

(2005/C 286/07)

On 12 November 2004 the Commission decided to consult the European Economic and Social Committee, under Article 31 of the Treaty establishing the European Atomic Energy Community, on the abovementioned proposal.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 May 2005. The rapporteur was Mr Buffetaut.

At its 418th plenary session, held on 8 and 9 June 2005 (meeting of 9 June 2005), the European Economic and Social Committee adopted the following opinion by 120 votes with 6 abstentions.

1. Introduction


1.2 The Directive applies both to 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. They have the authority to approve such transfers or reject them.

1.3 As regards export, the authorities of the third country of destination are informed about the transfer.

1.4 After more than a decade of generally satisfactory application, the Commission reached the conclusion that some revisions were necessary for practical and legal reasons.

1.5 The revision process was initiated in the context of the fifth phase of the SLIM initiative (Simpler Legislation for the Internal Market).

1.5.1 Its main objective was to look into the feasibility of:

— examining and clarifying those rules in the Directive which provide for the refusal to grant approvals for shipments of radioactive waste;

— simplifying the standard document used for notification;

— replacing the Directive with a Regulation.

1.5.2 At the end of this process, 14 recommendations were put forward and served as the basis for further consultation on revising the Directive.

2. The new Proposal for a Directive

2.1 The European Commission puts forward four reasons for revising Directive 92/3:

— consistency with the latest Euratom directives;

— consistency with international conventions;

— clarifying the procedure in practice: this involves clarifying certain concepts, amending existing definitions or adding new ones, eliminating inconsistencies and simplifying the procedure;

— extension of the Directive's scope to spent fuel: 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. The Commission wishes to bring spent fuel for reprocessing within the scope of the Directive since it believes that it is illogical to apply or not apply legislation according to the intended use of the spent fuel when the material is identical.

2.2 Finally, the Commission wishes to improve the structure of the text from the point of view of legislative technique.
3. General comments

3.1 As the Commission points out, the Directive presented certain practical problems regarding its application. When consulted within the framework of the SLIM initiative, the nuclear industry drew up recommendations advocating the clarification and simplification of existing procedures in order to improve the system's efficiency, increase predictability and save time.

3.2 The Commission is justified in its decision to revise the Directive to ensure consistency with the latest Euratom directives and with international conventions, in particular the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, and in order to simplify it.

3.3 Efforts to simplify existing procedures, e.g. the generalisation of automatic approval (Article 6), the introduction of an acknowledgement of receipt (Article 8), modifications to the use of languages in the standard document (Article 13), are to be welcomed. However, the SLIM approach could probably have been taken further. In fact, several difficulties identified in practice persist. Furthermore, some of the proposed amendments raise queries regarding their practical implementation. Other amendments run the risk of obstructing the efficient transfer of radioactive waste and spent fuel. Finally, the industrial sector has expressed concern regarding the extension of the application of Directive 92/3/Euratom to spent fuel for reprocessing since there is a risk of making transfers more difficult and increasing administrative procedures without raising the level of protection for the population and workers, who are already safeguarded by other legal instruments, viz., the Joint Convention on the Safety of Spent Fuel Management and the Safety of Radioactive Waste Management, and existing rules on the transport of radioactive materials.

4. Specific comments

The drafting of the proposal raises important points of principle.

4.1 The new Directive and the free movement of spent fuel intended for reprocessing

4.1.1 One of the new proposal's major innovations is the extension of the Directive's scope to all spent fuels, irrespective of whether they are to be reprocessed or stored permanently.

At present, spent fuel intended for reprocessing, which unlike radioactive waste is considered as goods awaiting further use, does not fall within the scope of Directive 92/3.

4.1.2 This distinction between spent fuel to be stored permanently, which is considered as radioactive waste, and spent fuel for reprocessing has been explained by the Commission on several occasions and in clear terms (answers to European Parliament Written Questions E-1734/97 and P-1702/02). Furthermore, it reflects the right of each Member State to formulate and implement its own management policy for spent fuel as well as the different strategies that exist in this area.

