



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 January 2005 (14.01)  
(OR. Fr)**

**5343/05**

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**Interinstitutional File:  
2004/0249 (CNS)**

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**ATO 4**

**NOTE**

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from : Council General Secretariat

to : Delegations

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No. Cion prop. : 14686/04 ATO 121 (COM(2004) 716 final)

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Subject : Proposal for a Council Directive on the supervision and control of shipments of radioactive waste and spent fuel

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Delegations will find attached the Belgian delegation's comments on the above proposal.

**Draft Council Directive on the supervision and control of shipments of radioactive waste and spent fuel (2004/0249 (CNS))**

**Comments by Belgium**

Belgium thanks the Commission for the draft Council Directive on the supervision and control of shipments of radioactive waste and spent fuel (2004/0249 (CNS)). Belgium is in favour of this project for the simplification and amendment of Directive 92/3 and would like to make the following comments and requests for clarification. Those comments and requests are without prejudice to any subsequent remarks that might be considered useful.

The draft proposed retains most of the provisions of the previous Directive (92/3). However, the reorganisation of the content of those provisions, certain additions and extensions of the scope and certain changes in terminology and definitions alter present procedures and their structure. It would be useful to delegations to have a diagram (as prepared in the case of Directive 92/3) indicating for each transfer the procedural stages and the roles of the various players (countries of origin, destination and transit, within or outside of the EU). Such a diagram would give an exhaustive view of the procedures to be complied with and would form a basis for the discussions and reflection that will take place.

**Article 1**

The principal objective of this draft, which is based on Chapter III of the Treaty, is to establish a system that will protect the public from the dangers involved in the transport of radioactive waste and spent fuel. Any links with the field of safeguards are tenuous. The incorporation of this objective in Article 1(1) introduces pointless ambiguities. That reference ought to be deleted. A recital might possibly mention the positive effect that application of the Directive might have on safeguards regarding nuclear materials. It should be noted in this connection that the transport of nuclear materials is governed by specific provisions in the Regulation on the implementation of Euratom safeguards COM 2002/99.

### Article 3

Certain definitions have been taken from the Joint Convention on Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management. However, in the case of the definition of radioactive waste the word "or" has been added:

"(1) '*radioactive waste*' means radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the countries of origin and destination, or by a natural or legal person whose decision is accepted by these countries, and/or which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the countries of origin, transit and destination".

What is the reason for that addition?

### Article 5

The organisation of the Directive into chapters has been done away with, so the measures concerning transport to and from States outside the EU are apparently no longer grouped together. Application of Article 11, which requires that the prior consent of the non-EU State be obtained, raises the question whether the provisions of Article 5, on the transmission to third countries of applications for shipment authorisation, apply. In other words, is it necessary to apply to any non-EU country of transit for the authorisation for shipment referred to? If so, it should be noted that such States are not legally bound by the Directive and they would not be obliged to comply with the provisions in question. It would also raise the problem of free movement in maritime areas (of transit). If not, it should be specified in Article 5 that non-EU States of transit are not covered and/or specify in the definition of country of transit that only Member States are covered.

### Article 6

The deletion of the option concerning non-acceptance of the automatic approval procedure (Article 17 of Directive 92/3/Euratom) is likely to cause problems. In fact, the organisation of

shipments of radioactive waste and spent fuel necessitates the involvement of a great many resources and the issue of a number of authorisations. The authorisations referred to in Directive 92/3/Euratom and in this draft represent only some of them. The organisation and the allocation of powers at national level, in connection with transport, vary from one State to another. In Belgium, as in other Member States, it is the safety authority that is in charge of ensuring the co-ordination of transport in general and issuing the required authorisations. In this context, it can authorise international transport and notify the competent authorities of the country of origin of its acceptance (Article 6) only when all the criteria concerning the satisfactory conduct of the transport have been met (including national domestic provisions). Experience, however, has shown that certain applications have been submitted very early in the process of organisation of international transport. Accordingly, a fixed period of three months (with an option of one extra month) would be too short in practice, since the organisation of such transport often takes much longer. This situation would oblige national authorities to refuse authorisation for shipment if the period allowed expired, causing an overload of administrative work (submission of a new application). Belgium therefore considers it necessary to maintain, for those Member States that wish it, the option of non-acceptance of the automatic approval procedure (Article 17 of Directive 92/3/Euratom).

In the light of the above argument, recital 10 of the draft Directive has no basis and ought to be deleted.

## **Article 9**

Paragraph 1 is an addition. On examination paragraph 2 would appear to render it superfluous. Clarification of the precise reasons for this addition would be useful. Furthermore, paragraph 1 speaks only of the Member State of destination; what of the possible States of transit?

Paragraph 2 is taken from Article 15 of Directive 92/3/Euratom. It would, however, be useful to define the concept of "Member State of dispatch"; how does that differ from the Member State of origin?

## **Article 11**

Paragraph 4 provides for a period of two weeks. To be consistent with Article 8 the same period (fifteen days or two weeks) should be provided for in both articles.

## Article 17

The period of one year allowed for transposition is short. Although it is a question of amending an existing Directive, which has already been transposed into national law, the legislative process involves a number of incompressible stages that take the same length of time whatever the extent of the amendments involved. It would be preferable if two years were allowed for transposition.

## Article 19(1)

For the sake of completion and in order to prevent any ambiguity, it should be specified that shipments that have already received authorisation from the competent authorities of the Member State of origin before the date of entry into force of the new Directive will also be covered and will be governed by Directive 92/3/Euratom. The following wording might be appropriate:

"Where the application for authorisation has been duly submitted to, **or approved by**, the competent authorities of the country of origin before *(same date as Article 17(1))* Directive 92/3/Euratom will be applicable to all shipment operations covered by the same authorisation".

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