

**French regulatory framework:  
The guarantees of ASN independence  
and the obligation for ASN to maintain relations with the licensees**

## **A. Introduction**

The French legal and regulatory framework has been established:

- to affirm that the licensee is responsible for nuclear safety;
- to provide full independence to the regulator in its decision making;
- to guaranty transparency of any decision related to nuclear safety.

The corresponding legal and regulatory dispositions are presented in this note.

## **B. The guarantees of ASN independence**

A number of legislative and regulatory provisions, contained in various branches of French law, guarantee ASN's independence from the Government and the licensees as well as the impartiality and probity of the members of the Commission, its staff and the experts whose services it uses, whether in the resolutions and opinions it issues, or in the activities carried out by its personnel (for example inspections).

### **I – Independent administrative authority (AAI) status**

Act n° 2006-686 of 13 June 2006 *on transparency and security in the nuclear field*, known as the “TSN Act”<sup>1</sup>, created the Autorité de sûreté nucléaire (ASN), conferring on it the status of independent administrative authority. The Act entrusts it with duties relating to the regulation of nuclear safety and radiation protection and the information of the public in these fields.

These duties were previously carried out by a central administration placed under the authority of 3 ministers (industry and/or finance and environment and health).

ASN does not have the status of a legal person, but its Chairman (art. L. 592-15 to L. 592-17 of the Environment Code (EC):

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<sup>1</sup> Act 2006-686 of 13 June 2006 is now codified in the Environment Code. The articles relevant to the presentation are appended.

- is the authorising officer for revenue and expenditure<sup>2</sup>;
- is empowered to sign all agreements useful for the performance of the duties of the authority;
- and, for the purposes of performance of the duties entrusted to ASN, is empowered to act in legal matters on behalf of the State.

## **II – The ASN Commission**

ASN “consists of a commission of five members appointed for their expertise in the fields of nuclear security and radiation protection” (art. L. 592-2 of the EC).

The 5 commissioners carry out their functions in complete impartiality and receive no instructions from either the Government or any other person or institution (art. L. 592-7 of the EC).

The independence and impartiality of the commissioners is guaranteed by the following provisions (art. L. 592-2 to art. L. 592-10 of the EC):

- their method of appointment: 3 commissioners, including the Chairman, appointed by the President of the Republic and 2 commissioners appointed by the President of the National Assembly and the President of the Senate respectively; these appointments are based on competence;
- the principle of collegiality: resolutions and opinions are jointly issued according to the majority of the commissioners present (at least 3), following a debate;
- the duration of their mandate which is non-renewable: non-renewable 6-year mandate;
- the cases in which their functions can be terminated are explicitly stated by law: incapacity or resignation duly noted by a majority of the members of the ASN Commission, compulsory resignation, serious breach by a Commissioner of his or her obligations, as confirmed by a resolution from the majority of the members of the commission or by a decision of the President of the Republic;
- the obligation to devote themselves exclusively to their duties: incompatibility between the function of commissioner and any professional activity, any elected mandate and any other public employment;
- full-time performance of the function of commissioner; this function being remunerated;
- as soon as they are nominated, the obligation to issue a public declaration of the interests they hold or have held over the previous 5 years in fields within the scope of ASN competence;
- during the course of their mandate, a ban on holding interests such as to affect their independence, or their impartiality;
- for the duration of their functions, a ban on taking a public stance, in a personal capacity, on subjects falling within the scope of ASN competence;
- for the duration of their functions and following the end of their mandate, the fact that they are bound by professional secrecy concerning the events, actions and information of which they became aware through the course of their functions (in particular ASN deliberations and voting).

Before their nomination, the Chairman and the Director General receive a hearing before Parliament<sup>3</sup>.

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<sup>2</sup> The ASN budget comes from 5 programmes and, since 2011, from a tax paid by the BNI operators to fund IRSN's appraisal duties on behalf of ASN.

