

II

(Acts whose publication is not obligatory)

COUNCIL

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission⁽¹⁾, drawn up after obtaining the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts in the Member States,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas on 2 February 1959 the Council adopted Directives laying down the basic standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation⁽⁴⁾, as amended by Directive 80/836/Euratom⁽⁵⁾ and Directive 84/467/Euratom⁽⁶⁾;

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

Whereas, pursuant to Article 3 of Directive 80/836/Euratom, each Member State must make compulsory the reporting of activities which involve a hazard arising from

ionizing radiation; whereas, in the light of possible dangers and other relevant considerations these activities are subject to prior authorization in cases decided upon by each Member State;

Whereas Member States have consequently set up systems within their territories in order to meet the requirements of Article 3 of Directive 80/836/Euratom laying down basic standards in accordance with Article 30 of the Euratom Treaty; whereas, therefore, by means of the internal controls that Member States apply on the basis of national rules consistent with existing Community and any relevant international requirements, Member States continue to ensure a comparable level of protection within their territories;

Whereas the protection of the health 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 system of prior authorization; whereas this requirement is in line with the Community's policy of subsidiarity;

Whereas the European Parliament resolution of 6 July 1988 on the findings of the Committee of Inquiry into the Handling and Transport of Nuclear Materials⁽⁷⁾ calls *inter alia*, for comprehensive Community rules to make transfrontier movements of nuclear waste subject to a system of strict controls and authorizations from their point of origin to their point of storage;

Whereas Council Directive 84/631/EEC of 6 December 1984 on the supervision and control within the European Community of the transfrontier shipment of hazardous waste⁽⁸⁾ does not apply to radioactive waste;

⁽¹⁾ OJ No C 210, 23. 8. 1990, p. 7.

⁽²⁾ OJ No C 267, 14. 10. 1991, p. 210.

⁽³⁾ OJ No C 168, 10. 7. 1990, p. 18.

⁽⁴⁾ OJ No 11, 20. 2. 1959, p. 221/59.

⁽⁵⁾ OJ No L 246, 17. 9. 1980, p. 1.

⁽⁶⁾ OJ No L 265, 5. 10. 1984, p. 4.

⁽⁷⁾ OJ No C 235, 12. 9. 1988, p. 70.

⁽⁸⁾ OJ No L 326, 13. 12. 1984, p. 31. Directive as last amended by Directive 86/279/EEC (OJ No L 181, 4. 7. 1986, p. 13).

Whereas by Decision No 90/170/EEC⁽¹⁾ the Council has decided that the Community should be Party to the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal of 22 March 1989; whereas that Convention does not apply to radioactive waste;

Whereas all the Member States have subscribed to the International Atomic Energy Agency (IAEA) code of good practice on the international transboundary movement of radioactive waste;

Whereas the management of radioactive waste necessitates supervision and control including a compulsory and common notification procedure for shipments of such waste;

Whereas measures ensuring *post-factum* control of shipments are necessary;

Whereas the competent authorities of the Member States of destination of radioactive waste should be able to raise objections to shipments of radioactive waste;

Whereas it is also desirable for the competent authorities of the Member State of origin and of the Member State(s) of transit to be able, subject to certain criteria, to lay down conditions in respect of the shipment of radioactive waste on their territory;

Whereas, to protect human health and the environment against dangers arising from such waste, account must be taken of risks occurring outside the Community; whereas, therefore, in the case of radioactive waste entering and/or leaving the Community, the third country of destination or origin and any third country or countries of transit must be consulted and informed and must have given their consent;

Whereas the Fourth ACP-EEC Convention signed at Lomé on 15 December 1989 contains specific provisions governing the export of radioactive waste from the Community to non-member States party to that Convention;

Whereas radioactive waste may contain nuclear materials as defined by Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards⁽²⁾ and the transport of such substances must be subjected to the International Convention on the physical protection of nuclear materials (IAEA, 1980),

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Scope

Article 1

1. This Directive shall apply to shipments of radioactive waste between Member States and into and out of the

Community whenever the quantities and concentration exceed the levels laid down in Articles 4 (a) and (b) of Directive 80/836/Euratom.

