



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.7.2003
COM(2003) 370 final

Proposal for a

COUNCIL REGULATION

**amending Regulation (EURATOM) No 2587/1999 defining the investment projects to be
communicated to the Commission in accordance with Article 41 of the Treaty
establishing the European Atomic Energy Community**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

The aim of the Euratom Treaty, which was signed in 1957, was to provide the European Community with an alternative source of indigenous energy supply in order to bring a halt to the growing dependence on oil from the Middle East. The Treaty was meant to enable Europe to develop its know-how and obtain the means of exploiting nuclear energy for civil purposes (e.g. the generation of electricity). Pooling resources (know-how, infrastructure, financing and control) was to translate into faster progress at lower cost.

In this regard, major investment was regarded as necessary to achieve the Treaty aims and in particular, to build and maintain new nuclear power stations. For those purposes, the Community, and notably the Commission, was given, under Chapter 4 of Title II of the Euratom Treaty, the specific task of stimulating and facilitating co-ordinated investments in the nuclear field. In order to do so, the Commission first publishes illustrative programmes indicating in particular nuclear energy production targets and types of investment required for their attainment. Secondly, the Commission examines the investment plans scheduled in the Member States and makes its views known as to all aspects of those investment projects which relate to the objectives of the Euratom Treaty. In this context, the Commission has already examined 240 investment projects for which it has checked both their merits and their compatibility with the Treaty. These investments exceed EUR 400 billion, of which the Community budget contributed EUR 2.9 billion. This has contributed to the Community's industrial development with the result that nuclear power stations installed on the territory of the Community cover 35% of its electricity needs.

On 6 November 2002, the European Commission adopted a nuclear package of measures with a view to finally producing a comprehensive, truly Community approach to nuclear safety and security of supply. This package consisted of a communication and, notably, two draft proposals for directives, one on safety and the other on waste management. On 30 January 2003, the Commission adopted these two proposals.

First, the European Commission proposed a Community approach to safety, by adopting its proposal for a framework directive laying down the basic obligations and general principles concerning the safety of nuclear installations during operation and decommissioning¹. Amongst other objectives, the directive aims at guaranteeing adequate financial resources for decommissioning nuclear installations. The aim is to ensure that sufficient funds will be available to carry out decommissioning operations under conditions protecting the general public and the environment from ionising radiation. As highlighted in the Commission Communication on nuclear safety in the European Union, also approved on 6 November 2002, it is also essential to avoid any possibility that the decommissioning of a nuclear installation will not be able to start as planned, is not carried out according to the appropriate procedures or is abandoned before completion due to a lack of resources².

Secondly, the Commission adopted another proposal for a Council Directive (Euratom) on the management of spent nuclear fuel and radioactive waste³. The aim of this proposal, again

¹ COM(2003) 32 final.

² COM(2002) 605 final, p. 16.

³ COM(2003) 32 final.

outlined in the Communication, gives priority to geological burial of waste as the safest method of disposal known at present. It further noted that the funding allocated to research and waste management is insufficient. Article 6 of this proposal states, for instance, that the Commission should take into consideration the progress made by Member States towards meeting the targets for managing radioactive waste when authorising a repository or repositories for the different forms of radioactive waste.

This concern for the safety and security of nuclear installations in the context of the increasing public importance attached to waste management and decommissioning of nuclear installations should be reflected when the Commission discusses and provides its point of view on investment projects communicated to it in accordance with Chapter 4 of Title II of the Euratom Treaty, and notably Article 43.

In this light, it is increasingly important that the Commission's examination of investments in the nuclear sector considers whether these safety and security principles and objectives are ensured and guaranteed by persons or undertakings when carrying out the investment in question.

However, the forthcoming accession of new Member States from Central and Eastern Europe does not exclude the fact that Community or national support to nuclear investment is all the more relevant with a view to attaining, notably, certain security and safety objectives. In this light and in order to ensure a co-ordinated development of investment activities within the nuclear field, it is increasingly important that the Commission's examination in the nuclear sector considers these investment projects in the light of the objectives of the Euratom Treaty. Should these investments not be necessary for or go beyond the objectives of the Euratom Treaty or should its public financing distort or threaten to distort competition in the internal market, this Regulation is without prejudice to the application of the EC Treaty.

The attached proposal to amend Council Regulation No 2587/1999 therefore introduces a provision to facilitate the tasks of the Commission regarding nuclear investment in light of the rapidly evolving completion of the internal electricity market.