The ASN internal regulations (art. 22) stipulate that *“Both during the performance of their duties and at other times, the commissioners shall ensure that they do not place themselves in a situation which could compromise their independence with respect to persons or entities over whom ASN exercises regulatory authority or which could be construed as liable to compromise the impartial exercise of these duties.*

*The same obligation applies to ASN staff on the occasion of the performance of their duties”.*

### **III – The general obligations of ASN staff**

The staff performing their functions within ASN must meet certain obligations. The purpose of these obligations is to guarantee their independence and they are defined by the general status of civil servants, the texts governing public employees and the penal code. These obligations are recalled in the ASN internal regulations<sup>4</sup>. ASN also benefits from the provision of contract employees under private law (IRSN, CEA, ANDRA). By virtue of article 43 of Act 84-16 of 11 January 1984 constituting the statutory provisions concerning the public function of the State, they are subject to the same requirements and obligations binding on civil servants.

#### **The duty of compliance and of good service performance**

- The civil servant *“must follow the instructions received from his or her hierarchical superior, except if said order given is clearly illegal and such as to seriously compromise a public interest.”*<sup>5</sup> Any refusal to comply shall be considered professional misconduct. The same applies to non-permanent staff.

The principle of hierarchical subordination also demands compliance with the hierarchical control of the competent higher authority and loyalty in the performance of one’s duties. The duty of compliance finally entails observance of laws and regulations of whatsoever nature.

- Furthermore, civil servants and public employees are bound by the obligation of good service performance. They are responsible for the performance of the tasks entrusted to them and are in no way relieved of their responsibilities by the individual responsibility of their own subordinates.

#### **The obligation of devotion to duty**

*“Civil servants and non-permanent staff shall devote the entirety of their professional activity to the tasks entrusted to them”*<sup>6</sup>.

Public employees are subject to the principle of exclusivity, prohibiting the performance of any professional activity outside their employment in the administration. They may however benefit from certain waivers<sup>7</sup>.

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<sup>3</sup> This has been the case for the ASN Chairman since the constitutional reform of 2008 and, for the Director General, since Act 2011-2012 of 29 December 2012 *concerning the reinforcement of the health safety of drugs and health products”.*

<sup>4</sup> ASN resolution n° 2010-DC-0195 of 19 October 2010 establishing the internal regulations of the ASN, approved by order of 3 December 2010. An extract is appended.

<sup>5</sup> Art. 28 of Act 83-634 of 13 July 1983.

<sup>6</sup> Art. 25 of Act 83-634 of 13 July 1983.

<sup>7</sup> Plurality of activities governed by specific texts.

### **Obligation of neutrality**

No public employee may have interests in an company related to his or her function, that would be such as to compromise his or her independence<sup>8</sup>.

This obligation is reinforced by articles 432-12 and 432-13 of the Penal Code which impose penalties on any public employee who receives an interest in operations or companies under his or her control, or over which he or she had control less than 3 years previously.

Article 21 of the ASN internal regulations state that *“Each ASN staff member shall take all necessary steps to avoid holding an interest in activities under his or her control, such as would prejudice the impartiality of his or her judgement.*

*ASN staff shall inform their hierarchy of any situation which could lead to such a conflict of interest and shall propose a means of putting an end to said situation. The hierarchical superior may relieve the person concerned of responsibility for certain particular matters”.*

### **Duty of probity**

Article 20 of the ASN internal regulations recalls that any abuse of authority against individuals and any failure to abide by the duty of probity expose the party concerned to criminal proceedings as stated in articles 432-4 to 432-11 of the Penal Code.

### **The obligations with which the nuclear safety inspectors agree to comply when they are sworn-in**

Article 5 of decree 2007-831 of 11 May 2007 *setting the procedures for appointing and approving nuclear safety inspectors* states that the nuclear safety inspectors and the personnel responsible for inspecting nuclear pressure equipment in their capacity as civil servants, swear the following oath to the court of first instance on which their administrative residence depends:

*“I swear to correctly and faithfully carry out my functions and in all respects comply with the duties arising therefrom. I also swear not to disclose or use any information protected by law, of which I become aware on the occasion of the performance of my duties.”*

Pursuant to the provisions of the Public Health Code (art. L. 1333-17 and following), the radiation protection inspectors are sworn-in, in similar conditions.

