



**COUNCIL OF
THE EUROPEAN UNION**

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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 a revised draft of the above as prepared following the meeting on 23 February last. This text will be examined by the Working Party on Atomic Questions on 14 March.

New text in **bold underline**; deletions are marked with ~~strikethrough~~.

Proposal for a

COUNCIL DIRECTIVE

[on the supervision and control of shipments of radioactive waste and spent fuel]¹

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 31 (2) and 32 thereof,

Having regard to the proposal from the Commission² drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States, in accordance with Article 31 of the Treaty, and after having consulted the European Economic and Social Committee,³

Having regard to the opinion of the European Parliament⁴,

Whereas:

[*recitals*]

HAS ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

1. **The purpose of** this Directive ~~shall~~ **is to** provide adequate **provisions** ~~administrative arrangements~~ so as to guarantee an adequate protection of the population, ~~as well as adequate safeguards of fissile material,~~ by establishing a ~~uniform~~ **Community** system of supervision and control of shipments of radioactive waste [and spent fuel].
2. This Directive shall apply to **transboundary** shipments of radioactive waste [or spent fuel] whenever :

¹ The title and the recitals to be revisited at a later stage. Also, throughout the text, the principle of and/or the modalities for covering spent fuel are understood to be under discussion

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

- (a) the country of origin, the country of destination or the country or countries of transit ~~are~~ **is** within the territory of the Community, and
 - (b) the quantities and concentration of the consignment exceed the levels laid down in paragraph 2, points (a) and (b) of Article 3 of Council Directive 96/29/Euratom⁵ **as it may be amended or replaced**
3. This Directive does not apply to shipments of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation. However, this exemption shall not apply to sealed sources containing fissile material.

Article 2

Reshipments related to processing and reprocessing operations

This Directive shall not affect the right of a Member State or an undertaking in the Member State to which radioactive waste is to be shipped for processing to return the radioactive waste **and other products of the processing operation** after treatment to its country of origin. Nor shall it affect the right of a Member State or an undertaking in that Member State to which ~~irradiated nuclear~~ **spent** fuel is to be shipped for reprocessing to return to its country of origin radioactive waste and other products of the reprocessing operation.

Article 3

Definitions

For the purpose of this Directive the following definitions shall apply:

(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];⁶

[(2) ‘*spent fuel*’ means nuclear fuel that has been irradiated in and permanently removed from a reactor core;]

⁵ OJ L 159, 29.6.1996, p. 1.

⁶ It is recalled that the definition of “radioactive waste” in the current Directive 92/3 is: “*any material which contains or is contaminated by radio-nuclides and for which no use is foreseen*”.

The definition in the Joint Convention reads:

“*radioactive material in gaseous, liquid or solid form for which no further use is foreseen by the Contracting Party or by a natural or legal person whose decision is accepted by the Contracting Party, and which is controlled as radioactive waste by a regulatory body under the legislative and regulatory framework of the Contracting Party*”.

- (3) *'shipment'* means the whole of operations involved in moving radioactive waste or spent fuel from the place of origin to the place of destination, including transport, loading and unloading for disposal or storage;
- (4) *'disposal'* means the emplacement of radioactive waste [or spent fuel] in an appropriate facility without the intention of retrieval;
- (5) *'storage'* means the holding of radioactive waste [or spent fuel] in a facility that provides for its containment, with the intention of retrieval;
- (6) *'holder'* means any natural or legal person who, before carrying out a shipment of radioactive waste or spent fuel, has the legal responsibility for such materials and plans to carry out a shipment to a consignee;
- (7) *'consignee'* means any natural or legal person to whom radioactive waste [or spent fuel] is shipped;
- (8) *'country of origin'* and *'country of destination'* respectively ~~cover~~ **mean** any country from which a shipment is planned to be initiated or is initiated, and any country to which a shipment is planned or takes place;
- (9) *'country of transit'* means any country other than the country of origin or the country of destination, through which territory a shipment is planned or takes place;
- (10) *'competent authorities'* means any authority which, under the law or regulations of the countries of origin, transit or destination, are empowered to implement the system of supervision and control **of shipments of radioactive waste [or spent fuel]** ~~defined in this Directive; these competent authorities shall be designated in accordance with Article 14;~~
- (11) *'sealed source'* means a source whose structure is such as to prevent, under normal conditions of use, any dispersion of the radioactive substances into the environment;
- (12) *'disused source'* means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;
- (13) *'recognised installation'* means a facility located in the territory of a State authorised by the competent authorities of that State in accordance with national law for the long-term storage or disposal of sources or an installation duly authorised under national law for the interim storage of sources.