2. OBJECTIVES PURSUED

The objective underlined in the new Commission package to introduce a common approach to the security and safety of nuclear installations also entails an increase in transparency in this field. In the light of its prerogatives, the Commission therefore needs to examine whether these safety and security principles and objectives will be ensured and guaranteed even at an early stage, eg when the investment project is communicated to the Commission. In this light, when communicating the investment project, the persons or undertakings concerned should also provide the Commission with the decommissioning plans for the installation to be constructed and with the plans for the management of spent fuel or radioactive waste originating from the investment project. At that early stage, the Commission will already be able to provide its input and, where appropriate, discuss with the nuclear operators all security and safety aspects linked to the project in question. The Commission could even suggest measures to adjust any irregular plans should the need arise.

Secondly, the Community approach to nuclear safety and security will also require the Commission to be able to discuss with the nuclear undertakings concerned all aspects of the decommissioning project when this decommissioning plan is to be carried out in light of article 42 of the Euratom Treaty. To enhance this objective, all aspects of investment projects

aimed at decommissioning installations should be communicated to the Commission with a view to ensuring nuclear safety. The Commission should therefore be able to discuss these decommissioning projects as well. This possibility should enhance transparency, and could in particular enable the Commission to verify whether the objectives of Community safety are being fully achieved, before the final phase in the life of the investment is finally completed.

Finally, the results of the tasks exercised by the Commission regarding nuclear investment over the last four decades are encouraging. To ensure that the Commission carries out its tasks of facilitating and co-ordination of nuclear investments in the light of the objectives of the Euratom Treaty (notably security and safety), it is therefore necessary to increase transparency in this field. Thus, transparency should be reinforced by requiring nuclear undertakings in addition to the information already supplied, to communicate to the Commission detailed data on the methods of financing of the investment projects and the financing by private and public means.

3. A SUMMARY OF THE EXISTING LEGISLATION

3.1. The provisions in the Euratom Treaty

Article 1 of the Euratom Treaty states that it shall be the task of the Community to contribute to the raising of the standard of living in Member States and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries. Article 2 specifies further objectives, including facilitating investment and ensuring, particularly by encouraging ventures on the part of undertakings, the establishment of the basic installations necessary for the development of nuclear energy in the Community.

Chapter IV of the Euratom Treaty (Articles 40 to 44) provides for a set of instruments aimed at guaranteeing compliance with such tasks and objectives.

In particular, Article 40 entrusts the Commission with the task of stimulating and facilitating co-ordinated development of investment in the nuclear field. For these tasks, the Commission shall periodically publish illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment.

Articles 41 to 44 then allow the Commission to examine the investment plans scheduled in the Member States and make its views known.

In particular, Article 41 requires, in this respect, persons or undertakings engaged in nuclear activities to communicate investment projects to the Commission.

Articles 42 and 43 lay down procedural rules. According to Article 42 of the Treaty, these investment projects will be communicated to the Commission and, for information purposes, to the Member State concerned in a prescribed time-limit. Article 43 states that the Commission examines these projects, discusses them with the undertakings and communicates its views to the Member State concerned.

Finally, Article 44 allows the Commission, with the consent of the Member States, persons and undertakings concerned, to publish any investment projects communicated to it.

3.2. Secondary legislation

In order to carry out these tasks, procedural Regulations provide for appropriate information to be forwarded to the Commission.

First, in 1999, Council Regulation (Euratom) No 2587/1999 simplified existing regulations and updated the types of nuclear investments to be communicated to the Commission. It requires:

- i. persons or undertakings engaged in nuclear activities to communicate to the Commission investment projects when the costs of these projects exceed certain threshold values attached in the Annex of the Regulation.
- ii. that the communication of the projects should include certain specified information (e.g. type of products, total amount of expenditure directly chargeable to the project, the length of time, etc.).
- iii. persons or undertakings concerned to communicate the essential characteristics of investments projects aiming at decommissioning installations when their costs exceed certain threshold values; in this case, communication to the Commission of the detailed information as referred to in point (ii) is not mandatory. Furthermore, in such cases, the Commission does not need to discuss these projects as specified by Article 43 of the Euratom Treaty.

In addition, Commission Regulation 1209/2000 further determined the procedures for notifying investment projects to the Commission pursuant to Article 41 of the Euratom Treaty. This Regulation requires the relevant information to be notified to the Commission by means of a prescribed form which is attached in an Annex to that Regulation. In particular, this requires that the communication to the Commission should include the total amount of expenditure directly attributable to the project as well as its methods of financing.