### **The duty of professional secrecy and the obligation of professional discretion**

The law that created ASN is untitled “law on security and transparency in nuclear matters”. This law was incorporated in the Code of Environment in 2012. The article (article L. 592-1 of the EC) states thus that the ASN contributes to public information in its areas of competence The article (L. 592-27 of the EC) states that the ASN positions and decisions resulting from the Commission deliberations are made available to the public, with due respect to legal confidentiality rules.

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<sup>8</sup> Art. 25-I of Act 83-634 of 13 July 1983.

Consequently, ASN staff involved in information to the public and transparency is required to communicate information brought to their attention in the performance or on the occasion of the performance of their function.

As civil servants and public employees, they “*are bound by professional secrecy under the rules laid out in the penal code*”<sup>9</sup> such domain as national security. Disclosing information that is secret in nature may be considered a criminal offence<sup>10</sup>.

- Civil servants and public employees are also bound by the obligation of professional discretion<sup>11</sup> with regard to everything concerning the events and information of which they become aware during the performance of their duties. They communicate official documents and information, subject to the provisions regulating the freedom of access to administrative documents, with the express authorisation from the relevant competent authority;
- ASN personnel must ensure that they do not disclose information and do not adopt a public stance which could be prejudicial to ASN<sup>12</sup>;
- Any failure to comply with this or any other of the obligations shall lead to disciplinary measures being taken.

#### **IV - Obligations specific to the health field, regarding the transparency of declared interests and appointments as health expert**

Act 2011-2012 of 29 December 2012 *concerning the reinforcement of health safety of drugs and health products*, known as the “Drugs” Act, and decree 2012-745 of 9 May 2012 (provisions which appear in the Public Health Code) defined an overhauled framework for health ethics and appointments as health experts to be complied with by the authorities involved in the field of health and health safety, which include ASN. Resolution CODEP-CLG-2012-033820 issued by the ASN Chairman on 4 July 2012 specifies the procedures for implementation within ASN of the ethical rules instituted by the above-mentioned Act and decree.

For implementation of the provisions in question, ASN ensures that the members of the management committee (CODIR)<sup>13</sup>, the members of the Commission and of the Advisory committee for radiation protection of health professionals, patients and the general public for medical and forensic applications of ionising radiation (GPMED), establish a declaration of interests in the field of health products safety which is made public and with respect to which any omission exposes the person concerned to criminal penalties. The persons concerned also have an obligation to stand down in the event of a conflict of interest.

Furthermore, when the GPMED deals with subjects relating to the safety of health products, its debates are recorded and the minutes of its meetings are placed on-line.

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<sup>9</sup> Art. 26 of Act 83-634 of 13 July 1983.

<sup>10</sup> Articles 226-13 and 432-9 of the Penal Code.

<sup>11</sup> Art. 26 of Act 83-634 of 13 July 1983.

<sup>12</sup> Art. 19 of the ASN internal regulations.

<sup>13</sup> Under the terms of article 1 of ASN resolution 2010-DC-0195 of 19 October 2010 establishing the ASN internal regulations, “The ASN management committee consists of the executive committee, the heads of the entities making up the head office departments, the regional representatives and the regional heads”.

## **C. Obligation for ASN to maintain relations with the licensees**

The regulations and individual resolutions applicable to the BNI licensees must be comprehensible and must be clear and appropriate to the goals set: safe BNI operation and protection of the general public, workers and the environment.

To achieve this objective, particular attention must be given to industrial realities and to the particularities of BNI operation when drafting the regulations, in order to guarantee their pertinence and the attainment of the defined objectives. In this respect, exchanges with the BNI licensees are essential. These exchanges contribute to ensuring the pertinence of ASN's analysis, while in no way compromising its independence. In addition to the licensees, the general public is also consulted, especially the environmental protection associations. ASN issues its resolutions having taking account of all of the observations received, although without necessarily following them.