Article 4

Application for shipment authorisation

1. A holder who has planned to carry out a shipment of radioactive waste [or spent fuel] or to arrange for such a shipment to be carried out shall submit an application for authorisation to the competent authorities of the country of origin.

2. The application may be sent in respect of more than one shipment, provided that:
 - (a) the radioactive waste [or the spent fuel] to which it relates essentially has the same physical, chemical and radioactive characteristics, and
 - (b) the shipments are to be made from the same holder to the same consignee and involve the same competent authorities, and
 - (c) where shipments involve **transit through** third countries, such transit is via the same frontier post of entry to and/or exit from the Community and via the same frontier post of the third country or countries concerned, unless otherwise agreed between the competent authorities concerned.

Article 5

Transmission of the application to the competent authorities

1. The competent authorities of the ~~country~~ **Member State** of origin shall:
 - (a) send the applications referred to in Article 4 for ~~approval~~ **consent** to the competent authorities of the country of destination and of the ~~country or countries~~ **Member States** of transit, if any;
 - (b) **notify the shipment to the competent authorities of any third country of transit;**⁷
2. The sending of that document shall in no way affect the subsequent decision referred to in Article 7.

*Article 6*⁸

Acceptance Consent⁹ and refusal

1. Not later than one month from the date of receipt of the duly completed application, the competent authorities of the ~~country~~ **Member State** of destination and of any ~~country~~ **Member State** of transit shall issue an acknowledgement of receipt.

⁷ A recital could be envisaged recalling that this Directive is without prejudice to the rights and obligations of Member States vis-à-vis third countries under international law (including cases where a consent by a third country of transit might be needed for a shipment).

⁸ A recital could be envisaged recalling that each Member State remains fully responsible for the management of radioactive waste [and spent fuel] under its jurisdiction and that nothing in this Directive should imply that a Member State have to accept shipments of radioactive waste.

⁹ Throughout the text, “*authorisations*” are granted by the country of origin whereas “*consent*” refers to the acceptance of a shipment by countries other than the country of origin.

Not later than three months from the date of receipt of the duly completed application, the competent authorities of the ~~country~~ **Member State** of destination and of any ~~country~~ **Member State** of transit shall notify the competent authorities of the country of origin of their ~~acceptance~~ **consent** or of the conditions which they consider necessary or of their refusal to grant ~~approval~~ **consent**.

However, the competent authorities of the country of destination or of any ~~country~~ **Member State** of transit may request a further period of not more than one month in addition to the periods referred to in ~~the first and~~ second subparagraph to make their position known.

2. If upon expiry of the periods referred to in paragraph 1 no reply has been received from the competent authorities of the ~~country~~ **Member State** of destination and/or the intended ~~countries~~ **Member States** of transit, those countries shall be deemed to have given their ~~approval~~ **consent** for the shipment requested **[provided that the acknowledgement of receipt referred to in paragraph 1 has been received from those countries]**¹⁰.
3. Reasons shall be given **[by Member States]** for any refusal to grant ~~approval~~ **consent**, or for conditions attached to ~~approval~~ **consent**, which shall be based on the relevant legislation applicable **and be in compliance with international law**.

Any conditions required by the competent authorities of the Member States, whether they are the country of transit or of destination, may not be more stringent than those laid down for similar shipments within those **Member States**.

4. The Member State or States which ~~approved~~ **gave consent to** transit for a given shipment may not refuse to ~~approve~~ **give consent to** reshipment in the following cases:
 - (a) ~~When the initial shipment was approved for treatment or reprocessing purposes,~~ **Under the circumstances described in Article 2,** if the reshipment concerns radioactive waste or other products equivalent to the original material after treatment or reprocessing, and all relevant legislation is respected.
 - (b) Under the circumstances described in Article 9, if the reshipment is undertaken on the same conditions and with the same specifications.

