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THE EUROPEAN UNION**

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NOTE

from: General Secretariat of the Council
to: Delegations

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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 discussion at the Working Party on 8 February.

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 ~~nuclear~~ spent nuclear fuel

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 Commission¹ 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 Committee²,

Having regard to the opinion of the European Parliament³,

Whereas:

(p.m. recitals)

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HAS ADOPTED THIS DIRECTIVE:

Chapter 1 Preliminary provisions

Article 1 Subject matter and scope

1. This Directive lays down a Community system of supervision and control of transboundary shipments of radioactive waste and spent fuel, so as to guarantee an adequate protection of the population.

¹ OJ C , , p. .

² OJ C , , p. .

³ OJ C , , p. .

⁴ **New recital: As stated in Council Resolution of 22. May 2002, OJ C 119/9, it is important to minimise the radiological risk deriving from the presence of radioactive materials among metallic materials destined for recycling**
Furthermore a Council Statement could invite the Commission to conclude its studies on how to reduce the presence of radioactive materials in imports of metallic materials and to facilitate their safe return after the appropriate detection and submit proposals where appropriate.

2. This Directive shall apply to transboundary shipments of radioactive waste or spent fuel whenever:
 - (a) the country of origin or the country of destination or any country of transit is within 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/Euratom as it may be amended or replaced.
3. This Directive shall not apply to shipments of disused sources to a supplier or manufacturer of radioactive sources or to a recognised installation.
4. **This Directive is without prejudice to the rights and obligations under international law, including, but not limited to, the right of innocent passage and right of transit passage afforded to third parties by the United Nations Convention on the Law of the Sea (UNCLOS).**

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 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;
- (2) '*spent fuel*' means nuclear fuel that has been irradiated in and permanently removed from a reactor core;
- (3) '*shipment*' means the whole of operations involved in moving radioactive waste or spent fuel from the country or the Member State of origin to the country or the Member State of destination;
- (4) '*intra-community shipment*' means a shipment carried out where the country of origin and the country of destination are Member States;

- (5) ‘*extra-community shipment*’ means a shipment carried out where the country of origin and/or the country of destination are third countries;
- (6) ‘*disposal*’ means the emplacement of radioactive waste or spent fuel in an authorised facility without the intention of retrieval;
- (7) ‘*storage*’ means the holding of radioactive waste or spent fuel in a facility that provides for its containment, with the intention of retrieval;
- (8) ‘*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;
- (9) ‘*consignee*’ means any natural or legal person to whom radioactive waste or spent fuel is shipped;
- (10) ‘*country or Member State of origin*’ and ‘*country or Member State of destination*’ respectively means any *country or Member State* from which a shipment is planned to be initiated or is initiated, and any *country or Member State* to which a shipment is planned or takes place;
- (11) ‘*country or Member State of transit*’ means any *country or Member State* other than the *country or the Member State* of origin or the *country or the Member State* of destination, through which territory a shipment is planned or takes place;
- (12) ‘*territory*’ means a State’s land territory, airspace and territorial waters, with exclusion of its exclusive economic zone;
- (13) ‘*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;
- (14) ‘*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~~ **has the meaning given to it by Directive 96/29/Euratom and includes the capsule, where applicable, enclosing the radioactive material as an integral part of the source;**
- (15) ‘*disused source*’ means a sealed source which is no longer used or intended to be used for the practice for which authorisation was granted;
- (16) ‘*recognised installation*’ means a facility located in the territory of a country authorised by the competent authorities of that country in accordance with national law for the long-term storage or disposal of sealed sources or an installation duly authorised under national law for the interim storage of sealed sources;
- (17) “*application*” means the standard document to be established in accordance with Article 14 accompanied by all the documents that have to be attached to the standard document.**

Chapter 2 Intra-Community Shipments

Article 4

Application for shipment authorisation

1. A holder who has planned to carry out an intra-Community shipment of radioactive waste or spent fuel or to arrange for such a shipment to be carried out shall submit a **duly completed** application for authorisation to the competent authorities of the Member State 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,
 - (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 exits 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 Member State of origin shall send the applications referred to in Article 4 for:
 - a) consent to the competent authorities of the Member State of destination and of the Member States of transit, if any; or
 - b) consent to the competent authorities of the Member State of destination and for information to the competent authorities of the Member States of transit if the shipment only transit through territorial waters of Member States.**
2. **The competent authorities of the Member States involved shall take the necessary measures to ensure that all information regarding shipments covered by this Directive is handled with due care and protected against any misuse.**

Article 6⁵

Acknowledgement of receipt and Consent

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

If the application received has not been duly completed, the competent authorities of the Member State of destination or of any Member State of transit shall notify the competent authorities of the Member State of origin, within one month from the date of receipt of the application, of the formal deficiency of the application.