The regulations also expressly require consultation of the licensees with regard to the essential individual resolutions which specify their obligations: BNI creation authorisation decree (DAC), BNI final shutdown and decommissioning authorisation decree (MAD DEM), requirements applicable to BNIs, in particular requirements regarding water intake and discharges into the environment.

Articles 14 and 38- I of decree 2007-1557 of 2 November 2007 stipulate that the Government must collect observations from the licensees concerning draft BNI creation or decommissioning authorisation decrees.

Article 18-I of the same decree requires that ASN collect observations from the licensees regarding the planned BNI operations requirements that it will be imposing on the licensees.

ASN also considers that in addition to these written observations, it is worthwhile collecting verbal comments from the licensees and setting up procedures for verbal exchanges. This is why ASN put into place a procedure enabling the licensees to receive a hearing from the ASN Commission before it submits its opinion to the Government on a planned DAC or MAD DEM. These hearings are an opportunity for direct discussions which enable the ASN Commissioners to gain a clearer understanding of the situation, without in any way compromising their independence nor that of the opinion they will be submitting to the Government.

Generally speaking, French law requires that grounds must be given for any resolution issued to authorise an activity. This means that the authority issuing the resolution (Government or ASN) must explain the reasons underpinning its resolution: these reasons are both legal (the text stipulating the authorisation conditions) and based in actual fact. On this latter point, consultation of the licensee when drafting the authorisations and requirements contributes to an accurate assessment of the situation and the facts and thus the adoption of the most appropriate requirements.

In short, ASN considers that exchanges with the licensees are a means towards, if not a pre-condition for ASN adopting requirements that are in line with the reality of BNI operation and the goal of safe BNI operation and protection of the general public and the environment. These exchanges also enable ASN to explain its requests and requirements, thus helping the licensees to assimilate and correctly implement them.

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To conclude, a clear distinction must be made between the phase involving discussions, consultations and exchanges with the licensee when drafting the requirements, which are a means of providing ASN with all the information it needs, and the decision-making phase, which is the sole responsibility of ASN, once it has heard all the opinions, whether those of the licensees or, more generally, those of the public.

## Texts

**Article L593-6** of the Environment Code – Article 28-II of the TSN Act

The licensee of a basic nuclear installation is responsible for the safety of its facility.

**Decree 2007-1557 of 2 November 2007 concerning basic nuclear installations and the supervision of the transport of nuclear materials, with respect to nuclear safety**

### Article 14

The ministers responsible for nuclear safety send the licensee a draft of the decree. The licensee has a period of two months in which to present its observations.

### Article 38

I. – The final shutdown and decommissioning authorisation application follows the same consultation and inquiry process as that applicable to the creation authorisation applications.

### Article 18

I. – When, for implementation of the creation authorisation decree, ASN intends to issue technical requirements concerning the design, construction or operation of the basic nuclear installation, it forwards the draft to the licensee, which has two months in which to submit its observations.

**ASN Resolution 2010-DC-0179 of 13 April 2010 instituting a hearings procedure for BNI licensees and local information committees prior to the adoption of certain opinions or resolutions** [\[extracts\]](#)

The ASN Commission,

Having regard to the convention on freedom of access to information, participation of the public in the decision-making process and access to justice in the environmental field (two appendices) done in Aarhus on 25 June 1998;

Having regard to Act 2000-321 of 12 April 2000 concerning the rights of the citizens in their dealings with the administration, in particular its article 24;

Having regard to Act 2006-686 of 13 June 2006 on transparency and security in the nuclear field, in particular its articles 1, 4, 22 and 29;

Having regard to decree 2007-1557 of 2 November 2007 as amended, concerning basic nuclear installations and the supervision of the transport of nuclear materials, with respect to nuclear safety, in particular its articles 14, 21, 29, 30, 31, 35, 38, 40, 41 and 44;

Having regard to the ASN internal regulations established by ASN resolution 2006-001 of 20 November 2006, in particular its articles 7 and 11;