Article 7

Authorisation of shipments

1. If all the ~~approvals~~ **consents** necessary for shipment have been granted, the competent authorities of the Member State of origin shall be entitled to authorise the holder to carry out the shipment and shall inform the competent authorities of the country of destination and of the country or countries of transit, if any, accordingly.

¹⁰ It is recalled that the current Directive 92/3 provides for an automatic consent by Member States “*unless they have informed the Commission that they do not accept this automatic consent procedure in general.*”

2. This authorisation shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.
3. A single authorisation may cover more than one shipment, provided the conditions in Article 4, paragraph 2, are met.
4. Any authorisation shall be valid for a period of not more than [three] years.¹¹

Article 8

Acknowledgement of receipt of the shipment

1. Within 15 days of receipt, the consignee shall send the competent authorities of its Member State an acknowledgement of receipt of the shipment.
2. The competent authorities of the ~~country~~ **Member State** of destination shall send copies of the acknowledgement to the ~~other countries involved in the operation~~ **country of origin and countries of transit**.
3. The competent authorities of the ~~country~~ **Member State** of origin shall send a copy of the acknowledgement to the original holder.

Article 9

Shipment failure

1. The Member State of destination [**, origin or transit**] may decide that the shipment may not be completed ~~in any of the following circumstances: if~~ (a) ~~where~~ the conditions for shipment are ~~not~~ **no longer** complied with in accordance with the provisions of this Directive, or **are not in accordance with the authorisations or consents issued pursuant to this Directive**
 - (b) ~~where the properties of the radioactive waste or spent fuel do not match the technical specifications under which the shipment was approved, or~~
 - (c) ~~where the properties of the radioactive waste or spent fuel do not match the criteria under which no approval was required.~~
2. Where a shipment cannot be completed or if the conditions for shipment are not complied with in accordance with the provisions of this Directive, the competent authorities of the Member State of ~~dispatch~~ **origin** shall ensure that the radioactive waste [or the spent fuel] in question is taken back by the holder of that radioactive waste.

¹¹ It may be noted that the period of validity of the authorisation (as laid down by the Member State of origin) should take into account any conditions set out in the consent by the country of destination or countries of transit.

3. In the case of shipments from a third country to a destination within the Community, the competent authorities of the Member State of destination shall ensure that the consignee ~~negotiates a clause with~~ **has concluded an arrangement with** the holder established in the third country obliging that holder to take back the radioactive waste [or the spent fuel] where a shipment cannot be completed.

Article 10

Special rules for imports into the Community

Where radioactive waste [or spent fuel] falling within the scope of this Directive is to enter the Community from a third country and the country of destination is a Member State, the consignee shall submit an application for authorisation to the competent authorities of that Member State. The consignee shall act as the holder and the competent authorities of the ~~country~~ **Member State** of destination shall act as if they were the competent authorities of the country of origin **and shall observe the obligations of the holder and the country of origin, respectively, as set out in Articles 4 to 9**.

Article 10a

Special rules for transit through the Community

~~Where radioactive waste or spent fuel falling within the scope of this Directive is to enter the Community from a third country and the country of destination is not a Member State~~ Where radioactive waste [or spent fuel] **is to transit through the Community on its way** from a third country **of origin to a third** country of destination, then the Member State in whose territory the radioactive waste [or the spent fuel] is first to enter the Community shall be deemed to be the country of origin for the purposes of that shipment. The person who has the responsibility for managing the shipment within that Member State shall act as the holder.

Article 11

Special rules for exports out of the Community

1. Where radioactive waste [or spent fuel] is to be exported from the Community to a third country, the competent authorities of the Member State of origin shall notify the authorities of the country of destination and ask their consent, prior to such a shipment.
2. If all the conditions for shipment **established pursuant to this Directive are fulfilled, including the required authorisations and consents,** ~~are fulfilled,~~ the competent authorities of the Member State of origin shall authorise the holder to carry out the shipment and shall inform the authorities of the country of destination about this shipment.
3. This authorisation shall not in any way affect the responsibility of the holder, the transporter, the owner, the consignee or any other natural or legal person involved in the shipment.
4. The holder shall notify the competent authorities of the ~~country~~ **Member State** of origin that the radioactive waste [or the spent fuel] has reached its destination in the third country within two weeks of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

This notification shall be substantiated by a declaration or certification of the consignee stating that the radioactive waste [or the spent fuel] has reached its proper destination and indicating the customs post of entry in the third country.