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

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

3. If upon expiry of the periods referred to in the **first or** second subparagraph of paragraph 2,
 - no reply has been received from the competent authorities of the Member State of destination and/or the intended Member States of transit **and**
 - **the acknowledgement of receipt referred to in paragraph 1 has been received from those countries,**

those countries shall be deemed to have given their consent for the shipment requested ~~provided that the acknowledgement of receipt referred to in paragraph 1 has been received from those countries.~~

- 4 Reasons shall be given by Member States for any refusal to grant consent, or for conditions attached to consent⁶, which shall be based:

⁵ **Recital: "Each Member State remains fully responsible for the management of radioactive waste and spent fuel under its jurisdiction; nothing in this Directive should imply that a Member State of destination has to accept shipments of radioactive waste and spent fuel for final treatment or disposal except in the case of reshipment. Any refusal of such shipments should be justified on the basis of the criteria set out in this Directive."**

⁶ **New recital: "Whereas it is recalled that the consent may stipulate that the condition attached to it have to be fulfilled prior to the shipment"**.

- a) for Member States of transit, on the relevant national, Community or international legislation applicable to transport⁷ of radioactive material;
- b) for the Member State of destination, on relevant legislation applicable to the management of radioactive waste or spent fuel ~~and~~ or on relevant national, Community or international legislation applicable to transport of radioactive material.

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.

- 5.** The Member State or States which gave consent to transit for a given shipment may not refuse to give consent to reshipment in the following cases:
- (a) When the initial consent concerned material being shipped for treatment or reprocessing purposes, 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 shipments⁸

1. If all the 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 Member State of destination and of any Member State or third country of transit accordingly.
2. The authorisation referred to in paragraph 1 shall not in any way affect the responsibility of the holder, the transporters, 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, where the conditions referred to in Article 4 (2) are met.
4. Any authorisation shall be valid for a period of not more than three years.

When establishing this period of validity, Member States shall take into account any conditions set out in the consent by the Member States of destination or of transit.

⁷ **Recital: “Legislation relevant for the transport of radioactive waste and spent fuel is not limited to sectoral transport legislation”.**

⁸ **Recital: “The “authorisations” for shipments in the sense of this Directive will not replace any specific national requirements for the shipments such as transport licences.”**

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 each shipment.
2. The competent authorities of the Member State of destination shall send copies of the acknowledgement to the Member State of origin and any Member State or third country of transit.
3. The competent authorities of the 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 if the conditions for shipment are 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.

Such Member State shall forthwith inform of this decision the competent authorities of the other Member States involved in the shipment.

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 origin shall ensure that the radioactive waste or the spent fuel in question is taken back by the holder, unless an alternative safe arrangement can be made. They shall ensure that the person responsible for the shipment takes corrective safety measures where necessary.⁹
3. The holder shall be liable for costs arising in cases where the shipment cannot or may not be completed¹⁰.

Chapter 3

Extra-Community shipments

Article 10

Imports into the Community

1. 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 application may be sent in respect of more than one shipment, under the conditions referred to in Article 4 (2).

⁹ **New Recital: "The requirement that the person responsible for the shipment should take corrective safety measures where necessary in case of shipment failure does not prevent that mechanisms established by the Member States at national level apply".**

¹⁰ **It is recalled that the explanatory memorandum of the Commission mentions e.g. repackaging and transport costs.**

It shall include evidence that the consignee has concluded an arrangement with the holder established in the third country, and accepted by the competent authorities of that third country, obliging that holder to take back the radioactive waste or the spent fuel where a shipment cannot be completed in accordance with this Directive, as provided for in paragraph 5 of this Article.

The consignee shall be liable for costs arising in cases where the shipment cannot or may not be completed.