2. Specific provisions concerning reshipment of such waste are set out in Title IV.

Article 2

For the purpose of this Directive:

- '*radioactive waste*' means any material which contains or is contaminated by radio-nuclides and for which no use is foreseen,
- '*shipment*' means transport operations from the place of origin to the place of destination, including loading and unloading, of radioactive waste,
- the '*holder*' of radioactive waste means any natural or legal person who, before carrying out a shipment, has the legal responsibility for such materials and intends to carry out shipment to a consignee,
- the '*consignee*' of radioactive waste means any natural or legal person to whom such material is shipped,
- '*place of origin*' and '*place of destination*' mean places situated in two different countries, either Member States of the Community or third countries, accordingly called '*country of origin*' and '*country of destination*',
- '*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 Titles I to IV inclusive; these competent authorities shall be designated in accordance with Article 17,
- '*sealed source*' has the meaning given to it in Directive 80/836/Euratom.

Article 3

The transport operations necessary for shipment shall comply with Community and national provisions and with international agreements on the transport of radioactive material.

TITLE II

Shipments between Member States

Article 4

A holder of radioactive waste who intends to carry out a shipment of such waste or to arrange for such a shipment to be carried out shall submit an application for authori-

⁽¹⁾ OJ No L 92, 7. 4. 1990, p. 52.

⁽²⁾ OJ No L 363, 31. 12. 1976, p. 1. Regulation as amended by Regulation (Euratom) No 220/90 (OJ No L 22, 27. 1. 1990, p. 56).

zation to the competent authorities of the country of origin. These competent authorities shall send such applications for approval to the competent authorities of the country of destination and of the country or countries of transit, if any.

For this purpose they shall use the standard document referred to in Article 20.

The sending of that document shall in no way affect the subsequent decision referred to in Article 7.

Article 5

1. Any application may be sent in respect of more than one shipment, provided that :

- the radioactive waste to which it relates essentially has the same physical, chemical and radioactive characteristics, and
- the shipments are to be made from the same holder to the same consignee and involve the same competent authorities, and
- 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.

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

Article 6

1. Not later than two months after 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.

For this purpose they shall use the standard document referred to in Article 20.

2. 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 and must comply with existing international agreements.

Reasons shall be given for any refusal to grant approval, or the attaching of conditions to approval, in accordance with Article 3.

3. 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 period referred to in paragraph 1 to make their position known.

4. If upon expiry of the periods referred to in paragraph 1 and, if appropriate, paragraph 3, 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, unless they have informed the Commission, in accordance with Article 17, that they do not accept this automatic approval procedure in general.

Article 7

If all the approvals necessary for shipment have been granted, the competent authorities of the Member State of origin shall be entitled to authorize the holder of the radioactive waste to ship it and inform the competent authorities of the country of destination and of the country or countries of transit, if any.

For that purpose, they shall use the standard document referred to in Article 20. Any additional requirements for such shipments shall be attached to this document.

This authorization 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.

Article 8

Without prejudice to any other accompanying documents required under other relevant legal provisions, the documents referred to in Articles 4 and 6 shall accompany each shipment falling under the scope of this Directive, including the cases of approval of more than one transfer referred to in Article 5.

Where shipments are made by rail, these documents shall be available to the competent authorities of all the countries concerned.

Article 9

1. Within 15 days of receipt, the consignee of the radioactive waste shall send the competent authorities of its Member State an acknowledgement of receipt, using the standard document referred to in Article 20.

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

TITLE III

Imports into and exports out of the Community

Article 10

1. Where waste 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 authorization to the competent authorities of that Member State using the standard document referred to in Article 20. 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 referred to in Title II in respect of the country or countries of transit.

2. Where waste 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 waste is first to enter the Community shall be deemed to be the country of origin for the purposes of that shipment.