Article 12

Prohibited exports

1. The competent authorities of Member States shall not authorise shipments:
 - (a) to a destination south of latitude 60° south, or
 - (b) to a State party to the Cotonou ACP-EC Agreement which is not a member of the Community, taking account, however, of Article 2, or
 - (c) to a third country which does not, in the opinion of the competent authorities of the ~~country~~ **Member State** of origin, in accordance with the criteria referred to in paragraph 2 **[and taking into account of any relevant information from other Member States in this respect]**, have the technical, legal or administrative resources to manage the radioactive waste **[or spent fuel]** safely.
2. Criteria enabling Member States to evaluate whether requirements for exports are met shall be established according to the procedure laid down in Article 16.

Article 13

Use of a standard document

1. A standard document shall be used for all shipments ~~operations~~ within the scope of this Directive.
2. The standard document shall be established following the procedure laid down in Article 16 and shall be published in the *Official Journal of the European Union* not later than ~~(same date as~~ **[one year prior to the date referred to in]** Article 17(1)-transposition date). If necessary, it shall be updated following the same procedure.
3. The application for authorisation shall be completed and any further documentation and information referred to in Article 7 shall be supplied in a language that is acceptable to the competent authority of the country of origin.

An authenticated translation shall be supplied by the holder at the request of the competent authorities of the country of destination in a language acceptable to them.
4. Any additional requirements for authorising a shipment shall be attached to the standard document.

5. Without prejudice to any other accompanying documents required under other relevant legal provisions, the completed standard document certifying that the authorisation procedure has been duly complied with shall accompany each shipment falling under the scope of this Directive, including in cases where the approval relates to more than one shipment in a single document.
6. ~~Where shipments are made by rail,~~ These documents shall be available to the competent authorities of all **the country of origin and destination** and the countries **of transit** concerned.

Article 14

Competent authorities

Member States shall forward to the Commission not later than (*same date as Article 17(1)*) the name(s) and the address(es) of the competent authorities and all necessary information for rapidly communicating with such authorities.

Member States shall regularly forward to the Commission any changes to such data.

The Commission shall communicate this information, and any changes thereto, to all the competent authorities in the Community.

Article 15

Regular reports

By 1st ~~April 2007~~ **(two) years after the date referred to in Article 17(1)** and every [two] years afterwards, Member States shall forward to the Commission reports on the implementation of this Directive.

They shall supplement these reports by information on the situation with regard to shipments within their respective territories.

On the basis of these reports, the Commission shall, in accordance with the procedure laid down in Article 16, establish a summary report for the European Parliament, the Council and the European Economic and Social Committee.

Article 16

Advisory committee

In performing the tasks laid down in Articles 12, 13 and 15 the Commission shall be assisted by a Committee of an advisory nature composed of representatives of the Member States and chaired by the representative of the Commission.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes. Each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take **utmost** account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 17 **Transposition**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before (***two years*** after the date of ~~adoption~~ ***entry into force***).

Where these measures are adopted by the Member States, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive, together with a table showing how the provisions of this Directive correspond to the national provisions adopted.

Article 18 **Repeal**

Directive 92/3/Euratom is hereby repealed with effect from (*same date as the date set in Article 17(1)*), without prejudice to the obligations of the Member States relating to the time limit for transposition into national law and application of that Directive.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in the Annex.

Article 19 **Transitional provisions**

1. Where the application for authorisation has been duly submitted to 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.
2. When deciding on applications for authorisation submitted before (*same date as Article 17(1)*), for more than one shipment of radioactive waste to a third country of destination, the Member State of origin shall take account of all relevant circumstances, and in particular:
 - (a) to the planned time schedule for carrying out all shipments covered by the same application;
 - (b) to the justification for including all shipments in the same application;

- (c) to the timeliness of granting authorisation for a number of shipments lower than this covered by the application.
3. If **Until** the standard document provided for in Article 13 of this Directive **becomes available** has not been published by *(same date as Article 17(1))*, the standard document established by Commission Decision 93/552/Euratom¹² shall be used *mutatis mutandis* for the purposes of this Directive.
4. **By derogation from Article 17, Article 13(2) and Article 16 shall apply as from the entry into force of this Directive.**

Article 20
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, [...]

¹² OJ L 268 , 29.10.1993, p. 83.