



COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

INTERINSTITUTIONAL AGREEMENT

on inter-institutional co-operation in the framework of international Conventions to which the European Atomic Energy Community and its Member States are parties

(presented by the Commission)

{SEC(2006) 519}

EXPLANATORY MEMORANDUM

1. OBJECTIVE

The purpose of this proposal is to set out general principles for inter-institutional co-ordination between the Member States represented in the Council, and the Commission representing the European Atomic Energy Community (hereinafter “the Community”), when participating at international events whose subject matter falls partly within the competence of the Community covered by the Treaty establishing the European Atomic Energy Community and partly within that of the Member States.

Coordination between the Commission and the Member States represented in the Council is necessary in order for them to exercise their respective roles in full accordance with the Treaty and the Community spirit when both the Commission and the Member States take part in such events.

The need to define a set of principles for joint participation by Euratom and its Member States was highlighted recently during the meetings to review the Convention on Nuclear Safety and the Conference to consider and adopt proposed amendments to the Convention on the Physical Protection of Nuclear Material.

2. EURATOM EXTERNAL COMPETENCE

The main task of the European Atomic Energy Community created in 1957, as stipulated in Article 1 of the Euratom Treaty, is “to contribute to the raising of the standards of living in the Member States and to the development of relations with other countries by creating the conditions necessary for the speedy establishment and growth of nuclear industries”. To accomplish this task, the Community has been given sovereign rights, which the Member States ceded to it by signing the Euratom Treaty, in the following main areas: research, health and safety (protection of workers and the population against the dangers of ionising radiation), supply of raw materials and nuclear safeguards.

The Community can under Article 2(h) of the Euratom Treaty establish relations with third countries and international organisations to foster progress in the peaceful uses of nuclear energy. To this end, the Community may, within the limits of its powers and jurisdiction, enter into obligations by concluding agreements or contracts with a third State, an international organisation or a national of a third State (Article 101 of the Euratom Treaty).

The Community’s external competence has been confirmed by case law. In 1978, in connection with the planned accession by the Community to the Physical Protection Convention, the Court of Justice of the European Communities examined the Community’s external competences¹. Referring to its case law on external competences, the Court noted that as the Community develops common internal rules it also acquires authority over external negotiations which might affect these common rules². The Court of Justice also declared that if the Community has the internal competence to achieve a specific objective, it implicitly

¹ Ruling of the Court of 14 November 1978, Ruling 1/78.

² Case 22/70 of 31.03.1971, Commission v. Council, ECR 1971, p. 263 - AETR.

holds the exclusive external competence on that subject insofar as such an external exercise is necessary to achieve that objective³. Furthermore, concerning the implementation of an international obligation by the Community and its Member States, the Court ruled that the Convention can be implemented as regards the Community only by means of a close association between the institutions of the Community and the Member States, both in the process of negotiation and conclusion and in the fulfilment of the obligations entered into.

In 1994, the Court of Justice confirmed in its Opinion 1/94⁴ that “where it is apparent that the subject matter of an agreement or convention falls in part within the competence of the Community and in part within that of the Member States, it is essential to ensure close cooperation between the Member States and the Community institutions both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into”.

Recently, concerning the accession of the Community to the Convention on Nuclear Safety, the opinion of Advocate-General Jacobs, based on which the Court gave judgment on 10 December 2002, confirmed that: “Under Article 101(1) of the Treaty the Community may conclude international agreements ‘within the limits of its powers and jurisdiction’. Euratom external competence therefore has the same scope as its internal competence or, in other words, it has the power to enter into international agreements on all the matters on which it is entitled to act internally”⁵.

3. EURATOM OBLIGATIONS ARISING FROM ITS INTERNATIONAL RELATIONS

3.1. Introduction

For the matters covered by the Treaty establishing the European Atomic Energy Community the Community is at present a contracting party to five international conventions; these are the Convention on Nuclear Safety, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, the Convention on Early Notification of a Nuclear Accident, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency and the Convention on the Physical Protection of Nuclear Material.