4.1.3 The Commission cites radiation protection and logic (the materials are the same, only the destination changes) as arguments for extending the scope of application to spent fuels for reprocessing. If radioactive materials are to be subject to the same system irrespective of their destination, then it is vital to ensure that the new Directive is not misapplied in order to obstruct the transfer of spent fuel. For this reason, the automatic approval procedure serves to balance the document and should be retained. Another point that would further balance the document would be to define more precisely the grounds for a transit State's refusal to authorise a transfer.

4.2 State of transit considerations

4.2.1 The new proposal defines a country of transit as 'any country other than the country of origin or the country of destination, through which territory a shipment is planned or takes place'. How should the word 'territory' be defined? Does it include land, territorial waters, the exclusive economic zone and airspace?

4.2.2 These concepts must be clearly defined since the consequences of these provisions could vary considerably depending on whether, for instance, the exclusive economic zone is considered as an integral part of the country's territory. It is important to bear in mind that under international law, a State's powers vary according to the part of its territory in question.

4.2.3 International public law grants States full sovereignty over their territorial waters, but not over their exclusive economic zone and the continental shelf, where their rights are restricted. The EESC believes that a State of transit's territory should be interpreted as the State's land territory, airspace and territorial waters, but should exclude its exclusive economic zone.

4.2.4 This position is all the more justified by the fact that exclusive economic zones do not exist in the Mediterranean since its size does not allow for them. The European Union includes many Mediterranean countries, which would not benefit from the same rights as other Member States if the exclusive economic zone were to be included. Furthermore, the EESC recommends that this more precise definition of a transit State's territory should be applied in the light of internationally recognised navigation rights and freedoms, in particular, the right of innocent passage through territorial waters, as explicitly specified under Article 27(3)(i) of the Joint Convention.
4.3 Defining a State of transit’s rights

4.3.1 It is appropriate to examine the extent of rights conferred upon States of transit under this Directive.

4.3.2 The proposal foresees prior authorisation by States of transit, irrespective of whether they are EU Member States or third States.

4.3.3 When Member States are required to request prior transit authorisation through a third State, they should ensure that the State respects the safety standards set out in the Convention.

4.4 Conditions governing the exercise of rights conferred upon a State of transit

4.4.1 Article 27(3)(i) of the IAEA Joint Convention stipulates that nothing in the Convention’s provisions ‘prejudices or affects the exercise, by ships and aircraft of all States, of maritime, river and air navigation rights and freedoms, as provided for in international law’.

4.4.2 In fact, the SLIM team had suggested that it would be advisable to include such a provision in the Directive.

4.4.3 At all events, it would be necessary to specify more precisely the grounds that would entitle a Member State of transit to refuse transit authorisation. Directive 92/3 established a derogation system to the principles of the nuclear common market and, as a consequence, this derogation system must be strictly applied. Thus, under this Directive, States of transit can only refuse transit authorisation on grounds of non-compliance with international and Community transport rules. However, the current Commission proposal merely adopts the loose phrase ‘the relevant legislation applicable’.

4.4.4 Its pertinence and clarity would be enhanced if a distinction were made between Member States of transit and Member States of destination. The main concern for Member States of transit would be to ensure that the proposed transfer satisfied international and EU regulatory conditions for the transport of radioactive materials. The main areas of concern would be far broader for Member States of destination and would include not only transport but also the management of radioactive material.

4.4.5 Thus Article 6(3) could read as follows:

‘Reasons shall be given for any refusal to grant authorisation, or for conditions attached to authorisation:

i) for Member States of transit, on the basis of international, Community and national rules relevant to the transport of radioactive materials;

ii) for Member States of destination, on the basis of existing legislation on radioactive waste management and the management of spent fuel or international, Community and national rules relevant to the transport of radioactive materials.’

4.4.6 Finally, the so-called automatic approval procedure, which prevents States from adopting delaying or foot-dragging procedures, is extremely useful and should not be called into question (Article 6(2) of the proposal).