3. With regard to shipments falling within paragraph 1, the intended consignee of the shipment within the Community, and with regard to shipments falling within paragraph 2, the person within the Member State in whose territory the waste is first to enter the Community who has responsibility for managing the shipment within that Member State shall inform his competent authorities in order to initiate the appropriate procedures.

Article 11

The competent authorities of Member States shall not authorize shipments:

1. either to:
 - (a) a destination south of latitude 60° south;
 - (b) a State party to the Fourth ACP-EEC Convention which is not a member of the Community, taking account, however, of Article 14;
2. or to a third country which, in the opinion of the competent authorities of the country of origin, in accordance with the criteria referred to in Article 20, does not have the technical, legal or administrative resources to manage the radioactive waste safely.

Article 12

1. Where radioactive waste is to be exported from the Community to a third country, the competent authorities of the Member State of origin shall contact the authorities of the country of destination regarding such a shipment.
2. If all the conditions for shipment are fulfilled, the competent authorities of the Member State of origin shall authorize the holder of radioactive waste to ship it and shall inform the authorities of the country of destination about this shipment.
3. This authorization 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. For the purpose of the shipment, the standard documents referred to in Article 20 shall be used.

5. The holder of the radioactive waste shall notify the competent authorities of the country of origin that the waste 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.

6. This notification shall be substantiated by a declaration or certification of the consignee of the radioactive waste stating that the waste has reached its proper destination and indicating the customs post of entry in the third country.

TITLE IV

Reshipment operations

Article 13

Where a sealed source is returned by its user to the supplier of the source in another country, its shipment shall not fall within the scope of this Directive.

However, this exemption shall not apply to sealed sources containing fissile material.

Article 14

This Directive shall not affect the right of a Member State or an undertaking in the Member State to which waste is to be exported for processing to return the 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 exported for reprocessing to return to its country of origin waste and/or other products of the reprocessing operation.

Article 15

1. Where a shipment of radioactive waste cannot be completed or if the conditions for shipment are not complied with in accordance with the provisions under Title II, the competent authorities of the Member State of dispatch shall ensure that the radioactive waste in question is taken back by the holder of that waste.
2. In case of shipments of radioactive waste from a third country to a destination within the Community, the competent authorities of the Member State of destination shall ensure that the consignee of that waste negotiates a clause with the holder of the waste established in the third country obliging that holder to take back the waste where a shipment cannot be completed.

Article 16

The Member State or States which approved transit for the initial shipment may not refuse to approve reshipment in the cases referred to :

- in Article 14, if the reshipment concerns the same material after treatment or reprocessing and if all relevant legislation is respected,
- in Article 15, if the reshipment is undertaken on the same conditions and with the same specifications.

TITLE V

Procedural provisions*Article 17*

Member States shall forward to the Commission not later than 1 January 1994 the name(s) and the address(es) of the competent authorities and all necessary information for rapidly communicating with such authorities, as well as their possible non-acceptance of the automatic approval procedure referred to in Article 6 (4).

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 18

Every two years, and for the first time on 31 January 1994, 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 prepare a summary report for the European Parliament, the Council and the Economic and Social Committee.

Article 19

The Commission shall be assisted in performing the tasks laid down in Articles 18 and 20 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 ; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost 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 20

The procedure laid down in Article 19 shall in particular apply to :

- the preparation and possible updating of the standard document for applications for authorization referred to in Article 4,
- the preparation and possible updating of the standard document for granting approval referred to in Article 6 (1),
- the preparation and possible updating of the standard document for acknowledgment of receipt referred to in Article 9 (1),
- the establishment of criteria enabling Member States, to evaluate whether requirements for exports of radioactive waste are met, as provided for in Article 11 (2),
- the preparation of the summary report referred to in Article 18.

TITLE VI

Final provisions*Article 21*

1. Member States shall bring into force not later than 1 January 1994 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2. When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

3. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field governed by this Directive.

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 3 February 1992.

For the Council
The President
 João PINHEIRO