



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

on the supervision and control of shipments of radioactive waste and spent fuel

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. JUSTIFICATION OF THE PROPOSAL

1.1. Existing system under Directive 92/3/Euratom

Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community was adopted to establish a system of strict control and prior authorisation for shipments of radioactive waste in order to avoid illicit traffic of such materials.

The Directive applies both to the shipments between the Member States and to import into and export out of the Community. It ensures that Member States of destination and of transit are informed about the transfer of radioactive waste to or through their country and that they approve such a transfer or have an opportunity to object to it. As regards export, the authorities of the third country of destination are informed about the transfer. Export of radioactive waste to certain places is totally forbidden, e.g. to the Antarctic or to the states that are parties to the Lomé Convention.

This Directive was intended to supplement Directive 80/836/Euratom of 15 July 1980 laying down the basic safety standards for the health protection of the general public and workers against the dangers arising from ionising radiation, which was amended by Council Directive 84/467/Euratom.

Directive 80/836 was replaced and repealed with effect from 13 May 2000 by Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation.

While the system of strict control and prior authorisation for shipments of radioactive waste laid down in Directive 92/3 has proved satisfactory, its implementation in practice has highlighted the need for a number of adaptations.

Although the essentials of the provisions in Directive 92/3 are being maintained, the number and nature of the modifications to be proposed justify that a new, recasting Directive be adopted replacing and repealing Directive 92/3.

1.2. Need for simplification

The revision process of Directive 92/3 Euratom was initiated in 2001 in the context of the fifth phase of the SLIM initiative (Simpler Legislation for Internal Market; SLIM V), with a view to making Directive 92/3 Euratom more user-friendly and transparent.

The SLIM review of the Directive focused on the following issues:

- incorporating the technical provisions set out in subsequent legislation and in particular, the Basic Safety Standards Directive;
- aligning the provisions of the Directive (in particular Articles 7, 10, 11, 12) with certain international agreements to which the Community is a party or plans to accede;

- clarifying and, where appropriate, removing inconsistencies in those provisions (Article 12 in particular) dealing with the right of third countries to be consulted on the proposed shipment of radioactive waste in the case of export;
- the possible extension of the scope of the Directive to include irradiated fuel for reprocessing, thus bringing it into line with current international rules and instruments;
- examining and clarifying those rules in the Directive which provide for the refusal to grant approvals for shipments of radioactive waste;
- the simplification of the standard document used for notification of the intention to ship radioactive waste;
- the benefits of replacing the Directive by a Regulation.

Those issues were discussed and led to 14 recommendations being proposed and included in the Report from the Commission on the Outcome of the 5th Phase of SLIM.¹

1.3. Modifications proposed

Modifications in the provisions of Directive 92/3 are justified by four different reasons:

1.3.1 Consistency with latest Euratom Directives

The new Directive has necessarily to reflect the adoption of Directive 96/29 Euratom, and is thus meant to supplement that Directive.

The adoption on 22 December 2003 of Council Directive 2003/122/Euratom on the control of high-activity sealed radioactive sources and orphan sources, makes it also necessary to adapt the wording of the provisions on reshipment of radioactive sealed sources. It should be noted that while under certain conditions such shipments can be exempted from the requirements of this Directive, this exemption should not apply to fissile materials, in order to ensure adequate safeguards.

1.3.2 Consistency with international Conventions

Directive 92/3/Euratom is not limited to intra-Community shipments of radioactive waste, and its implementation involves several international legal instruments, such as conventions adopted in the same field by the International Atomic Energy Agency or international agreements concerning airspace or maritime movements. These legal instruments have evolved considerably since 1992.

Consistency was in particular needed in view of the planned accession of the European Atomic Energy Community (Euratom) to the IAEA Joint Convention on the Safety of Spent fuel Management and on the Safety of Radioactive Waste Management.

¹ Commission Staff Working Paper, Simpler Legislation for the Internal Market (SEC (2001)1977), transmitted to the Council and the European Parliament on 5th December 2001.