Having regard to ASN opinion 2010-AV-0088 of 11 March 2010 on the draft decree terminating the BNI Consultative Committee and transferring some of its duties to the committee mentioned in article D. 511-1 of the Environment Code;

Whereas, except in an emergency, it is preferable that those persons subject to the most important resolutions or opinions of the ASN Commission be not only able to put forward their observations in writing but also present them verbally;

Whereas the local information committees of the BNIs comprise representatives of the various parties interested by these facilities other than the licensees and can accordingly present a written and verbal summary of the observations of these parties;

Whereas the above-mentioned decree of 2 November 2007 has created a BNI Consultative Committee responsible for issuing an opinion on certain individual resolutions relative to these facilities and under Government responsibility, ASN takes part in the meetings of this committee before issuing its own opinions on these resolutions and the representatives of the licensees and local information committees have an opportunity to be given a hearing by this consultative committee;

Whereas the decree of 2 November 2007 also instituted consultation of the BNI Consultative Committee for draft resolutions by ASN to delicense a decommissioned BNI;

Whereas the Government announced its intention to terminate the BNI Consultative Committee;

Whereas if the general definition of the procedures for a hearing before the ASN Commission requires preliminary work and discussions, the replacement of the licensee and local information committee hearings before the BNI Consultative Committee by the hearings before the ASN Commission needs to be organised immediately.

DECIDES:

### Article 1

This resolution is applicable to the opinions submitted to the Government by ASN with respect to the draft individual resolutions concerning a BNI mentioned below:

- 1° Draft creation authorisation decree and draft modification of such a decree in the event of a change in licensee or perimeter or a significant modification of the facility;
- 2° Draft decree terminating the authorisation of a BNI which was not commissioned within the time set by the authorisation decree;
- 3° Draft decree ordering final shutdown and decommissioning of a BNI, pursuant to article 34 of the 13 June 2006 Act;
- 4° Draft decree authorising final shutdown and decommissioning of a BNI and draft modification of such a decree in the event of a change in licensee or a significant modification of the authorised operations;
- 5° Draft order from the ministers responsible for nuclear safety, prohibiting the resumption of operation of a BNI which had not been in operation for a continuous period of two years and serving the licensee with formal notice to submit a final shutdown and decommissioning authorisation application;
- 6° Draft decree authorising final shutdown and transition to the surveillance phase of a radioactive waste repository and draft modification of such a decree in the event of a change in licensee or a significant modification of the authorised operations.

This resolution also applies to ASN resolutions delicensing a decommissioned BNI.

### Article 2

Except in the event of an emergency, the licensee of a BNI may receive a hearing by the ASN Commission before it issues a resolution or an opinion mentioned in article 1. At least fifteen days in advance, ASN thus notifies it of the date and place of the Commission meeting during which it will be able to make observations should it so wish.

The licensee may be assisted by an adviser or be represented by someone of its choice.

### Article 3

A representative of the local information committee, if there is one, may be given a hearing by the ASN Commission in accordance with the same procedures as those defined in article 2 for the licensee.

## ***Act 2000-321 of 12 April 2000 concerning the rights of the citizens in their dealings with the administration***

### Article 24

Except for cases where an individual resolution is issued following a request, the individual resolutions, which must be justified pursuant to [articles 1 and 2 of Act 79-587 of 11 July 1979](#) concerning the justification for administrative procedures and the improvement of relations between the administration and the public, are only issued once the person concerned has had an opportunity to present written and, as applicable, verbal observations. This person may be assisted by an adviser or be represented by someone of their choice. The administrative authority is not required to comply with unwarranted requests for a hearing, in particular if they are excessively numerous, repetitive or systematic.

The provisions of the previous section do not apply:

- 1° In the event of an emergency or exceptional circumstances;
- 2° When their implementation would be such as to jeopardise public order or international relations;
- 3° To the resolutions for which legislative provisions have created a particular joint procedure.

The implementation methods for this present article are set as required by decree of the Conseil d'Etat (Council of State).