These conventions provide that regional integration organisations are parties only to the extent of their competence. The extent of their competence in matters covered by the Convention has to be communicated by the regional integration organisations when depositing their instrument of accession. In particular, the Community, when acceding to these conventions, deposited its declarations. (Listed in the Commission Staff Working Document)

3.2. General principles

By signing the Euratom Treaty, the Member States transferred some of their competences in the nuclear field to the Community. Therefore, the Community alone, when it has exclusive competence, or, together with the Member States, when competences are shared, is in a

³ Opinion 1/76 of 26.04.1977, Draft Agreement establishing a European laying-up fund for inland waterway vessels, ECR 1977, p. 741.

⁴ Opinion 1/94 of 15.11.1994.

⁵ Opinion of Advocate-General Jacobs delivered on 13 December 2001, Case C-29/99. European Court reports 2002, p. I-11221.

position to assume and carry out obligations vis-à-vis third countries at international conferences, the result of which could affect the Community's sphere of competences.

The Community and the Member States when implementing their international obligations in this field, which fall in part within the Community's competence and in part within that of the Member States, have therefore to respect the following principles:

- Principle of co-operation: the Member States and the Community institutions shall co-operate closely in order to ensure the best possible result.
- Principle of coordination: the Member States and the Community shall coordinate their positions, always upholding a common position.
- Principle of solidarity: This principle is laid down in Article 192 of the Euratom Treaty: *“Member States shall take all appropriate measures whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks. They shall abstain from any measure which could jeopardise the attainment of the objectives of this Treaty.”*
- Principle of unity: the Member States shall facilitate the Community's task to ensure the unity of its representation vis-à-vis third parties.
- Added value principle: the Member States should regard the fact that they belong to the Community as an added value which does not hinder but rather reinforces their positions at international conferences.

3.3. Community participation at review meetings

The two IAEA Conventions – the Convention on Nuclear Safety and the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management - created an obligation for the States Parties to hold regular review meetings every three years. The purpose of these review meetings is to examine the reports submitted by the contracting parties on measures taken to implement the obligations of the Conventions.

The Commission – representing the Community at such review meetings – draws up a report on measures taken on behalf of Euratom to implement obligations of the Conventions which fall within its competences recognised in the Treaty establishing the European Atomic Energy Community, and it takes part alongside the Member States in review meetings to the extent of its competences.

The Commission should initiate contacts with the Council prior to finalising this report in due time before the review meeting in order to allow discussions with the Member States aimed at clarifying parts of the report. The Council is the appropriate forum for such discussions. According to the principles outlined above, reports submitted on behalf of the Community should constitute a Community document and – as such – not be the subject of discussion by Member States in international fora.

In those fora, reports submitted by the contracting parties are discussed and evaluated in so-called “country groups”, until now according to the peer review principle. Only representatives of delegations represented in a given country group are, in principle, allowed to participate in these discussions. The representatives of the Commission present the report

on behalf of Euratom. The individual Member States are not included in the Euratom delegation. The proposed agreement provides that Member States who so wish may take part in the Euratom delegation in order to ensure the unity of the Community's representation vis-à-vis third parties.

3.4. Community participation at revision and amendment conferences

All the conventions mentioned provide a mechanism for them to be revised or amended. The Community as a contracting party to these conventions takes part in these conferences in order to ensure the compatibility of the obligations arising from the conventions with policies and provisions of the Euratom Treaty and its secondary legislation.

When the subject matter of the revision or amendment conference falls partly within the competence of the Community covered by the Treaty establishing the European Atomic Energy Community and partly within that of the Member States, the participation of the Community needs to be co-ordinated.

Therefore, prior to the conference, the Commission has to undertake the necessary consultation with the Member States in the Council in order to establish a common position, which will be then promoted on behalf of the Community.

Furthermore, at the request of the Commission or any of the Member States, as many as required on-the-spot consultations should take place between the Commission, the Member States and the Council so as to establish a common position which would be presented during the conference on behalf of the Community.

4. CONCLUSION

This proposal for an interinstitutional agreement sets out general principles for interinstitutional co-ordination between the Member States meeting within the Council and the Commission representing the European Atomic Energy Community when attending meetings organised in the framework of international Conventions to which Euratom and its Member States are parties, in order to ensure a single representation vis-à-vis third states and to ensure that both Community and national obligations are respected.