1.3.3. Clarifying the procedure in practice

The existing system needs to be improved by clarifying certain concepts, either by amending the existing definitions or by adding new definitions. It has also proved necessary to remove inconsistencies and to simplify the existing procedure for the shipment of radioactive waste between Member States.

Further to the recommendations in the SLIM Report, it was felt necessary to address situations that had been omitted in the past. In particular, there is a need to take into consideration shipments from and to the same country of origin when they are transiting through another country.

The use of languages in the standard document also needs to be clarified. Some Member States have pointed out uncertainties on this, and the fact that in some cases delays would occur when the applications for the authorisation of a shipment are transmitted to countries with a language other than that used to fill in the application. The need for clear rules on the use of languages is specially relevant in a Community of 25 Member States.

1.3.4. Extension of the scope to spent fuel

The scope of the Directive is now extended so that the control procedures it lays down are also explicitly applicable to shipments of spent fuel, whether it is intended for disposal or for reprocessing.

The provisions in Directive 92/3 gave rise to uncertainties regarding its applicability to shipments of irradiated fuel, and the Commission had to give its interpretation on this issue on several occasions, following individual requests for information, but also parliamentary questions.

Under Directive 92/3, spent fuel for which no use is foreseen is considered as “radioactive waste” and shipments of such materials are subject to the uniform control procedure laid down in the Directive. Shipments of spent fuel for reprocessing are on the contrary not subject to such a procedure. This leads to the inconsistency that the same material is or is not subject to this procedure depending on its intended use.

The SLIM report recognised “that the example of the Joint Convention on Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management would suggest that the scope of the Directive be extended to cover also spent nuclear fuel for reprocessing”. No direct recommendation was however made, because the SLIM team considered this as “going beyond its mandate in the framework of the SLIM V initiative”.

In view of the foregoing circumstances, and because from a radiological point of view there would be no reason not to apply the procedure laid down in Directive 92/3 to all shipments of spent fuel, it is deemed appropriate to extend the scope of the Directive as explained. The administrative burden for those shipments of irradiated fuel which would concern only Member States who have concluded an agreement that this will be for the purpose of reprocessing can be kept very low. It would indeed imply only minor constraints in addition to those in place for ensuring adequate safeguards.

1.3.5. Improving the Directive structure

The existing provisions in Directive 92/3 needed to be reorganised in a user-friendly way. The Directive's internal structure has thus been modified on the basis of considerations of legislative technique and some provisions have been relocated or regrouped, as considered appropriate.

2. LEGAL BASIS

The legal basis for this proposal is Article 31 of the Euratom Treaty, in connection with Article 32 thereof. Article 31 defines the procedure for the adoption of the basic safety standards provided for in Article 30 for the protection of the health of workers and the general public against the dangers arising from ionising radiation. Article 32 explicitly states that said basic standards might be supplemented in accordance with the procedure laid down in Article 31.

3. SUBSIDIARITY AND PROPORTIONALITY

While the Community is responsible for establishing uniform rules in the radiation protection field in order to achieve a high level of health protection of workers and the general public, it falls on the Member States to transpose into their national legislation such rules and to implement them.

When considering the existing requirements concerning shipments between Member States, there is no ambiguity as to the roles of the Community and the Member States under the existing system of prior authorisation and control of shipments of radioactive waste laid down by Directive 92/3.

This proposal for a Directive does not fundamentally modify this existing prior authorisation system. The task of controlling shipments through a specific mechanism remains within the competence of Member States.

Nevertheless, the proposed modifications reflect the need for a more harmonised approach to the existing prior authorisation system which exists between the Member States, while simplifying the procedure and thus improving its efficiency.

4. COSTS OF IMPLEMENTING THE PROPOSAL FOR MEMBER STATES AND THE COMMUNITY

4.1. Costs to the Member States

Directive 92/3 Euratom already provides for a system of supervision and control of shipments of radioactive waste which involves designated competent authorities in each Member State.

The proposed amendments do not modify the existing scheme. The fact of extending the procedure also to shipments of spent fuel intended for reprocessing should not imply considerable extra costs to the Member States, the costs being easily absorbed by the administrative infrastructures already in place.