2. The competent authorities of the Member State of destination shall send the application referred to in paragraph 1 for consent to the competent authorities of the Member States of transit, if any.

Article 6 shall apply.

3. If all the consents necessary for the shipment have been granted, the competent authorities of the Member State of destination shall be entitled to authorise the consignee to carry out the shipment and shall inform the competent authorities of any Member State or third country of origin or of transit accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. Within 15 days of receipt of the shipment, the consignee shall send the competent authorities of the Member State of destination an acknowledgement of receipt of each shipment. The competent authorities of the Member State of destination shall send copies of the acknowledgement to the country of origin and to any Member State or third country of transit.
5. The Member State of destination or any Member State of transit may decide that the shipment may not be completed if the conditions for shipment are 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. Such Member State shall forthwith inform the competent authorities of the country of origin of this decision. The consignee ~~will~~ **shall** be liable for costs arising in cases where the shipment cannot or may not be completed.

Article 11

Transit through the Community

1. Where radioactive waste or spent fuel is to enter the Community from a third country and the country of destination is not a Member State, the **natural or legal** person who has the responsibility for managing the shipment within the Member State through whose customs post the radioactive waste is first to enter the Community (“first Member State of transit”) shall submit an application for authorisation to the competent authorities of that Member State. The application may be sent in respect of more than one shipment, under the conditions referred to in Article 4(2).

It shall include evidence that the consignee established in the third country has concluded an arrangement with the holder established in the third country, and accepted by the competent authorities of the latter, obliging that holder to take back the radioactive waste or the spent fuel where a shipment cannot be completed in accordance with this Directive, as provided for in paragraph 5 of this Article.¹¹

2. The competent authorities of the first Member State of transit shall send the application referred to in paragraph 1 for consent to the competent authorities of other Member States of transit, if any.

Article 6 shall apply.

3. If all the consents necessary for shipment have been granted, the competent authorities of the first Member State of transit shall be entitled to authorise the responsible person referred to in paragraph 1 to carry out the shipment and shall inform the competent authorities of any other Member State or third country of transit **or of origin** accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. The responsible person referred to in paragraph 1 shall notify the competent authorities of the first Member State of transit that the radioactive waste or spent fuel has reached its destination in the third country within 15 days of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

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

5. A Member State of transit may decide that the shipment may not be completed if the conditions for shipment are 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. Such Member State shall forthwith inform the competent authorities of the country of origin of this decision. The responsible person referred to in paragraph 1 shall be liable for costs arising in cases where the shipment cannot or may not be completed.

Article 12

Exports out of the Community

1. Where radioactive waste or spent fuel is to be exported from the Community to a third country, the holder shall submit an application for authorisation to the competent authorities of the Member State of origin. The application may be sent in respect of more than one shipment, under the conditions referred to in Article 4 (2).

¹¹ **New Recital: "When an arrangement between a consignee in third country and a holder in a third country has been concluded pursuant to Article 27 of the Joint Convention, the same arrangement could be used for the purpose of the Directive".**

2. The competent authorities of the Member State of origin shall:
 - (a) notify the authorities of the country of destination and ask their consent, prior to such a shipment;
 - (b) send the application referred to in paragraph 1 for consent to the competent authorities of the Member States of transit, if any; Article 6 shall apply.
3. If all the 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 third country of destination and of any Member State or third country of transit accordingly.

Paragraphs 2 to 4 of Article 7 shall apply.

4. The holder shall notify the competent authorities of the Member State of origin that the radioactive waste or spent fuel has reached its destination in the third country within 15 days of the date of arrival and shall indicate the last customs post in the Community through which the shipment passed.

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

5. The Member State of origin or any Member State of transit may decide that the shipment may not be completed if the conditions for shipment are 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. Such Member State of transit shall forthwith inform the competent authorities of the Member State of origin of this decision. Article 9, paragraph 2 and 3, applies.

Article 13

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 Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, (Cotonou ACP-EC Agreement) which is not a Member State without prejudice to Article 2, or
 - (c) to a third country which does not, in the opinion of the competent authorities of the Member State of origin, in accordance with the criteria referred to in paragraph 2, have the administrative and technical capacity and regulatory structure to manage the radioactive waste or spent fuel safely. In so doing Member States should take duly into account any relevant information from other Member States in this respect.
2. The Commission shall, in accordance with the procedure laid down in Article 18, establish criteria facilitating Member States to evaluate whether requirements for exports are met.