4.5 Practical difficulties in implementing certain procedures

4.5.1 The proposal introduces welcome and genuine simplifications to existing procedures. Nevertheless, some difficulties and queries persist regarding the practical application of certain amendments.

4.6 Clarifying the rules for imports and exports (Articles 10, 11 and 12)

4.6.1. The structure of the Directive has been changed to identify more clearly the different stages in the procedure. Specific provisions apply to imports and exports, but just how they tie in with the general rules specifying the stages of the procedure needs to be clarified.

4.6.2 Thus, reading Article 10(1) in combination with the proposal’s general provisions would lead a Member State of destination to submit a request for authorisation to itself, which seems rather odd.

4.6.3 Under Article 10(2), the ‘person who has the responsibility for managing the shipment’ is unclear, and could refer to a variety of operators. If this refers to legal responsibility, then should it be defined contractually and/or by regulation or law?

4.6.4 Reconciling Article 10(2) with Article 12 specifying the conditions for prohibiting exports also presents difficulties. Is the Member State of transit expected, in addition to other concerns, to assess with certainty the ability of a third State of destination to manage radioactive waste (Article 12(1)(c))?

4.6.5 In order to ensure that precise requirements are laid down for exports of radioactive waste and spent fuel outside the borders of the EU, it is proposed that Article 12(1)(c) should be amended by inclusion of a provision to the effect that the authorities of Member States shall not authorise shipments to any third country in which technical, legal and administrative resources, and the channels for public involvement in decision-making are insufficient to guarantee the safe management of radioactive waste, at least to the standards applying in EU countries.
4.6.6 Article 11 on rules for exports outside the Community does not in any way specify the form in which a request for authorisation by a third State is to be submitted and/or obtained. Moreover, the application of the proposal’s general rules cannot be reconciled with the extraterritoriality of third States of destination, which do not fall within the Community’s jurisdiction.

4.6.7 Refusal of authorisation by the State of destination. As already stated with reference to States of transit, it would be preferable to specify more clearly the reasons that could justify a refusal of authorisation (Article 6(3) applies to both categories of States).

4.7 Clarification and standardisation of terminology

4.7.1 ‘Radioactive waste’: Article 3(1) provides a new definition of radioactive waste. Although it is supposed to be based on the Joint Convention definition, it contains some differences. This is particularly so in the case of identifying the country that is to categorise the radioactive waste. It would be preferable to apply the Joint Convention definition.

4.7.2 ‘Technical specifications’: Article 9 refers to ‘technical specifications under which the shipment was approved’ without defining the term. Since this term is often used in legislation on the transport of radioactive waste and spent fuel, the term should be clearly defined in order to avoid any risk of confusion.

4.7.3 ‘Authorisation’ — ‘approval’ — ‘acceptance’ — ‘consent’: Several articles in the proposal (Articles 4 to 7 and Articles 10, 11 and 13) make indiscriminate use of these terms. Standardising terminology would facilitate reading and interpreting the document. The EESC recommends retaining two terms: authorisation and consent. Authorisation: this term would refer to the agreement of the State of origin. Consent: this would refer to the agreement given by the State of destination and/or transit. This distinction would make it possible to distinguish between the two major phases in the control procedure laid down in the Directive.

5. Conclusions

5.1 The EESC agrees that the Directive should be revised to ensure consistency with Euratom’s latest directives and with international conventions, as well as to simplify and clarify existing procedures. It welcomes the introduction of an automatic approval procedure that prevents States from employing delaying tactics.

5.2 Nevertheless, it would draw attention to the need to redefine the rules on transit in order to ensure that their application does not cause undue interference with the transport of spent fuel for reprocessing within the European Union, which would be contrary to the principles of the nuclear common market.

5.3 Finally, it is necessary to clarify the rules on imports and exports and to redefine more precisely the grounds entitling a State of transit or destination to refuse authorisation.


The President
of the European Economic and Social Committee
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