission advises the BMU in matters of nuclear waste management. The advisory services comprise waste conditioning, interim storage and final disposal of radioactive waste and irradiated fuel assemblies, the transport of radioactive material and the decommissioning of nuclear facilities.

Article 3

Composition

The Nuclear Waste Management Commission normally has 11 members. The Commission should include representatives of those specialised areas that are directly relevant to the task of expert advising of the BMU in the matters set forth in Art. 2. The Commission's members must ensure that the BMU receives expert, objective advice. In the interest of balanced advising, the Nuclear Waste Management Commission should be so structured that the entire range of tenable views in light of the state of the art in science and technology is represented.

Article 4
Members

(1) Membership in the Commission is a personally held voluntary office that admits no substitutions. The Commission's members are independent and are not bound to any directives. They must respect the professional opinions of other members and observe the rules for scientific discourse.

(2) As a rule, the BMU appoints the Commission's members for terms of three calendar years. In general, reappointments in direct succession should result in total tenures of office of no more than six years, except in individual cases in which longer tenures of office are required for reasons of continuity.

(3) The BMU may terminate any member's membership early, for special reasons. Such reasons must be announced to the member in question and to the Commission. A member may not be removed early for reasons having to do with his/her professional views.

(4) Before taking up their duties, Commission members are obligated, by the BMU, to carry out their duties conscientiously and objectively, to observe the confidentiality of meetings (Art. 14 (4)) and to maintain secrecy with regard to matters that are the subject of a licensing or supervisory procedure under nuclear law or radiation-protection law and that they learn about as Commission members.

Article 5
Chairperson and deputy

After hearing the Commission, the BMU appoints the chairperson and his/her deputy, for a term normally lasting two calendar years. As a rule, when the chairperson serves two terms in immediate succession, his/her total time in office should not exceed a period of four years.

Article 6
Committees and working groups

(1) The Nuclear Waste Management Commission establishes the following three committees:

- Disposal (Endlagerung radioaktiver Abfälle) (EL)
- Waste Conditioning, Transport and Interim Storage (Abfallkonditionierung, Transporte und Zwischenlagerung) (AZ)
- Decommissioning (Stilllegung) (ST)

In agreement with the BMU, or at the BMU's request, the Commission establishes working groups for individual, specialised, interdisciplinary or project-related matters and determines the work orders for such committees and working groups. Acting on the Commission's nominations, the BMU appoints the members of committees and working groups and appoints their chairpersons. Committee chairpersons must be Commission members.

(2) The provisions of Art. 4 (1), (2) Sentence 1, (3) and (4), Art. 5 Sentence 1, Art. 10, Art. 11 (5), Art. 12 (3) and (4) and Arts. 13 through 16 apply *mutatis mutandis* for committees and working groups, except where their activities are governed by special rules of procedure of the BMU in keeping with the principles of these statutes.

Article 7
Authorised experts

In agreement with the BMU, the Commission, its committees and its working groups may draw on the assistance of authorised experts in their consultations. In each case, the relevant chairperson must obligate authorised experts to maintain confidentiality (Art. 14 (4)) regarding the proceedings of meetings and to maintain secrecy in accordance with Art. 4 (4).

Article 8
Secretariat

(1) Within the Federal Office for Radiation Protection (BfS), the BMU shall establish a secretariat for the Commission which shall not be subject to the BfS's instructions in technical/specialised matters. The secretariat supports the Commission, and its committees and working groups, in carrying out its tasks, especially in accordance with Art. 12 (3) and (4) and Art. 15.

(2) Until establishment of the secretariat, the tasks of the secretariat for the Nuclear Waste Management Commission shall be performed by the secretariat of the Reactor Safety Commission (RSK). Also in this function, the RSK secretariat shall not be subject to the BfS's instructions in technical/specialised matters.

Article 9
Requests for advice

(1) The BMU issues requests for advice to the Commission. The Commission is also free to take up advising-relevant matters on its own accord.

(2) In agreement with the Commission chairperson, the BMU may issue requests for advice to a committee or a working group if the matter in question falls solely within the specialised areas of the relevant committee or working group and it is not so significant that it must be deliberated by the Commission.