The procedure being now clarified in some key aspects (certainty concerning spent fuel, generalisation of automatic approval, use of languages, user-friendly structure of the Directive provisions, etc.), the new Directive will allow delays to be avoided in carrying out shipments, thus reducing their administrative cost.

4.2. Costs to operators

The extension of the authorisation procedure also to shipments of spent fuel intended for reprocessing should not imply additional costs to nuclear operators, as shipments of this kind are already covered in the Member States by some kind of administrative procedure on the basis of Directive 96/29.

The procedure being now clarified in some key aspects (certainty concerning spent fuel, generalisation of automatic approval, use of languages, user friendly structure of the Directive provisions, etc), the new Directive will allow delays to be avoided in carrying out shipments, which is beneficial to the operators concerned.

4.3. Costs to the Community

There will be no impact on the Community budget.

The various obligations upon the Commission arising from this Directive (concerning reporting, establishment and updating of standard document, publication of lists of authorities) already exist on the basis of Directive 92/3.

Similarly, the Advisory Committee to be set up under Article 16 corresponds to the Committee which already exists under Article 19 of Directive 92/3.

In certain respects the costs of effective compliance with Community requirements at an early stage through the use of a more precise and simplified procedure will be cost-beneficial in terms of avoiding administrative costs associated with dealing with infringements of Community law caused by bad practical application of the BSS requirements.

5. CONSULTATIONS WITH INTERESTED PARTIES

This Proposal is based on the report of the SLIM team (see point 1.2 above).

Furthermore, because the main purpose of this proposal is to render the Directive more user-friendly and transparent, the representatives of the competent authorities in charge of the implementation of Directive 92/3 Euratom (Committee provided for in Article 19 of Directive 92/3) were consulted on the draft revision of the Directive at a meeting held on 18 October 2002.

Under Article 31 of the Euratom Treaty, any draft legislation related to basic safety standards shall be submitted to an expert group (Article 31 Group of Experts) which is composed of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States.

These experts, acting independently from Member States, provide the Commission with valuable scientific expertise, give advice on all planned Community legislation and propose to amend or complement the standards on the basis of scientific and technical expertise.

This Group of Experts was consulted on the revision of Directive 92/3 during its meeting on December 2002 and gave its support to it.

6. PROVISIONS OF THE PROPOSAL

The title of the Directive has been shortened, the expression “between Member States and into and out of the Community” being redundant.

Following the extended scope of this proposal, and the new definition of “shipments”, the words “spent fuel” have been added; alternatively the words “radioactive waste” have been deleted, as appropriate.

The general structure has been modified, and the different steps of the procedure are now dealt with in different Articles. This implies that some provisions have been moved from one article to another. Provisions in the Directive are no longer divided in Titles.

The provision in Article 3 of Directive 92/3, according to which “The transport operations necessary for shipment shall comply with Community and national provisions and with international agreements on the transport of radioactive material” has been deleted. This provision did not create any new obligation additional to other relevant legal provisions applicable to the transport operations, and was therefore redundant. A general reference to the relevant obligations concerning transport and waste management has instead been included in the fourth recital of the Directive.

All references to the standard document have been deleted in individual articles and regrouped in Article 13 (*Use of the standard document*).

Explanations are given only for those provisions that deviate from those in Directive 92/3/Euratom. Unless explicitly indicated, Article numbers correspond to those in Directive 92/3.

6.1. Subject matter and scope (Article 1)

Article 1(1): For reasons of legislative technique, the purpose of the Directive is now clearly stated. This Directive supplements Directive 96/29/Euratom, under which Member States have set out a system of reporting and authorisation of practices involving a risk from ionising radiation, and its purpose is thus consistent with those in Directive 96/29: health protection. To this aim, the Directive lays down administrative requirements, so as to allow Member States to discharge their responsibilities in this area; the same administrative requirements can be used for safeguards purposes.

Article 1(2): The provision in Article 1(1) of Directive 92/3 has been reworded so that:

- It takes into account the new conditions set in Articles 3.2 (a) and (b) of Directive 96/29/Euratom (quantities and concentration of radionuclides).
- It is clarified so as to cover shipments involving the same country of origin and of destination, when such a shipment concerns a different country of transit.
- Shipments of spent fuel not considered as waste are now also subject to the procedures laid down in the Directive.