Chapter 4 **General provisions**

Article 14

Use of a standard document

1. A standard document shall be used for all shipments within the scope of this Directive.
2. The Commission shall, in accordance with the procedure laid down in Article 18, establish the standard document which shall be published in the *Official Journal of the European Union* **and be made available in electronic form** not later than *(same date as Article 19(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 Articles 7, 10, 11 and 12 shall be supplied in a language that is acceptable to the competent authority of the Member State to whom the application for authorisation is submitted in accordance with this Directive.

An authenticated translation shall be supplied by the holder at the request of the competent authorities of the country of destination or transit 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 authorisation relates to more than one shipment in a single document.
6. These documents shall be available to the competent authorities of the country of origin and destination and any country of transit.

Article 15

Competent authorities

Member States shall forward to the Commission not later than *(same date as Article 19(1))* the name(s) and the addresse(s) of the competent **authority or** 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 establish and maintain an electronic communication platform to publish

- **the name(s) and addresse(s) of the competent authority(ies) of each Member State,**
- **the languages acceptable to the competent authorities of each Member State and**
- **all general conditions and additional requirements, if any, necessary for the competent authorities of each Member State to authorise a shipment.**

Article 16
Co-operation

1. Member States shall promote agreements in order to facilitate the safe management, including the final disposal, of radioactive waste **or spent fuel** from countries that produce it in small quantities and where the establishment of appropriate facilities would not be justified from the radiological point of view.
2. Each Member State shall ensure that its competent authorities cooperate and communicate with the competent authorities of other relevant Member States or third countries so that to avoid undue delays in the procedures laid down by this Directive.
3. ~~The Commission shall, in accordance with the procedure laid down in Article 18, establish recommendations for the secure and effective system of transmission of the documents and information relating to the provisions of this Directive.~~
4. ~~Any unjustified delays and/or lack of cooperation by the competent authorities of another Member State shall immediately be reported to the Commission.~~

Article 16a
Transmission

The Commission shall, in accordance with the procedure laid down in Article 18, establish recommendations for the secure and effective system of transmission of the documents and information relating to the provisions of this Directive.

Article 17
Regular reports

By *(three years after the date referred to in Article 19(1))* and every three years afterwards, Member States shall forward to the Commission reports on the implementation of this Directive.

They ~~shall~~ **may** supplement these reports by information on the situation with regard to shipments within their respective territories¹².

¹² **New recital: "Information supplementing reports to the Commission may cover any unjustified delays and/or lack of cooperation by the competent authorities of another Member State".**

On the basis of these reports, the Commission shall, in accordance with the procedure laid down in Article 18, establish a summary report for the European Parliament, the Council and the European Economic and Social Committee.

Article 18
Advisory committee

In performing the tasks laid down in Articles 13(2), 14(2), 16(3) and in the third paragraph of Article 17 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 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 19
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 entry into force)*. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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.¹³

Article 20
Repeal

Directive 92/3/Euratom is hereby repealed with effect from *(same date as the date set in Article 19(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.

¹³ **Recital: “It should be remembered that Paragraph 34 of the interinstitutional agreement on better law making (OJ C-321, 31.12.2003) states that Council “will encourage Member States to draw up, for themselves and in the interest of the Community, their own tables which will, as far as possible, illustrate the correlation between Directives and the transposition measures and to make them public.”**

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 21

Transitional provisions

1. Where the application for authorisation has been duly approved by or submitted to the competent authorities of the country of origin before (*same date as Article 19(1)*) Directive 92/3/Euratom shall apply to all shipment operations covered by the same authorisation.
2. When deciding on applications for authorisation submitted before (*same date as Article 19(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) the planned time schedule for carrying out all shipments covered by the same application;
 - (b) the justification for including all shipments in the same application;
 - (c) the appropriateness of granting authorisation for a number of shipments lower than that covered by the application.
3. Until the standard document provided for in Article 14 of this Directive becomes available, the standard document established by Commission Decision 93/552/Euratom¹⁴ shall be used *mutatis mutandis* for the purposes of this Directive.

Article 22

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 23

This Directive is addressed to the Member States.

Done at Brussels,

¹⁴ OJ L 268, 29.10.1993, p. 83.