



INF

INFCIRC/254/Rev.1/Part 1/Mod.3
November 1994

International Atomic Energy Agency
INFORMATION CIRCULAR

GENERAL Distr.
Original: ENGLISH, FRENCH and
RUSSIAN

**COMMUNICATIONS RECEIVED FROM MEMBER STATES
REGARDING GUIDELINES FOR THE EXPORT OF NUCLEAR MATERIAL,
EQUIPMENT AND TECHNOLOGY**

1. The Director General has received notes verbales relating to the export of nuclear material, equipment and technology from the following Permanent Missions to the International Atomic Energy Agency: notes verbales dated 15 June 1994 from the Permanent Missions of Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, Norway, Poland, Portugal, Romania, the Slovak Republic, Spain, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America; and a note verbale dated 10 November 1994 from the Permanent Mission of the Russian Federation.
2. The purpose of these notes verbales is to provide further information on these Governments' nuclear export policies and practices.
3. In the light of the wish expressed at the end of each note verbale, the analogous text of the notes verbales is attached hereto. The enclosure of these notes verbales with the amendments to the "Guidelines for Nuclear Transfers" contained in INFCIRC/254/Rev.1/Part 1/Mod.1 is reproduced in the Annex.

GUIDELINES FOR NUCLEAR TRANSFERS

1. The following fundamental principles for safeguards and export controls should apply to nuclear transfers for peaceful purposes to any non-nuclear-weapon State and, in the case of controls on retransfer, to transfers to any State. In this connection, suppliers have defined an export trigger list and agreed on common criteria for technology transfers.

Prohibition on nuclear explosives

2. Suppliers should authorize transfer of items identified in the trigger list only upon formal governmental assurances from recipients explicitly excluding uses which would result in any nuclear explosive device.

Physical protection

3.
 - (a) All nuclear materials and facilities identified by the agreed trigger list should be placed under effective physical protection to prevent unauthorized use and handling. The levels of physical protection to be ensured in relation to the type of materials, equipment and facilities, have been agreed by suppliers, taking account of international recommendations.
 - (b) The implementation of measures of physical protection in the recipient country is the responsibility of the Government of that country. However, in order to implement the terms agreed upon amongst suppliers, the levels of physical protection on which these measures have to be based should be the subject of an agreement between supplier and recipient.
 - (c) In each case special arrangements should be made for a clear definition of responsibilities for the transport of trigger list items.

Safeguards

4.
 - (a) Suppliers should transfer trigger list items to a non-nuclear-weapon State only when the receiving State has brought into force an agreement with the IAEA requiring the application of safeguards on all source and special fissionable material in its current and future peaceful activities.

- (b) Transfers covered by paragraph 4 (a) to a non-nuclear-weapon State without such a safeguards agreement should be authorized only in exceptional cases when they are deemed essential for the safe operation of existing facilities and if safeguards are applied to those facilities. Suppliers should inform and, if appropriate, consult in the event that they intend to authorize or to deny such transfers.
 - (c) The policy referred to in paragraph 4 (a) and 4 (b) does not apply to agreements or contracts drawn up on or prior to April 3, 1992. In case of countries that have adhered or will adhere to INFCIRC/254/Rev.1/Part 1 later than April 3, 1992, the policy only applies to agreements (to be) drawn up after their date of adherence.
 - (d) Under agreements to which the policy referred to in paragraph 4 (a) does not apply (see paragraphs 4 (b) and (c)) suppliers should transfer trigger list items only when covered by IAEA safeguards with duration and coverage provisions in conformity with IAEA doc. GOV/1621. However, suppliers undertake to strive for the earliest possible implementation of the policy referred to in paragraph 4 (a) under such agreements.
 - (e) Suppliers reserve the right to apply additional conditions of supply as a matter of national policy.
5. Suppliers will jointly reconsider their common safeguards requirements, whenever appropriate.

Safeguards triggered by the transfer of certain technology

- 6. (a) The requirements of paragraphs 2, 3 and 4 above should also apply to facilities for reprocessing, enrichment, or heavy-water production, utilizing technology directly transferred by the supplier or derived from transferred facilities, or major critical components thereof.
- (b) The transfer of such facilities, or major critical components thereof, or related technology, should require an undertaking (1) that IAEA safeguards apply to any facilities of the same type (i.e. if the design, construction or operating processes are based on the same or similar physical or chemical processes, as defined in the trigger list) constructed during an agreed period in the recipient country and (2) that there should at all times be in effect a safeguards agreement permitting the IAEA to apply Agency safeguards with respect to such facilities identified by the recipient, or by the supplier in consultation with the recipient, as using transferred technology.

Special controls on sensitive exports

7. Suppliers should exercise restraint in the transfer of sensitive facilities, technology and weapons-usable materials. If enrichment or reprocessing facilities, equipment or technology are to be transferred, suppliers should encourage recipients to accept, as an alternative to national plants, supplier involvement and/or other appropriate multinational participation in resulting facilities. Suppliers should also promote international (including IAEA) activities concerned with multinational regional fuel cycle centres.

Special controls on export of enrichment facilities, equipment and technology

8. For a transfer of an enrichment facility, or technology therefor, the recipient nation should agree that neither the transferred facility, nor any facility based on such technology, will be designed or operated for the production of greater than 20% enriched uranium without the consent of the supplier nation, of which the IAEA should be advised.

Controls on supplied or derived weapons-usable material

9. Suppliers recognize the importance, in order to advance the objectives of these guidelines and to provide opportunities further to reduce the risks of proliferation, of including in agreements on supply of nuclear materials or of facilities which produce weapons-usable material, provisions calling for mutual agreement between the supplier and the recipient on arrangements for reprocessing, storage, alteration, use, transfer or retransfer of any weapons-usable material involved. Suppliers should endeavour to include such provisions whenever appropriate and practicable.

