

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 10 July 2007

**approving the accession of the European Atomic Energy Community to the amended Convention
on the Physical Protection of Nuclear Material and Nuclear Facilities**

(2007/513/Euratom)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 101 thereof,

Having regard to the proposal from the Commission,

Whereas:

- (1) Article 2(e) of the Treaty establishing the European Atomic Energy Community (Euratom Treaty) states that the European Atomic Energy Community (the Community) shall make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended.
- (2) The Convention on the Physical Protection of Nuclear Material (CPPNM) was adopted in 1979 and entered into force in 1987. As of 27 June 2006, 118 States and the Community were parties to the CPPNM. All the Member States are Parties to the CPPNM.
- (3) An Amendment Conference in accordance with Article 20 of the CPPNM was convened on 4 July 2005 under the auspices of the IAEA. The final act regarding the amendments to the CPPNM was signed by the Commission on behalf of the Community on 8 July 2005.
- (4) The Court of Justice of the European Communities (Court of Justice) ⁽¹⁾ decided that the participation of

the Member States in the CPPNM is compatible with the provisions of the Euratom Treaty only subject to the conditions that, in so far as its own powers and jurisdiction are concerned, the Community as such is a party to the CPPNM on the same lines as the Member States and that certain commitments of the CPPNM can only be implemented, where the Community is concerned, by means of close association between the Community and the Member States, both in the negotiation and conclusion process and in fulfilment of the commitments assumed.

- (5) The Court of Justice confirmed further that Article 2(e) of the Euratom Treaty gives the Community the task of making certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended, without making any distinction with regard to the nature of such diversions and the circumstances in which they might take place and finally that the very expression 'safeguards' which the Treaty uses to characterize the provisions of chapter VII has a wider scope than the mere substitution of a different destination for the one declared by a user of nuclear materials. Consequently, according to the Court of Justice, it includes also measures of physical protection ⁽²⁾. The Court of Justice also stated in its Ruling 1/78 that provisions related to criminal prosecution and extradition relate to matters falling within the jurisdiction of the Member States ⁽³⁾.
- (6) According to Article 18(4) of the CPPNM, when becoming party to the Convention the Community must communicate to the depositary a declaration indicating which articles of the CPPNM do not apply to it. That declaration is attached to this Decision.

⁽¹⁾ Ruling 1/78 of 14 November 1978, ECR 1978, p. 2151, in particular First operative part of the Ruling and paragraph 34.

⁽²⁾ Paragraph 21.

⁽³⁾ Paragraph 31.

(7) Article 7 of the CPPNM requires each party to make certain offences punishable by appropriate penalties which take into account their grave nature. It is understood that this provision leaves to the parties the choice of the nature, type and level of the penalties to be adopted. In particular, it does not require that the parties make the conducts described therein punishable by criminal penalties. Consequently, Article 7 applies to the Community, at least to some extent.

(8) Therefore the accession of the Community to the amended CPPNM should be approved,

HAS DECIDED AS FOLLOWS:

Sole Article

The accession of the European Atomic Energy Community to the Convention on the Physical Protection of Nuclear Material

and Nuclear Facilities, as amended by the Final Act signed on 8 July 2005, is hereby approved.

The texts of the amended Convention and of the declaration by the Community according to Articles 18(4) and 17(3) of the Convention are attached to this Decision.

Done at Brussels, 10 July 2007.

For the Council

The President

F. TEIXEIRA DOS SANTOS