Article 1(3): This corresponds to the contents of Article 13 of Directive 92/3, concerning disused sources but its wording has been simplified and adapted to the provisions of Directive 2003/122. This exemption now covers all shipments of disused sources to a supplier, manufacturer or recognised installation (as described in Article 3(2)(a) of Directive 2003/122, as a part of the safe management of the source when it is no longer used), and not just the cases where the source is “returned by its user to the supplier of the source in another country”, as under Directive 92/3.

The right place of this provision seems to be Article 1, as it delimits the scope of the Directive.

6.2. Reshipments related to processing and reprocessing operations (Article 2)

The provision in Article 14 of Directive 92/3 has now been moved to Article 2. The term “waste” has been replaced by “radioactive waste”. The words “exported” have been replaced by “shipped”, in order to also cover those reshipments from a Member State to another Member State.

6.3. Definitions (Article 3)

Definitions have been modified as follows:

- Definitions of “*Radioactive waste*”, “*Spent fuel*”, “*Disposal*” and “*Storage*” have been brought into line with the definitions in the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management.
- “*Shipment*” now covers both shipments of radioactive waste and shipments of spent fuel. This allows a single term to be used to refer to shipments of all these materials and makes it unnecessary to repeat the whole expression.
- More preciseness has been given to the following definitions: “*Holder*”, where the word “intends” has been replaced by “plans” (see comments on Article 4); new definitions are given for “*Country of origin*” and “*country of destination*”, which replace the existing “place of origin and place of destination”, and for “*Country of transit*”.
- The definition of “*Sealed source*” has been taken from Directive 96/29; those of “*disused source*” and “*recognised installation*” correspond to Directive 2003/122.

6.4. Application for shipment authorisation (Article 4)

In Article 4 (1) the expression “intends to carry out a shipment” is replaced by a less ambiguous wording (“has planned to carry out a shipment”). This new expression will avoid in practice difficulties deriving from considerations as for the “intentional” character of a shipment (see point 3.5 SLIM Report), while ensuring the timeliness of applications (so that they are not lodged too far in advance).

Article 4 (2) corresponds to Article 5 (1) of Directive 92/3.

6.5. Transmission of the application to the competent authorities (Article 5)

Article 5 (1) and (2) correspond respectively to Article 4 (1), paragraph 1, second sentence, and paragraph 3, of Directive 92/3.

6.6. Acceptance and refusal (Article 6)

Contrary to the provision in Article 6 (4) of Directive 92/3, the automatic approval procedure is no longer optional, but shall apply to any shipment. A country of transit or of destination that does not give any reply as regards an intended shipment is deemed to have approved such shipment. Now, acknowledgement of receipt is requested within one month, and the period for notifying acceptance/refusal is extended to 4 months (3 months reply + 1 month extension on request).

The provision in Article 6 (2) of Directive 92/3 has now been simplified. The reference to the compliance with international agreements when imposing conditions is not appropriate, because it is redundant. A general reference to the "relevant legislation applicable" is made in connection to the reasoning of any refusal of condition. This suffices to avoid arbitrary decisions.

Article 6 (4) corresponds to the provision of Article 16 of Directive 92/3, its wording having been adapted to the structure of the present proposal. It is now clear that the approval procedure also applies to reshipments in cases where the initial shipment fails for the reasons detailed in Article 9 (see point 3.12 of the SLIM Report).

6.7. Authorisation of shipments (Article 7)

It is logical to address the stage of authorisation in a separate Article and after the provisions on acceptance.

Article 7 (3) reflects the idea that was already implicit in Article 5 (1) of Directive 92/3.

Article 7 (4) corresponds to Article 5 (2) of Directive 92/3.

6.8. Acknowledgement of receipt of the shipment (Article 8)

This provision corresponds to Article 9 of Directive 92/3.

6.9. Shipment failure (Article 9)

This provision corresponds to Article 15 of Directive 92/3.

