

COMMISSION OF THE EUROPEAN COMMUNITIES

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Report on the application of

Article 37 of the Euratom Treaty, Jan. 1987 - June 1990

(presented by the Commission)

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1. Introduction

In its resolution of 20 November, 1980, on the siting of nuclear power stations in frontier regions), the European Parliament requested the Commission to draw up an annual report on the application of Article 37 of the Euratom Treaty.*

This article imposes the following obligation on Member States in respect of the disposal of radioactive waste from nuclear installations :

***Article 37**

Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form as will make it possible to determine whether the implementation of such a plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State.

The Commission shall deliver its opinion within six months, after consulting the group of experts referred to in Article 31".

*The inaugural report COM(82) 455 final**) which covered the period 1959 to the summer of 1982 provided a detailed description of the*

**) O.J. C327/34 of 5.12.80*

****) COM(82) 455 final "Report from the Commission to the Council and to the European Parliament - Application of Article 37 of the Euratom Treaty"*

procedure followed in formulating such opinions, the main aspects considered when examining a disposal plan, and the experience thereby acquired. Subsequent reports*) have therefore been confined to a brief outline of the procedure and of the projects examined in the periods covered.

Since 1986 all opinions issued by the Commission under the terms of Article 37 have been published in the Official Journal as they arose. Moreover, the number of disposal plans submitted annually has fallen from 8 in 1980 to an average of 5 over the period 1983-87 and most recently to only 3 in 1988 and 1989. The situation has thus changed appreciably since the European Parliament requested an annual review. The present report relates to the 11 projects examined during the period January, 1987, to June, 1990, two others the examination of which is not yet complete and one communication of preliminary general data.

2. Article 37 application procedure

The Commission Recommendation of 3 February, 1982, on the application of Article 37**) defines, *inter alia*, the sense of "general data" for both preliminary and definitive communications and lays down the procedure to be followed by the Member States for communicating disposal plans to the Commission.

2.1. Preliminary general data

In the case of plans for the disposal of waste from nuclear power stations and nuclear fuel reprocessing plants, Member States are called on to submit to the Commission certain "preliminary general

*) COM(84) 566 final covering mid-1982 to end 1983

COM(85) 713 final covering 1984

COM(88) 109 final covering 1985 and 1986

**) OJ L 83 of 29 March, 1982

data", as specified in Annex 2 to the Recommendation, before permission for construction is granted by the competent national authorities.

That such data be submitted at this stage is only a recommendation rather than an obligation and in the period covered only one set of preliminary general data were communicated to the Commission, that for Sizewell B nuclear power station as shown in Table 1.

2.2. Definitive general data

The data to be submitted in respect of all disposal plans are specified in Annex 1 to the Recommendation which further provides for submission whenever possible one year, but not less than six months, before the planned date of commencement of disposal of radioactive waste. (However, this practice was overtaken by a ruling of the European Court of Justice, in September, 1988 - see Section 2.3 below.)

Following the submission, the Commission consults the group of experts referred to in Article 37 which examines the plan and presents its conclusions to the Commission. On the basis of the group's conclusions the Commission delivers its opinion on the project in question and this is sent to the Government of the Member State which submitted the plan.

In all, 13 communications have been received in the period January, 1987 to June, 1990, and opinions have been issued in 11 cases, the two remaining being still under examination. These concerned :

- 8 PWR equipped nuclear power stations (3 in the Federal Republic of Germany, 3 in France and 2 in Spain);
- 5 others pertaining respectively to
 - . an irradiated nuclear fuel reprocessing project (France),

- . the dismantling of a nuclear power station (Federal Republic of Germany),
- . intermediate storage of irradiated fuel (Federal Republic of Germany),
- . a waste vitrification and storage plant (United Kingdom),
- . a fuel fabrication plant (Federal Republic of Germany).

A complete listing is given in Table 2.

2.3. Evolution of the procedures

Since the 1982 Commission Recommendation was issued, further experience has been gained in the application of the procedures and a revised Recommendation is being prepared to reflect this. Moreover, in September, 1988, the European Court of Justice stated that, for the procedures to be fully effective, the competent national authorities could not validly issue discharge authorizations pertaining to a plan falling within the scope of Article 37 until the Member State concerned had received and considered the Commission's opinion on that plan (see Appendix). This view will be explicitly recognized in the revised Recommendation.

3. Points arising from the opinions

As regards the preliminary general data received for the Sizewell B project in accordance with the 1982 Recommendation the Commission found no need to comment at this stage and simply acknowledged their receipt.

As regards the 11 communications of general data in the strict sense of Article 37 for which an opinion has been issued during the period in question, the required timescale has generally been respected and the opinions have confirmed that implementation of the projects would not be liable to give rise to any significant risk to health in another Member State, either in normal operation or in accident conditions. Exceptions to the general case and supplementary matters raised in the opinions are discussed below.

3.1. Timing of communications and opinions

Article 37 allows the Commission six months to issue its opinion from the communication of general data and the 1982 Recommendation requests that such communications be made "whenever possible one year, but not less than six months, before the planned date of commencement of disposal of radioactive waste"; for power reactors the date of commencement has been taken to be that of connection to the grid.