Controls on retransfer

10. (a) Suppliers should transfer trigger list items, including technology defined under paragraph 6, only upon the recipient's assurance that in the case of:
 - (1) retransfer of such items,
 - or
 - (2) transfer of trigger list items derived from facilities originally transferred by the supplier, or with the help of equipment or technology originally transferred by the supplier;

the recipient of the retransfer or transfer will have provided the same assurances as those required by the supplier for the original transfer.

- (b) In addition the supplier's consent should be required for: (1) any retransfer of trigger list items and any transfer referred to under paragraph 10 (a) (2) from any State which does not require full scope safeguards, in accordance with paragraph 4 (a) of these Guidelines, as a condition of supply; (2) any retransfer of the facilities, major critical components, or technology described in paragraph 6; (3) any transfer of facilities or major critical components derived from those items; (4) any retransfer of heavy water or weapons-usable material.

Non-proliferation Principle

11. Notwithstanding other provisions of these Guidelines, suppliers should authorize transfer of items identified in the trigger list only when they are satisfied that the transfers would not contribute to the proliferation of nuclear weapons or other nuclear explosive devices.

SUPPORTING ACTIVITIES

Physical security

12. Suppliers should promote international co-operation on the exchange of physical security information, protection of nuclear materials in transit, and recovery of stolen nuclear materials and equipment.

Support for effective IAEA safeguards

13. Suppliers should make special efforts in support of effective implementation of IAEA safeguards. Suppliers should also support the Agency's efforts to assist Member States in the improvement of their national systems of accounting and control of nuclear material and to increase the technical effectiveness of safeguards.

Similarly, they should make every effort to support the IAEA in increasing further the adequacy of safeguards in the light of technical developments and the rapidly growing number of nuclear facilities, and to support appropriate initiatives aimed at improving the effectiveness of IAEA safeguards.

Sensitive plant design features

14. Suppliers should encourage the designers and makers of sensitive equipment to construct it in such a way as to facilitate the application of safeguards.

Consultations

15. (a) Suppliers should maintain contact and consult through regular channels on matters connected with the implementation of these Guidelines.
- (b) Suppliers should consult, as each deems appropriate, with other Governments concerned on specific sensitive cases, to ensure that any transfer does not contribute to risks of conflict or instability.
- (c) In the event that one or more suppliers believe that there has been a violation of supplier/recipient understandings resulting from these Guidelines, particularly in the case of an explosion of a nuclear device, or illegal termination or violation of IAEA safeguards by a recipient, suppliers should consult promptly through diplomatic channels in order to determine and assess the reality and extent of the alleged violation.

Pending the early outcome of such consultations, suppliers will not act in a manner that could prejudice any measure that may be adopted by other suppliers concerning their current contacts with that recipient.

Upon the findings of such consultations, the suppliers, bearing in mind Article XII of the IAEA Statute, should agree on an appropriate response and possible action which could include the termination of nuclear transfers to that recipient.

16. In considering transfers, each supplier should exercise prudence having regard to all the circumstances of each case, including any risk that technology transfers not covered by paragraph 6, or subsequent retransfers, might result in unsafeguarded nuclear materials.
17. Unanimous consent is required for any changes in these Guidelines, including any which might result from the reconsideration mentioned in paragraph 5.

NOTE VERBALE

The Permanent Mission of [Member State] to the International Atomic Energy Agency presents its compliments to the Director General of the International Atomic Energy Agency and has the honour to provide further information on its Government's nuclear export policies and practices.

The Government of [Member State] has decided that the fundamental principles for safeguards and export controls of the guidelines for nuclear transfer set out in INFCIRC/254/Rev.1/Part.1/Mod.1, should apply not only to nuclear transfers to any non-nuclear-weapon State for peaceful purposes, but also, in the case of controls on retransfer, to transfers to any State.

The Government of [Member State] has decided that the supplier's consent will be required for any retransfer of trigger list items and any transfer referred to under paragraph 10 (a) (2) of INFCIRC/254/Part.1/Rev.1/Mod.1, from any State which does not require full scope safeguards, in accordance with paragraph 4(a) of the guidelines for nuclear transfers (INFCIRC/254/Part.1/Rev.1/Mod.1), as a condition of supply.

The Government of [Member State] has also decided that notwithstanding other provisions of the guidelines for nuclear transfers set out in INFCIRC/254/Part.1/Rev./Mod.1, it will authorise transfer of items identified in the trigger list only when it is satisfied that the transfers would not contribute to the proliferation of nuclear weapons of other nuclear explosive devices.

A copy of the "Guidelines for Nuclear Transfers", with amendments to paragraphs 1 and 10 (b), a new paragraph 11 and the renumbering of subsequent paragraphs of the document, is attached.

In reaching this decision, the Government of [Member State] is fully aware of the need to contribute to economic development while avoiding contributing in any way to the dangers of a proliferation of nuclear weapons or other nuclear explosive devices, and of the need to remove non-proliferation assurances from the field of commercial competition.

[The Government of (Member State), so far as trade within the European Union is concerned, will implement this decision in the light of its commitments as a Member State of that Union.]^{*/}

The Government of [Member State] would be grateful if the Director General will bring this note to the attention of Member States of the IAEA.

^{*/} This paragraph has been included only in notes verbales from members of the European Union.

The Permanent Mission of [Member State] avails itself of this opportunity to renew to the Director General of the International Atomic Energy Agency the assurances of its highest consideration.