Article 9 (1) has been added: it is considered appropriate to state the right of the Member State of destination to abort a shipment, in the conditions laid down in the same provision.

6.10. Special rules for imports into the Community (Article 10)

The wording of Article 10 of Directive 92/3 has been clarified/simplified. It clearly assigns responsibilities for different steps of the procedure laid down in the Directive, by identifying who is assuming the role of "holder" (consignee and person responsible for managing the shipment, respectively) and of "country of origin" (Member State of destination and Member State of first entry into the Community). According to the redrafting, paragraph 3 is now redundant: the fact of identifying the "holder" for the purposes of this Article, implies that it is for him to initiate the authorisation procedure by informing the Member State considered as "country of origin" in this case.

6.11. Special rules for exports out of the Community (Article 11)

This Article modifies the provision in Article 12 of Directive 92/3 in order to make it consistent with the provisions of Article 27 of the Joint Convention on the Safety of Spent Fuel Management, and the export from the Community to a third country will in future require notification and consent of the State of destination, instead of a mere information.

6.12. Prohibited exports (Article 12)

Article 12 (1) corresponds to Article 11 of Directive 92/3, which prohibits exports to specific countries (ACP Countries) or to other third countries that do not meet the conditions for safe waste management. It has been amended to take into account that the Fourth Lomé ACP-EEC Convention has now been replaced by the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (ACP) of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000,² which entered into force on 1 April 2003. The relevant commitment by the Community had been included in Declaration IX to the Cotonou Agreement as follows: “The Community ensures that Article 11 of Directive 92/3/Euratom will be revised to cover all Parties of this Agreement which are not members of the Community.”

Article 12(2) reproduces the provision in Article 20, fourth indent, of Directive 92/3.

6.13. Use of a standard document (Article 13)

Article 13(1) has been adapted from Article 20 of Directive 92/3. This provision lays down a general obligation for the use of the standard document, so that individual references to the use of the standard document in the relevant provisions of the Directives are now redundant. The obligation to establish the new standard document by the date of transposition is laid down for the sake of clarity. However, should this deadline not be met, a transitional provision in Article 19 (3) provides for the use of the existing standard document.

Article 13(3) clarifies the use of languages, in order to avoid uncertainties. The need for clear rules on the use of languages is especially relevant in a Community of 25 Member States.

This question will subsequently be addressed when establishing the new standard document using the advisory committee procedure laid down in Article 16, possibly by including the different items/headings in all EU languages, or by allowing for the use of bilingual or multilingual official versions combining the language of the country of origin with one or more other EU languages, according to the needs.

Article 13 (4) corresponds to Article 7, second paragraph, of Directive 92/3.

Article 13 (5) corresponds to the provision in Article 8 of Directive 92/3, which has been adapted to the new structure of the Directive.

6.14. Competent authorities (Article 14)

The provision in Article 14 corresponds to Article 17 of Directive 92/3, but the reference to the automatic approval procedure has been deleted as a consequence of Article 6 (4).

² 2000/483/EC, OJ L 317, 15.12.2000, p. 3.

6.15. Regular reports (Article 15)

Article 15 corresponds to Article 18 of Directive 92/3. A reference is made to the procedure to be followed (this Proposal does not contain any provision similar to Article 20 of Directive 92/3, but integrates such a reference in Articles 3, 12, 13 and 15).

6.16. Advisory committee (Article 16)

Article 16 corresponds to Article 19 of Directive 92/3.

6.17. Transposition (Article 17)

When transposing this Directive, Member should pay special attention to those aspects that are new:

- Article 1 is mentioned, as far as it defines the extended scope of the Directive, which is now also applicable to shipments of spent fuel meant for reprocessing and shipments from one point to another of the same Member State but transiting through another country; and it makes reference to the quantities and concentration levels laid down in Directive 96/29.
- Article 2, extended provision on reshipments for processing and reprocessing purposes.
- Article 6, concerning the modified acceptance procedure.
- Article 9, paragraph 1, on shipment failure.
- Article 11, paragraph 1, concerning the exports out of the Community, which now requires the consent of the competent authorities of the country of destination.
- Article 12, including a new reference to the Cotonou ACP-EC Agreement.
- Article 13, on the use of the standard document, and in particular paragraph 3, on the use of languages.

