

# COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(92) 1538 final

Brussels, 23 July 1992

Proposal for a

COUNCIL REGULATION (EEC)

SHIPMENTS OF RADIOACTIVE SUBSTANCES

WITHIN THE EUROPEAN COMMUNITY

(presented by the Commission)

EXPLANATORY MEMORANDUM

In Ruling 1/78 of 14 November 1978 delivered pursuant to the third paragraph of Article 103 of the Euratom Treaty, the Court of Justice<sup>(1)</sup> stated that "[The nuclear common market] relates to the liberalization of transfers of nuclear materials and of specialized materials and equipment without these movements being obstructed by barriers resulting directly or indirectly from national legislation on fiscal, commercial or technical matters. Like the EEC Treaty the EAEC Treaty seeks to set up, with regard to matters covered by it, a homogeneous economic area". In this context it is not appropriate for Member States to exercise border controls for achieving the objectives of title two chapter III Health and Safety of the Euratom Treaty, when these objectives can be achieved as effectively through other means.

The Commission recently proposed<sup>(2)</sup> a revision of the Council Directive laying down the basic safety standards for the health protection of the general public and workers against the dangers of ionizing radiation which, inter alia, adapts the existing provisions in order to facilitate the abolition of border controls.

The attached proposal supplements the Directive 80/836/Euratom<sup>(3)</sup> presently in force and it constitutes an interim measure necessary to cover the period between 31 December 1992, date of implementation of Article 8a of the EEC Treaty, and the date of implementation of the amended Directive. It aims at maintaining the present level of radiation protection, while allowing Member States to progress towards the homogeneous economic area sought by the Euratom Treaty. The proposal does not address questions of Nuclear Non-Proliferation nor of Nuclear Export Controls, for which appropriate proposals have been announced<sup>(4)</sup>.

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(1) Rep. 1978, p. 2151 (2172)

(2) SEC(92) 1322 final

(3) O.J. L246 of 17.09.80 and O.J. L265 of 5.10.84

(4) SEC(92) 1085 final

In view of the urgency of the proposed measures, it is desirable that they should take the form of a regulation, which is of immediate application. The Regulation will apply to all 'radioactive substances' including radioactive waste, which is subject to the specific requirements of Directive 92/3/EURATOM, to be implemented by the Member States before 1 January 1994.

The proposed Regulation comprises two essential provisions:

- the exclusion of frontier controls between Member States;
- a requirement for the consignee of radioactive substances to provide the holder of such substances with a written declaration on compliance with relevant national legislation, when he intends to receive radioactive substances from another Member State.

The Regulation will remain in force for radioactive substances other than waste, unless and until it is superseded by the new Directive revising Directive 80/836. As to radioactive waste, the prior declaration system will cease to apply once the national provisions implementing Directive 92/3 come into force.

The proposed measures apply to shipment of radioactive substances between Member States and they comply with Article 2(b) of the Euratom Treaty which requires the Community to "establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied". Analogous measures taken at national level would not ensure intracommunity efficacy and would not respond to the requirement of uniformity explicitly set out by the Treaty.

Proposal for a Council Regulation  
on Shipments of Radioactive Substances  
within the European Community

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission<sup>(1)</sup>, 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,

Having regard to the opinion of the European Parliament<sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas the Council has adopted Directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation<sup>(4)</sup>, most recently in Directive 80/836/Euratom<sup>(5)</sup>, which was amended by Directive 84/467/Euratom<sup>(6)</sup>;

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(1)

(2)

(3)

(4) OJ No 11, 20.2.1959, p. 221/59.

(5) OJ No L 246, 17.9.1980, p. 1.

(6) OJ No L 265, 5.10.1984, p. 4.

Whereas, pursuant to Article 2 of Directive 80/836/Euratom, these basic safety standards apply inter alia to the transport of radioactive substances;

Whereas, pursuant to Article 3 of Directive 80/836/Euratom, each Member State must make compulsory the reporting of activities which involve a hazard arising from ionizing radiation; whereas, in the light of possible dangers and other relevant considerations these activities are subject to prior authorisation in cases decided upon by each Member State;

Whereas Member States have consequently set up systems within their territories in order to meet the requirements of Article 3 of Directive 80/836/Euratom; whereas, therefore, by means of the internal controls that Member States apply on the basis of national rules consistent with existing Community and any relevant international requirements, Member States continue to ensure a comparable level of protection within their territories;

Whereas shipments of radioactive waste between Member States and into and out of the Community are subject to the specific measures set up by Directive 92/3/Euratom<sup>(7)</sup>; whereas Member States are required to bring into force not later than 1 January 1994 the laws, regulations and administrative provisions necessary to comply with Directive 92/3/Euratom;

Whereas the Court of Justice has stated in its Ruling 1/78 pursuant to Article 103 of the Treaty<sup>(8)</sup> that movements of nuclear materials may not be obstructed by barriers resulting directly or indirectly from national legislation on fiscal, commercial or technical matters;

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(7) OJ No L 35, 12.2.1992, p. 24.

