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ATO 5

NOTE

from: General Secretariat of the Council
to: Delegations

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

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

Delegations will find attached the French delegation's comments on the above matter.

Note from the French authorities

References: Council document 14686/04 ATO 121 of 18 November 2004

On 12 November 2004 the Commission adopted a *proposal for a Directive on the supervision and control of shipments of radioactive waste and spent fuel*. The text was presented to Member States at the Working Party on Atomic Questions meeting on 3 November 2004.

This note is in response to the Presidency's request in the Working Party that Member States provide a written outline of their position by mid-January.

On first analysis, the proposal for a Directive prompts the following comments and questions from the French authorities, without prejudice to France's final position on the text:

1. Article 1: Subject matter and scope of the proposal for a Directive

- Safeguards

Article 1 of the text presented by the Commission, based on Articles 31 and 32 of the Euratom Treaty, specifies that "this Directive shall provide adequate administrative arrangements so as to guarantee an adequate protection of the population, as well as adequate safeguards of fissile material, by establishing a uniform system of supervision and control of shipments of radioactive waste and spent fuel".

As far as the French authorities are concerned, the safeguards objective, which appears neither in the explanatory memorandum nor the recitals, is not taken from Articles 31 and 32. Furthermore, the drafting implies that the system in place up to now does not provide an adequate safeguard.

- Inclusion of spent fuel for reprocessing

The French authorities question the benefit of including spent fuel in the scope of the Directive. They point out that they had already indicated under the SLIM procedure that inclusion did not seem wise.

Indeed, it does not seem to be the case that the Euratom Community's accession to the *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management* requires a straightforward alignment of Community legislation on the provisions therein, nor does it require the Community to go further, particularly with regard to the consent of transit States outside the European Union. Furthermore, from the point of view of health protection, there are no grounds for the inclusion of spent fuels in that:

1. transport operations are already covered by international, Community and national rules on the subject,
2. the provisions of Directive 96/29 apply to these materials and the facilities where they are kept.

2. Implementation of shipments of radioactive waste and spent fuel

- The notion of transit State

Contrary to the recommendations of the group of SLIM experts, the term 'territory' in Article 3 (9) of the proposal for a Directive is not specified and does not take into account the questions raised by air and sea shipments.

The French authorities would like clarification on this point: should territorial waters be regarded as part of the territory of the transit State? If so, how does the Commission intend to guarantee respect for the United Nations Convention on the Law of the Sea, in particular the principle of the "right of innocent passage"?

Moreover, under the definition of transit State in Article 3(9), the term could cover Member States as well as States outside the European Union. This point is worth clarifying.

- Circulation of spent fuels

In view of the above, the French authorities fear that the inclusion of spent fuels in the proposal for a Directive will hinder their free movement insofar as these materials may be regarded as goods. They wonder how the Commission intends to interpret the various provisions.

- Automatic authorisation procedure

The French authorities believe that making the automatic authorisation procedure systematic simplifies shipment management. They wonder, however, about the Commission's reasons for extending from two to three months the deadline after which the country of destination is deemed to have given its approval.

3. Terminology clarifications

The French authorities feel that the use of the following terms should be clarified:

- Authorisation - approval - acceptance - consent

These terms are used indiscriminately in Articles 4 to 7, 10, 11 and 13. It would be preferable to use only one of them.

- Completion of shipment

Article 9(1) stipulates that "the Member State of destination may decide that the shipment may not be completed in any of the following circumstances...". The term "completed" is not clear insofar as the circumstances listed subsequently imply that the shipment may be refused once it has taken place.

There is also a need to define the conditions for taking back the shipment in the event of a refusal even though the shipment has already taken place (in particular, coverage of additional costs if repackaging is necessary and transport costs).

- Terms "entreposage" (storage) and "évacuation" (disposal)

The definitions given in the French version of the text do not match the terms to which they are applied.