6.18. Final provisions (Articles 18, 20 and 21)

Standard texts.

After Directive 92/3 has been repealed, all references to this have to be considered as referring to the present Directive. A correlation table is annexed to the Directive.

6.19. Transitional provisions (Article 19)

Although the transition to the revised procedure should not present major difficulties in practice, for reasons of legal certainty it was deemed necessary to make it clear that the special requirements introduced by this Directive will not be applicable where the procedure of authorisation was initiated before the date of transposition, meaning in those cases where the application for authorisation had been duly submitted before that date.

For those applications covering multiple shipments to a third country of destination submitted during the transitional period, Member States should, however, refuse to grant authorisation for several shipments where there is no objective reason for regrouping them in a single application and there is a suspicion that the operator is seeking to avoid the application of the relevant provisions of this Directive, and in particular the need to obtain the consent of the third country of destination.

The existing standard document should be used as long as the new one has not been established. If necessary, its wording should be adapted in practice for the needs of this Directive (e.g. reference to spent fuel).

Proposal for a

COUNCIL DIRECTIVE

on the supervision and control of shipments of radioactive waste and spent 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 Commission³ 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,⁴

Having regard to the opinion of the European Parliament⁵,

Whereas:

- (1) Operations involved in shipments of radioactive waste or spent fuel are subject to a number of requirements under Community and international legal instruments regarding in particular the safe transport of radioactive material and the conditions under which radioactive waste or spent fuel is disposed of or stored in the country of destination.
- (2) Further to these requirements, the health protection of workers and the general public requires that shipments of radioactive waste between Member States and into and out of the Community be subject to a compulsory and common system of prior authorisation. This was in particular highlighted by the European Parliament Resolution of 6 July 1988 on the findings of the Committee of Inquiry into the Handling and Transport of Nuclear Materials⁶, which called *inter alia* for comprehensive Community rules to make transfrontier movements of nuclear waste subject to a system of strict controls and authorisations from their point of origin to their point of storage.
- (3) Council Directive 92/3/Euratom of 3 February 1992 on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community.⁷ was adopted to establish a system of strict control and prior

³ OJ C [...], [...], p. [...].

⁴ OJ C [...], [...], p. [...].

⁵ OJ C [...], [...], p. [...].

⁶ OJ C 235, 12. 9. 1988, p. 70.

⁷ OJ L 35, 12.2.1992, p. 24.

authorisation for shipments of radioactive waste in order to prevent any radiological risk arising from illicit traffic of such materials.

- (4) This system of control and prior authorisation for shipments of radioactive waste has proved satisfactory. It needs, nevertheless, to be amended in the light of experience in order to clarify and add concepts and definitions, to address situations that had been omitted in the past, to simplify the existing procedure for the shipment of radioactive waste between Member States and to guarantee consistency with other Community and international provisions.
- (5) In the framework of the Fifth Phase of the SLIM (Simpler Legislation for Internal Market) initiative, a working group of representatives of Member States and of users was set up in order to address a number of concerns expressed by users of Directive 92/3/Euratom, while bringing it into line with current international rules and instruments.
- (6) The procedure laid down in Directive 92/3 has been applied in practice only to shipments of spent fuel for which no use is intended, considered thus as “radioactive waste” for the purposes of the Directive. From a radiological point of view, excluding from such supervision and control procedure spent fuel where it is intended for reprocessing is not justified. It is therefore appropriate to extend the scope of this Directive to all shipments of spent fuel, whether it is intended for disposal or for reprocessing.
- (7) Shipments from and to the same country of origin when they are transiting through another country were not included in the scope of Directive 92/3. This omission was not justified.
- (8) The adoption of Council Directive 2003/122/Euratom of 22 December 2003, on the control of high-activity sealed radioactive sources and orphan sources⁸, makes it necessary to adapt the wording of the provisions on reshipment of radioactive sealed sources.
- (9) Simplification of the existing procedure should not hamper the existing rights of the Member States to object to or set conditions to a shipment of radioactive waste which require their approval. Objections should be founded on relevant national or international provisions that can be easily identified.
- (10) The possibility for a Member State of destination or of transit to refuse the automatic procedure for approval of shipments imposes an unjustified administrative burden and generates uncertainty. The mandatory acknowledgement of receipt of the application by the authorities of the countries of destination and transit, together with the extension of the period for granting approval, should allow tacit approval to be assumed with a high degree of certainty.
- (11) To protect human health and the environment against the dangers arising from radioactive waste, account must be taken of risks occurring outside the Community. In