INTERINSTITUTIONAL AGREEMENT

on inter-institutional co-operation in the framework of international Conventions to which the European Atomic Energy Community and its Member States are parties

THE COMMISSION OF THE EUROPEAN COMMUNITIES AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 192 thereof,

Whereas:

- (1) Where the subject matter of an agreement or convention falls in part within the competence of the Community and in part within that of the Member States, it is essential to ensure close co-operation between the Member States represented at the Council and the Commission, both in the process of negotiation and conclusion and in the fulfilment of the commitments entered into. That obligation to co-operate flows from the requirement of unity in the international representation of the Community. The Commission and the Member States should take all necessary steps to ensure the best possible co-operation in that regard.
- (2) The European Atomic Energy Community is at present a contracting party to five international conventions, in particular the Convention on Nuclear Safety⁶, the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management⁷, the Convention on Early Notification of a Nuclear Accident⁸, the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency⁹ and the Convention on the Physical Protection of Nuclear Material¹⁰.
- (3) Participation in international fora should be based on clear and agreed principles.
- (4) The Convention on Nuclear Safety and the Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management set up an obligation for the Contracting Parties to hold regular review meetings to examine the reports on measures taken to implement conventions' obligations submitted by the contracting parties. The Council should be adequately consulted in the reports to be drawn up and presented by the Commission on behalf of Euratom.

⁶ OJ L 318, 11/12/1999, p. 20.

⁷ OJ L 185, 16/07/2005, p. 33-34.

⁸ OJ L [...], [...], p. [...].

⁹ OJ L [...], [...], p. [...].

¹⁰ OJ L 149, 17/06/1980, p. 41.

- (5) The Commission representing the European Atomic Energy Community, being a contracting party to conventions, participates alongside the Member States at revision and amendment conferences to the extent of its competences. In order to ensure unity of the Community's representation vis-à-vis third parties, all necessary consultations should be undertaken with a view to reaching a common position, in respect of which consistent participation by both the Commission and the Member States can be ensured.

HAVE AGREED AS FOLLOWS:

1. PURPOSE

The purpose of this agreement is to set up general principles for co-ordinating the participation of the Member States and the Commission representing the European Atomic Energy Community at international events whose subject matter falls partly within the competence of the Community covered by the Treaty establishing the European Atomic Energy Community and partly within that of the Member States.

2. GENERAL PRINCIPLES

The Member States, when participating at such international events, shall act in close co-operation with the Commission and the Council on the basis of the following general principles.

1. Co-operation: the Member States and the Community institutions shall work together in order to ensure the best possible result.
2. Co-ordination: the Member States and the Community institutions shall coordinate their positions in order to uphold a common position.
3. Solidarity: the Member States shall take all appropriate measures to ensure fulfilment of the international obligations of the Community and shall abstain from any measures which could jeopardise the attainment thereof.
4. Unity: the Member States shall facilitate the role of the Community's towards third parties by ensuring the unity of its representation.
5. Added value: the Member States should regard belonging to the Community as an added value which strengthens rather than hinders their positions at the international conferences.

3. PARTICIPATION AT REVIEW MEETINGS

1. The Commission shall initiate contacts with the Council well before the review meeting takes place, prior to finalising its report on measures taken to implement obligations arising out of conventions.
2. The Community reports shall be discussed by Member States and Commission only within the Council. Discussions in other fora shall be avoided.

3. For the review meetings the Member States can nominate their representatives to take part in the Commission delegation. However, these representatives shall be different from those of the national delegations.

4. ATTENDANCE AT REVISION AND AMENDMENT CONFERENCES

1. Prior to a revision or an amendment conference, the Commission and the Member States shall undertake consultations in the Council in order to establish a common position.
2. During the conference on-the-spot preparatory meetings involving all the Member States present shall be organised by the Commission and the Council together. These meetings shall be called every time this is required or on the request of a Member State or the Commission in order to establish a common position to be presented in plenary on behalf of the Community.
3. During the conference the common position shall be presented on behalf of the Community by the Commission if it concerns a subject matter for which the Community has the exclusive competence, or by the Council when it concerns national competences, or jointly where the competences are shared. The Commission and the Member States may speak in support of the common position.
4. The Member States shall vote in line with the common position which has been agreed.

5. PUBLICATION

The present agreement shall be published in the *Official Journal of the European Union*.

Done at Brussels,

For the Commission
The President

For the Council
The President