Article 10
Exclusion from consultations due to bias
Notification obligations

(1) Those Commission members shall be excluded from consultations who

1. are themselves participants in a licensing or supervisory procedure that is the subject of the consultation in question; in this regard, persons shall be considered equal to participants who participated or may participate in decisions of the authority or the participant in the matters being deliberated, provided it is an authority or a legal entity under public law;
2. if they are employed, against payment, by a natural or legal entity or association belonging to the group of persons specified in number 1, or are active for such an entity or association as a member of the board of management, supervisory board or other equivalent organ; this shall not apply in case of employment at a public body; Article 10 (1) No. 1 shall remain unaffected thereby.

3. outside of their activity in the Commission, and in the matter that is being de-liberated, or is to be deliberated, by the Commission, have provided an expert opinion for the relevant applicant or entity subject to a supervisory measure, have advised the relevant applicant or entity or have been otherwise active for the relevant applicant or entity.

(2) If a Commission member considers himself/herself to be biased, or if there are any doubts as to whether the prerequisites of Para. 1 are fulfilled, then such opinion or doubts must be communicated to the chairperson. The chairperson shall notify the BMU of such communication. The Commission shall then decide on any exclusion. The member in question may not participate in such decision.

(3) An excluded member may not be present at the relevant consultation and resolution; he/she may be heard during the relevant meeting, however.

(4) Commission members are obligated to notify the BMU of any correspondence or discussion they exchange or engage in, in their function as Commission members, with applicants or with persons subject to supervisory measures, regarding matters that are the subject of Commission consultations.

Article 11 *Consultation procedure*

(1) As a result of its consultations, the Commission reaches resolutions on scientific and technical recommendations or statements directed to the BMU. It does not make any legal or political assessments. It must provide clear and understandable reasons for its recommendations and statements. The statement of reasons shall include the specification of the objects of investigation, a description of the means of fact finding (actual situation) referred to, of the assessment criteria which, as a matter of principle, represent the state of the art in science and technology, except where the BMU expressly may deem other criteria necessary, as well as a substantiation of the conclusion.

(2) If the Commission finds itself unable to issue a recommendation or statement, it asserts this in a resolution and describes its pertinent reasons.

(3) The Commission's recommendations and statements are provided, along with the pertinent reasons, to *Länder* authorities, for their information; they shall be published on the homepage of the Nuclear Waste Management Commission. The BMU retains the right to present its respective assessments on the recommendation or statement on this homepage. The BMU may publish the recommendations and statements in the Federal Gazette (Bundesanzeiger).

The publication of recommendations and statements shall be excluded if

- the disclosure of their contents would be of disadvantage to the interests of the federation or a Land, or
- if they must be kept secret according to a law or their nature, in particular due to legitimate interests of third parties.

In case of doubt as to the admissibility of publications, the Commission shall secure the consent of the BMU.

Should the BMU expect that the publication of recommendations and statements might be of disadvantage to the interests of the federation or a Land when placing an order, it makes publication subject to approval.

(4) The Commission's committees and working groups prepare proposals for recommendations or statements, as preparation for the Commission's consultations. Statements of a committee or working group directed to the Commission are forwarded to it and to the BMU.

(5) The Commission may generally issue comments or provide information to third parties. The Commission informs the BMU in good time prior to it. The BMU retains the right to prohibit the comment or provision of information in particular cases.

Article 12 ***Preparation of meetings***

(1) Subject to the agreement of the BMU, the Commission chooses the times and places for its meetings, doing so, as a rule, for a calendar year in advance.

(2) The BMU, the chairperson or at least one third of the Commission's members may call for an extraordinary meeting to take place.

(3) The chairperson convokes the Commission's meetings. Invitations to meetings, and provisional agendas, are prepared and sent out by the Commission's office, under commission to the chairperson and in agreement with the BMU; such invitations and provisional agendas should reach meeting participants at least two weeks before the relevant meeting is to take place. Applications of the BMU are to be included.

(4) The chairperson may have the secretariat prepare written documents relative to consultation problems, bases for consultation, proposals for resolutions and possible alternative resolutions. The consultation materials should reach the Commission members, the BMU and, to the extent they are affected, persons invited pursuant to Art. 13 (2) and (4), at least one week prior to the relevant meeting.

Article 13 ***Participation in meetings***

(1) The Commission's meetings are not public.