4. THE PROPOSALS

In order to provide increased transparency and to enable the Commission to properly examine nuclear investment projects in relation to the objectives of the Treaty (particularly safety and security), the following information, not presently required by Council Regulation 2587/1999, needs to be provided to the Commission:

1. Communication to the Commission of the plans for the management of spent fuel or radioactive waste originating from the notified investment, at the stage where the investment is envisaged in light of Article 42 of the Euratom Treaty. This communication shall also include the plans of the person or undertaking concerned for the decommissioning of the projected investment.
2. Communication to the Commission of all the necessary information with respect to investments made in the entire fuel cycle, and in particular for those projects aimed at decommissioning installations. Under the current Regulation 2587/1999, the declaration of these investment projects aimed at decommissioning installations only needs to refer to their essential characteristics. Furthermore, they do not need to be discussed with the persons or undertakings concerned pursuant to the procedure laid down in Article 43 of the Treaty. As a consequence, the Commission has not examined in the past these decommissioning projects in full detail. However as

decommissioning plans will acquire a growing significance in the next decades, it appears also important for the Commission to examine in full detail these investment projects in the light of the objectives of the Euratom Treaty. It is therefore appropriate that investment projects aimed at decommissioning installations should be examined under the same rules and requirements as projects aimed at other activities in the fuel cycle.

3. Communication of the methods of financing of the investment projects including both private and public financing . There are various reasons for requesting this information:

to allow the Commission (i) to facilitate co-ordinated development of investment in the nuclear field under Article 40 of the Euratom Treaty and (ii) to illustrate the types of investment required for the attainment of the nuclear energy production targets. In this respect, the Commission needs to know if and how Member States are supporting investment and how this support would fit in with the existing support mechanisms at Community level (e.g. Euratom loans, research aid, Joint Undertakings). It is thus important that the Commission facilitates co-ordinated development of investment ensuring interaction between national and Community support. In addition, pursuant to such information, the Commission may make specific recommendations in its periodical illustrative programmes regarding the methods of financing.

5. CONCLUSION

It is therefore proposed to amend Council Regulation No 2587/1999. The amendments proposed will:

1. require that declarations of investments refer to the plans for the management of spent fuel or radioactive waste originating from the projected investment as well as the plans for the decommissioning of the installation in question;
2. require that declarations of investments projects aimed at decommissioning installations contain all the details and information required for discussion of other investment projects made in the rest of the entire fuel cycle;
3. require persons and undertakings to include in their communication of investments pursuant to Article 43 of the Euratom Treaty information regarding public and private financing.

Proposal for a

COUNCIL REGULATION (EC) No .../...

amending Regulation (EURATOM) No 2587/1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 41 thereof,

Having regard to the proposal from the Commission¹,

Whereas:

- (1) Council Regulation (Euratom) No 2587/1999² defines the investment projects to be communicated to the Commission in accordance with Article 41 of the Euratom Treaty. Commission Regulation (EC) No 1209/2000³ determines the procedures for carrying out the obligations imposed on persons and undertakings by Article 41 of the Euratom Treaty.
- (2) In order to attain the Community objectives regarding safety, it is essential to allow the Commission to examine the undertakings' plans for decommissioning and the plans for fuel and waste management linked to the designed installation. This should allow the Community to follow closely the objective of safety from an early stage.
- (3) Dangers from ionising radiation may also arise as a result of decommissioning operations. In order to introduce transparency on how these decommissioning projects are to be implemented, the Commission should also have detailed data with respect to the investment projects aimed at decommissioning installations. The Commission should be able to discuss these projects with the undertaking, and communicate its views thereon to the Member State concerned. This should also permit the Commission to verify whether the safety objectives and Community safety rules are in the process of being fully achieved, before the final phase in the active life of the installation.
- (4) Investments made in the entire fuel cycle, including waste management and decommissioning, are integrally necessary for a correct and responsible operation of the nuclear industry.

¹ OJ C

² OJ L 315, 9.12.1999, p. 1.

³ OJ L 138, 9.2.2000, p. 12.

- (5) The financing of investment projects in the nuclear sector is an important element of the Commission's examination in the context of the objectives of the Euratom Treaty. Such information has, in the past, not always been available or has not always been sufficiently detailed in the communications from persons or undertakings pursuant to Regulation (Euratom) No 2587/1999. In order to ensure the assessment of all aspects of the investment projects that are relevant under the Euratom Treaty, the Commission must have the necessary information. This entails defining in further detail the conditions for introducing further transparency in the examination and assessment of those projects.
- (6) Furthermore, pursuant to Article 40 of the Euratom Treaty, it is the task of the Commission to stimulate and facilitate co-ordinated development of investment in the nuclear field. For this purpose, the Commission publishes illustrative programmes indicating in particular nuclear energy production targets and all the types of investment required for their attainment.
- (7) With a view to facilitating the co-ordinated development of investment, the Commission also needs to know how the investment projects are financed. This is important to ensure the necessary interaction between national and Community public support. It is therefore necessary for the Commission to have detailed data with respect to the methods of financing of the investment projects. Such information should identify as regards both private and public financing the amounts and the details of methods of financing.
- (8) Should the investments not be necessary for or go beyond the objectives of the Euratom Treaty or should its public financing distort or threaten to distort competition in the internal market, this Regulation is without prejudice to the application of the EC Treaty.
- (9) Regulation (Euratom) No 2587/1999 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (Euratom) No 2587/1999 is amended as follows:

- (1) Article 1 is replaced by the following:

“Article 1

- 1. Persons or undertakings engaged in the industrial activities listed in Annex II to the Treaty shall communicate to the Commission, within the time limits laid down in Article 42 of the Treaty, their investment projects aimed at:
 - (a) creating a production capacity;
 - (b) maintaining quantitative and qualitative production capacity;
 - (c) directly increasing production capacity;

- (d) directly increasing productivity;
- (e) improving the quality of production;
- (f) creating facilities for the management of spent fuel or radioactive waste, including treatment, interim or final storage and/or disposal;
- (g) decommissioning installations.

Projects referred to in points (a) to (f) of the first subparagraph shall be communicated when, in the industrial activities listed in column I of the table in the Annex, the cost exceeds the corresponding amount in column II of the table in the Annex for new installations and that in column III of the table in the Annex for replacements and conversions.

Projects referred to in point (g) of the first subparagraph shall be communicated when the costs exceed the corresponding amount in column III of the table in the Annex.

2. Projects for new installations for nuclear reactors of any type and for any purpose, and projects concerning the replacement, transformation modernisation or power increase of such installations, where the costs are lower than the threshold values of the table in Annex, and concerning the decommissioning of installations, where the costs are lower than the threshold values in column III of the table in the Annex, may be notified on a voluntary basis through a simple declaration giving only their essential characteristics. The procedure laid down in Article 43 of the Treaty need not be applied.”

(2) Article 3 is amended as follows:

- (a) point (b) is replaced by the following:

“(b) the total amount of expenditure directly chargeable to the project under consideration as well as the method of financing, including both private and public funding or financing of the investment project in question; the communication shall also refer to the amount or modalities of application thereof.”

- (b) the following point (e) is added:

“(e) the plans for the management of spent fuel or radioactive waste originating from the notified investment as well as the plans for the decommissioning of the installation.”

Article 2

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

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

Done at Brussels, [...]

For the Council
The President
[...]

IMPACT ASSESSMENT FORM

THE IMPACT OF THE PROPOSAL ON BUSINESS, WITH SPECIAL REFERENCE TO SMALL AND MEDIUM-SIZED ENTERPRISES(SMEs)

Proposal for a Regulation amending Council Regulation (Euratom) No 2587/1999 of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community.

DOCUMENT REFERENCE NUMBER

COM(...) ... final of

THE PROPOSAL

1. Taking account of the principle of subsidiarity, why is Community legislation necessary in this area and what are its main aims?

It envisages various objectives:

- The introduction of further transparency in the examination by the Commission of investment projects in the nuclear sector in the light of the safety objectives of the Treaty;

The Regulation refers to an exclusive competence of the Euratom Community. It therefore needs to be achieved at the Community level. This Regulation confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose.

THE IMPACT ON BUSINESS

2. Who will be affected by the proposal?

According to Chapter IV of the Euratom Treaty (Articles 40 to 44), which constitutes the main legal basis of the Regulation, persons or undertakings engaged in the industrial activities listed in Annex II to the Euratom Treaty will be affected by the proposal. They are required to communicate to the Commission the investment projects in question.

- which sectors of business

Pursuant to Article 41, all persons and undertakings engaged in the industrial activities listed in Annex II to the Euratom Treaty and carrying out investment projects relating to new installations and also replacements or conversions as listed out in the table in the Annex to the Council Regulation.

- which sizes of business (what is the concentration of small and medium-sized firms)

Persons and undertakings engaged in the nuclear sector. Experience shows that there are no small and medium-sized firms involved in the communication of the projects.

- are there particular geographical areas of the Community where these businesses are found

No

3. What will business have to do to comply with the proposal?

The persons and undertakings obliged to communicate the investment projects as laid down in Article 41 will communicate to the Commission the amount and methods of financing of those investment projects, explicitly identifying any public funds, including direct or indirect subsidies made available to the investment project in question.

4. What economic effects is the proposal likely to have?

The proposal will not have any effects on employment, nor on investment and the creation of new businesses or on the competitiveness of businesses

5. Does the proposal contain measures to take account of the specific situation of small and medium-sized firms (reduced or different requirements etc)?

No

CONSULTATION

6. List the organisations which have been consulted about the proposal and outline their main views.

The proposal from the Commission, before being laid before the Council, will first be forwarded to the Economic and Social Committee for its opinion.