⁸ OJ L 346 , 31.12.2003, p. 57.

the case of radioactive waste leaving the Community, the third country of destination shall not only be informed of the shipment, but shall also give its consent on it.

- (12) The Partnership Agreement between the members of the African, Caribbean and Pacific Group of States (ACP) of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000,⁹ entered into force on 1 April 2003. It contains specific provisions on exports of radioactive waste to Parties of this Agreement which are not members of the Community.
- (13) The existing standard document needs to be adapted for the needs of the provisions of this Directive and in the light of the past experience. Clear rules on the use of languages will allow for legal certainty and avoid unjustified delays.
- (14) Periodical reporting from Member States to the Commission and from this to the European Parliament, to the Council and to the European Economic and Social Committee provides a useful overview of authorisations given Community wide and identifies possible difficulties encountered in practice by the Member States, and solutions applied.
- (15) In the light of the foregoing, it is necessary, for reasons of clarity, to repeal and replace Directive 92/3/Euratom. This Directive must not prejudice the obligations of the Member States concerning the deadlines for transposition into national law and application of the repealed Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Subject matter and scope

- 1. This Directive shall provide adequate administrative arrangements so as to guarantee an adequate protection of the population, as well as adequate safeguards of fissile material, by establishing a uniform system of supervision and control of shipments of radioactive waste and spent fuel.
- 2. This Directive shall apply to shipments of radioactive waste or spent fuel whenever :
 - (a) the country of origin, the country of destination or the country or countries of transit are 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/Euratom¹⁰.

⁹ 2000/483/EC, OJ L 317, 15.12.2000, p. 3.

¹⁰ OJ L 159 du 29.6.1996, p. 1.

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 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 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 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 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 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 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 of origin shall send the applications referred to in Article 4 for approval to the competent authorities of the country of destination and of the country or countries of transit, if any.
2. The sending of that document shall in no way affect the subsequent decision referred to in Article 7.

Article 6
Acceptance and refusal

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

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

However, the competent authorities of the country of destination or of any country 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 of destination and/or the intended countries of transit, those countries shall be deemed to have given their approval for the shipment requested.
3. Reasons shall be given for any refusal to grant approval, or for conditions attached to approval, which shall be based on the relevant legislation applicable.

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 States.

4. The Member State or States which approved transit for a given shipment may not refuse to approve reshipment in the following cases:
 - (a) When the initial shipment was approved 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 shipments

1. If all the approvals 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.

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.

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 of destination shall send copies of the acknowledgement to the other countries involved in the operation.
3. The competent authorities of the country of origin shall send a copy of the acknowledgement to the original holder.

Article 9

Shipment failure

1. The Member State of destination may decide that the shipment may not be completed in any of the following circumstances:
 - (a) where the conditions for shipment are not complied with in accordance with the provisions of this Directive, or
 - (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 shall ensure that the radioactive waste or the spent fuel in question is taken back by the holder of that radioactive waste.
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 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

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 consignee shall act as the holder and the competent authorities of the country of destination shall act as if they were the competent authorities of the country of origin.
2. 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, 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 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 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 of origin, in accordance with the criteria referred to in paragraph 2, have the technical, legal or administrative resources to manage the radioactive waste 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 shipment 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 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 countries 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 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 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 *(one year after the date of adoption)*.

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 the standard document provided for in Article 13 of this Directive has not been published by *(same date as Article 17(1))*, the standard document established by Commission Decision 93/552/Euratom¹¹ shall be used *mutatis mutandis* for the purposes 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*.