The two Spanish projects received in 1987-88, however, concerned nuclear power stations which were connected to the grid at about the same time as the respective communications were made (Vandellos II, general data received November, 1987, connection to the grid December, 1987; Trillo I general data received July, 1988, connection to the grid May, 1988).

However, this can be attributed to the fact that, these were the first Spanish communications under the terms of Article 37 since the accession of that country to the Community and hence the need to establish the appropriate processes at national level. Moreover, difficulties experienced in the course of the examination of the Vandellos communication led the Spanish authorities to undertake a thorough revision of the Trillo general data, when this was already at an advanced stage of preparation, prior to submission.

In two cases the Commission was itself between two and four weeks late in issuing its opinion. The first of these again concerned the Vandellos communication and resulted from the difficulties referred to above. The second case was the plan for dismantling the Niederaichbach reactor which was dealt with by written consultation of the expert group; such a procedure had been used in the past for projects other than those concerning reprocessing installations or power reactors being brought into operation and had worked well.

However, in the case of Niederaichbach, despite requests for and receipt of appreciable information supplementing the original data prior to commencing the consultation, a number of further points were raised during the procedure which required additional clarification and inevitably caused a delay.

3.2. Routine discharges

Exceptionally, in examining the Vandellos II submission, it was observed that the Spanish authorities had not fixed explicit limits on the radioactive content of effluent discharges, choosing instead to rely solely on dose limits applicable to the most exposed members of the population (critical groups). The Commission's opinion noted that limits in terms of the radioactive content of effluents have the advantage that discharge monitoring results allow immediate comparison with the requirements of the authorization. The subsequent general data for Trillo I reflected this advice in that specific discharge limits were provided.

3.3. Accident situations

In two cases, Vandellos II nuclear power station and the Cap de la Hague irradiated fuel reprocessing plant, it was noted that in exceptional weather conditions, the reference accident considered could result in a need for countermeasures to ensure there is no significant exposure of the population as a consequence of the contamination of a neighbouring Member State. However, in both cases formal bilateral arrangements for the exchange of information in the event of an accident had already been agreed between the Member States concerned; this will allow the rapid implementation of the required countermeasures.

In a few other cases, while the reference accidents described in the general data would not lead to significant contamination of a neighbouring Member State, the Commission, nevertheless, recommended active pursuit of appropriate bilateral agreements which would allow other, more severe, hypothetical accidents to be taken into account.

4. Summary and conclusions

During the period January, 1987, to June, 1990, the Commission dealt with 1 preliminary and 11 definitive communications of plans for the disposal of radioactive waste from nuclear installations. Two further definitive communications await completion of the examination. Significant delays were experienced in the receipt of two communications and in the issuing of two opinions for reasons which have been explained above.

In all the opinions issued the Commission concluded that the routine discharges of radioactive effluents would not be liable to result in radioactive contamination, significant from the point of view of health, of another Member State. However, in one case where limits specific to the radioactive content of discharges were not applied, it was recommended that such limits be imposed.

As regards potential accident situations, countermeasures resulting from contamination of a neighbouring Member State could be required in the event of a reference accident at two of the installations considered coinciding with exceptional weather conditions; in both cases appropriate bilateral agreements had already been formalized, providing for even more severe hypothetical accident situations. In certain other cases it was recommended that bilateral agreements covering such more severe accidents be instituted, even although the reference accident would not lead to contamination, significant from the point of view of health, of a neighbouring Member State.

Finally, a revision of the 1982 Commission Recommendation which sets out the procedures associated with Article 37 is now in preparation to take account of the present day situation.

APPENDIX

**Judgment of the European Court of Justice of 22 September, 1988
(Case 187/87 : nuclear power stations - Opinion of the Commission
pursuant to Article 37 of the Euratom Treaty)**

A1 In May, 1986, a complaint was submitted to the Tribunal Administratif de Strasbourg to the effect that discharge authorizations for Cattenom nuclear power station issued by the French government on 21 February, 1986, were invalid. The Tribunal, in an interim judgment dated 11 June, 1987, decided that for Units 1 and 2 of the power station the validity of the authorizations rested on the interpretation of Article 37 of the Euratom Treaty and referred this question to the European Court of Justice. However, the Tribunal decided that the application of the authorizations to Units 3 and 4 was already invalidated for other reasons.

In parallel with the reference to the European Court, the French government appealed this judgment to the French Conseil d'Etat, the supreme French court.

A2 The European Court was specifically asked to rule whether Article 37 requires the general data on any plan for the disposal of radioactive wastes to be communicated prior to the actual discharge of any such wastes or, more restrictively, prior to the authorization issued in advance of any such discharge. In the case of Cattenom, for which the general data were only received by the Commission on 29 April, 1986, the latter condition (if valid) had not been respected. In its judgment of 22 September, 1988, the Court ruled that the more restrictive interpretation is in fact correct. The Strasbourg Tribunal then declared the Cattenom authorizations to be invalid in respect of Units 1 and 2.