(2) At the request of the BMU, representatives of other federal and *Länder* authorities may be invited to meetings. They are to be invited if the subject being discussed touches on a licensing or supervisory procedure under nuclear law that falls within their area of responsibility; their representatives must be heard on request; they have the right to take part in consultations on matters affecting them. Sentence 2 shall also apply to the cases where the BfS is the party responsible for repository projects.

(3) Authorised experts consulted in licensing or supervisory procedures, expert representatives of applicants and entities filing objections and entities participating in supervisory procedures may be invited, by the Commission chairperson and in agreement with the BMU, to meetings, if they agree to maintain the confidentiality of the relevant consultations. Such experts, representatives and entities must be heard at the request of the BMU or the competent authority. They have the right to take part in consultations on matters affecting them.

(4) Further persons may be invited to participate in the meetings by the chairperson of the Commission in agreement with the BMU, provided they commit themselves to maintain confidentiality about the consultations.

(5) Authorised experts consulted by the Commission (Art. 7) take part in those agenda items of meetings about which they are to be heard.

(6) Representatives of the BMU and of the secretariat participate in all parts of meetings.

(7) In reaching of resolutions regarding the issuing of a recommendation or statement, as a rule only representatives of the BMU and of the secretariat may be pre-sent, in addition to the Commission's members.

Article 14 ***Holding of Commission meetings***

(1) The chairperson chairs the meetings.

(2) At the beginning of each meeting, the Commission specifies the final agenda, in agreement with the BMU.

(3) The record of the results of the previous meeting is to be approved by the Commission.

(4) The Commission's meetings are confidential. Meeting participants may not provide third parties with any information about the remarks of individual members, about voting and about the contents of the record of results.

Article 15 ***Minutes, recording of meetings***

(1) The secretariat, working in agreement with the relevant chairperson, prepares the minutes for each meeting. In general and upon request of the BMU, a record of contents which completely represents the course of the discussions shall be prepared. Should a record of results be prepared, it includes:

1. designation of the subjects deliberated during the meeting,
2. the wording of resolutions (recommendations and statements) and, if applicable, the pertinent reasons, along with any minority votes pursuant to Art. 16 (3),
3. a list of the written documents upon which the consultations and the resolution are based,
4. the most important orally provided information, where such information was of significance for the resolution,
5. a list of the meeting participants,
6. a determination of the results of voting, in an attachment.

(2) In order to facilitate preparation of minutes, the secretariat records meetings on audio recording media; it permits Commission members and the BMU's representatives to hear such recordings. Such recordings are to be deleted within no more than one year.

(3) The minutes must be signed by the chairperson of the Commission and by an official representative of the secretariat.

(4) The secretariat sends the minutes, and the pertinent attachments showing the determined voting results, to the Commission members and to the BMU. At the BMU's request, other authorities are sent the sections of the minutes covering the agenda items for which they were invited to meetings. Such authorities may forward such excerpts, after the minutes have been approved by the Commission (Art. 14 (3)), to authorised experts they are consulting, to applicants and entities lodging objections, and to participants in a supervisory procedure if they are affected by the results of consultations.

Article 16 Resolutions

(1) The Commission reaches its resolutions by a majority of votes of appointed members. In exceptional cases, a resolution can be brought about by way of circulation; if a member expressly objects to use of that procedure, it shall be considered to have failed. The Commission must then reach a resolution at its next meeting.

(2) For recommendations relative to the site or design for a nuclear installation, as well as to commissioning of such an installation, a majority of at least two-thirds of the votes of appointed members is required.

(3) All members have the same voting rights, and all bear joint responsibility for the Commission's resolutions. Dissenting opinions shall be documented in the minutes and when publishing recommendations and statements.

Article 17 Reporting

In agreement with the chairperson, the secretariat reports on the work of the Commission, in particular on major topics of consultation and resolutions (statements and recommendations) on the website of the Commission.

Article 18 Remuneration for activity in the Commission

(1) In agreement with the Commission, the BMU determines the remuneration for activities of members of the Commission, of committees and of working groups and of consulted authorised experts.

((2) Such remuneration comprises a professional fee, a compensation for travel costs and a compensation for meetings. Expenditures made in special cases may be reimbursed.

Article 19 Entry into force

These statutes shall enter into force on 17 July 2008.