¹¹ OJ L 268 , 29.10.1993, p. 83.

Article 21

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President*

ANNEX

Correlation Table

Directive 92/3/Euratom	This Directive	Nature of modification ¹²
	Article 1(1)	New provision
Article 1 (1)	Article 1 (2)	Amended
Article 2	Article 3	Adapted
Article 3	First recital	Adapted
Article 4 (1) first sentence	Article 4 (1)	Adapted
Article 4 (1) second sentence	Article 5 (1)	Adapted
Article 4 (2)	Article 13 (1)	Adapted
Article 4 (3)	Article 5 (2)	
Article 5 (1)	Article 4 (2)	Adapted
Article 5 (2)	Article 7 (4)	Adapted
Article 6 (1) first subparagraph	Article 6 (1) second paragraph	Amended
Article 6 (1) second subparagraph	Article 13 (1)	Adapted
Article 6 (2) first subparagraph	Article 6 (3) second subparagraph	Amended
Article 6 (2) second subparagraph	Article 6 (3) first subparagraph	Amended
Article 6 (3)	Article 6 (1) third subparagraph	Adapted
Article 6 (4)	Article 6 (2)	Amended
Article 7 (1)	Article 7 (1)	Adapted
Article 7 (2), first sentence	Article 13 (1)	Adapted

¹²

"Adapted" indicates that the wording has been reformulated without changing the scope of the text of the repealed Directive. Changes to the scope of the provisions of the repealed Directive are denoted by the word "Amended".

Article 7 (2), second sentence	Article 13 (4)	Adapted
Article 7 (3)	Article 7 (2)	
Article 8 (1)	Article 13 (5)	Adapted
Article 8 (2)	Article 13 (6)	
Article 9 (1), first part of the sentence	Article 8 (1)	Adapted
Article 9 (1), end part of the sentence	Article 13 (1)	Adapted
Article 9 (2)	Article 8 (2)	
Article 10 (1)	Article 10 (1)	Adapted
Article 10 (1), end of the first sentence	Article 13 (1)	Adapted
Article 10 (2)	Article 10 (2)	Adapted
Article 10 (3) reference to paragraph 1	Article 10 (1)	Adapted
Article 10 (3) reference to paragraph 2	Article 10 (2)	Adapted
Article 11	Article 12 (1)	Adapted
Article 12 (1)	Article 11 (1)	Amended
Article 12 (2)	Article 11(2)	Adapted
Article 12 (3)	Article 11(3)	
Article 12 (4)	Article 13(1)	Adapted
Article 12 (5)	Article 11 (4)	Adapted
Article 12 (6)	Article 11 (5)	Adapted
Article 13 (1)	Article 1 (3) first sentence	Amended
Article 13 (2)	Article 1 (3) second sentence	
Article 14	Article 2	Amended
	Article 9 (1)	New provision

Article 15 (1)	Article 9 (2)	Adapted
Article 15 (2)	Article 9 (3)	Adapted
Article 16, first indent	Article 6 (4) (a)	Adapted
Article 16, second indent	Article 6 (4) (b)	Adapted
Article 17 (1)	Article 14 (1)	Adapted
Article 17 (2)	Article 14 (2)	
Article 17 (3)	Article 14 (3)	
Article 18 (1)	Article 15 (1)	Adapted
Article 18 (2)	Article 15 (2)	
Article 18 (3)	Article 15 (3) first sentence	
Article 19 (1)	Article 16 (1)	Adapted
Article 19 (2)	Article 16 (2)	
Article 19 (3)	Article 16 (3)	
Article 19 (4)	Article 16 (4)	
Article 20, first indent	Article 13 (2)	Adapted
Article 20, second indent	Article 13 (2)	Adapted
Article 20, third indent	Article 13 (2)	Adapted
Article 20, fourth indent	Article 12 (2)	Adapted
Article 20, fifth indent	Article 15 (3)	Adapted
Article 21	Article 17	Adapted
Article 22	Article 21	
	Article 13(3)	New provision
	Article 18	New provision
	Article 19	New provision
	Article 20	New provision