- A3. On 21 October, 1988, the French government, therefore, withdrew the initial discharge authorizations for the power station in respect of their application to Units 1 and 2 and issued new authorizations for the combination of these two units with limits corresponding to 50% of those originally applicable to the four units taken together. For Units 3 and 4, however, the invalidation by the Strasbourg Tribunal had been on different grounds, neither of these units was yet operational and no immediate action was taken.
- A4. Finally on 30, June, 1989 the Conseil d'Etat upheld the appeal against the grounds for the decision of the Strasbourg Tribunal concerning Units 3 and 4 but noted that, in consequence of the European Court's ruling on the application of Article 37 of the Euratom Treaty, the invalidation of the original discharge authorizations as they affected Units 3 and 4 was nevertheless correct. Accordingly the French government issued replacement authorizations for the combination of these two further units on 4 August, 1989, again corresponding to 50% of the original limits for all four units collectively.
- A5. The judgment of the European Court has obvious implications for the Commission's Recommendation of 3 February 1982 on the application of Article 37 of the Euratom Treaty, wherein communication of the general data for the principal categories of waste disposal plans is requested "whenever possible one year, but not less than six months, before the planned date of commencement of disposal of radioactive waste". The six month minimum corresponds to the period allowed to the Commission to issue its opinion and was intended to ensure that this would occur and that the content of the opinion would be taken into account prior to any disposal taking place.

A6 *However, in its reasoning leading to the European Court's response to the specific question raised by the Strasbourg Tribunal the Court argues more generally that, "where a Member State makes the disposal of radioactive waste subject to authorization, the Commission's opinion must, in order to be rendered fully effective, be brought to the notice of that State before the issue of any such authorization." Bearing in mind the six month period allowed to the Commission to formulate its opinion, this clearly implies that the general data concerned must be received by the Commission not less than six months prior to any related authorization being issued. This is obviously still more restrictive than the response to the specific question raised by the Strasbourg Tribunal and the revision of the Recommendation currently in preparation will take into account this more fundamental interpretation of Article 37 by the Court.*

SITE (Country)	DISTANCE TO ANOTHER MEMBER STATE (Country)	TYPE OF INSTALLATION(1)	DATE OF COMMUNICATION
SIZEWELL (UK)	140 km (F)	PWR 1 x 1175 MWe	12/87

(1) For abbreviations see Annex 1.

TABLE 1 - COMMUNICATION OF PRELIMINARY GENERAL DATA

SITE (Country)	DISTANCE TO ANOTHER MEMBER STATE (Country)	TYPE OF INSTALLATION(1)	DATE OF COMMUNICATION	OPINION	OJ REF.
NOGENT SUR SEINE (F)	200 km (B + L)	PWR 2 x 1300 MWe	03/87	07/87	L-238/30
ISAR II (D)	170 km (I)	PWR 1 x 1300 MWe	07/87	01/88	L-57/35
EMSLAND (D)	20 km (NL)	PWR 1 x 1300 MWe	07/87	01/88	L-57/36
VANDELLOS II (E)	180 km (F)	PWR 1 x 930 MWe	11/87	06/88	L-188/44
NECKAR II (D)	70 km (F)	PWR 1 x 1300 MWe	01/88	07/88	L-208/33
NIEDERAICHBACH (D)	170 km (I)	Dismantling of a GCHWR 1 x 100 MWe	12/87	07/88	L-208/38
TRILLO I (E)	280 km (F)	PWR 1 x 980 MWe	07/88	12/88	L-32/28 (2)

(1) For abbreviations see Annex 1.

(2) 1989

TABLE 2 - COMMUNICATION OF GENERAL DATA

SITE (Country)	DISTANCE TO ANOTHER MEMBER STATE (Country)	TYPE OF INSTALLATION (1)	DATE OF COMMUNICATION	OPINION	OJ REF.
GOLFECH (F)	150 km (E)	PWR 2 x 1300 MWe	11/88	05/89	L-150/25
LA HAGUE (F)	20 km (UK)(2)	Reprocessing of irradiated fuel Plants UP3-A, UP2-800	03/89	07/89	L-233/36
PENLY (F)	100 km (UK)	PWR 2 x 1300 MWe	04/89	07/89	L-233/37
AHAUS (D)	14 km (NL)	Intermediate storage of irradiated fuel	10/89	04/90	L-105/27
SELLAFIELD (UK)	180 km (EIR)	Vitrification and storage of waste	01/90	(3)	-
LINGEN (D)	20 km (B)	Fabrication of fuel elements	06/90	(3)	-

(1) For abbreviations see Annex 1.

(2) English Channel island of Alderney.

(3) Currently being studied.

TABLE 2 - COMMUNICATION OF GENERAL DATA (continued)

ABREVIATIONS

PWR : Pressurised Water Reactor
Réacteur à eau pressurisée

GCHWR : Gas Cooled Heavy Water Reactor
Réacteur modéré à l'eau lourde
refroidi au gaz