(8) Rep. 1978, p. 2151 (2172).

Whereas in this area controls need not be carried out at internal frontiers when their purpose can be achieved as effectively by a uniform system of declarations and routine checks performed throughout the territories of the Member States;

Whereas to this end it is necessary that the consignee of radioactive substances should furnish the holder with a declaration, endorsed by the competent authorities of the Member States to which the shipment is to be made; whereas the efficacy of this system is best ensured by the use of a standard document;

Whereas the adoption of a system abolishing frontier controls and introducing a requirement for such a declaration would also meet the objectives of the internal market while ensuring an adequate level of radiation protection for the general public and for workers.

HAS ADOPTED THIS REGULATION

#### Article 1

##### Scope

This Regulation shall apply to shipments of radioactive substances between Member States, whenever the quantities and concentrations exceed the levels laid down in Article 4(a) and (b) of Directive 80/836/Euratom. It shall also apply to shipments of radioactive waste as defined in Directive 92/3/Euratom.

## Article 2

### Definitions

For the purposes of this Regulation:

- 'shipment' means transport operations from the place of origin to the place of destination, including loading and unloading, of radioactive substances,
- the 'holder' of radioactive substances means any natural or legal person who, before carrying out a shipment, has the legal responsibility for such materials and intends to carry out shipment to a consignee,
- the 'consignee' of radioactive substances means any natural or legal person to whom such material is shipped,
- 'radioactive substance', has the meaning given to it in Directive 80/836/Euratom,
- 'activity', has the meaning given to it in Directive 80/836/Euratom.

## Article 3

Checks carried out under Community law or national law in the event of shipments of radioactive substances shall not take the form of controls at frontiers, but shall be conducted solely within the context of routine checks performed in a non-discriminatory manner throughout the territory of a Member State.

Article 4

1. A holder of radioactive substances who intends to carry out a shipment of such substances, or to arrange for such a shipment to be carried out, shall obtain a prior written declaration by the consignee of the radioactive substances to the effect that the consignee has complied, in the Member State of destination, with all the relevant requirements of the national provisions implementing Article 3 of Directive 80/836/Euratom and with all requirements regarding financial arrangements for ensuring the safe storage or disposal of the radioactive substances when no longer used.

The declaration shall be made by means of the standard document set out in Annex I.

2. The declaration referred to in 1 shall be endorsed by the competent authorities of the Member States to which the shipment is to be made.

3. This Article shall cease to apply when the holder is required, in compliance with the national provisions implementing Directive 92/3/Euratom, to obtain an authorisation for the shipment.



#### Article 5

1. The declaration referred to in Article 4 may refer to more than one shipment, provided that:

- the radioactive substances to which it relates have essentially the same physical, chemical and radioactive characteristics, and
- the radioactive substances to which it relates do not exceed the levels of activity set out in the declaration, and
- the shipments are to be made from the same holder to the same consignee and involve the same competent authorities.

2. The endorsed declaration shall be valid for a period of not more than three years.

#### Article 6

The competent authorities of Member States shall co-operate in ensuring the application of this Regulation as regards shipments of radioactive substances.

#### Article 7

Nothing in this Regulation shall effect the obligations resulting from Directive 92/3/Euratom.

**Article 8**

1. This Regulation shall enter into force on the fifteenth day following that of its publication in the Official Journal of the European Communities.

2. This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels.....1992

For the Council,  
The President,

## SHIPMENTS OF RADIOACTIVE SUBSTANCES WITHIN THE EUROPEAN COMMUNITY

## STANDARD DOCUMENT UNDER COUNCIL REGULATION N° XX/XXEURATOM

1. DECLARATION FOR  
A SINGLE SHIPMENT

DECLARATION FOR  
MORE THAN ONE  
SHIPMENT

2. CONSIGNEE OF THE RADIOACTIVE SUBSTANCES

.....

Place of destination of the radioactive substances ...

Responsible Person ...

3. THE CONSIGNEE IS SUBJECT TO

3.1. REPORTING

REPORTING WAS MADE  
ON (date) ... PLACE ...  
TO (name of the competent  
authority) ...

3.2. AUTHORISATION

AUTHORISATION DELIVERED  
BY (name of competent  
authority) ...  
ON (date) ... PLACE ...

3.3. Maximum activity and principal radionuclides mentioned in the reporting/authorisation ...

4. DESCRIPTION OF THE RADIOACTIVE SUBSTANCES TO BE SHIPPED

4.1. Maximum activity and principal radionuclides ...

5. HOLDER OF THE RADIOACTIVE SUBSTANCES ...

6. ADDITIONAL INFORMATION ...

7. CONSIGNEES DECLARATION

It is hereby certified that the information given above is correct

DATE ...

NAME ...

SIGNATURE ...

8. ENDORSEMENT BY THE COMPETENT AUTHORITIES AND DATE OF EXPIRY

NAME ...

ADDRESS ...

DATE ...

STAMP ...

SIGNATURE ...

Date of expiry of the  
endorsed declaration ...