

Directive 92/3/Euratom on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community was aimed at establishing a system of strict control and prior authorisation for shipments of radioactive waste. The Commission made a proposal (COM 04/0716) for the modification of this directive in 12.11.2004. It was, however, withdrawn in July 2005. The new, more thoroughly prepared proposal (COM 05/272) was launched on 21.12.2005, and the Commission has taken into account the preparatory work done in the Atomic Questions Group of the Council and the opinion of the EESC.

The legal base for the proposal is the Euratom Treaty and its Articles 31 and 32 (Health and Safety). Only the consultation procedure with the European Parliament is applied.

The Commission justifies its proposal by consistency with the latest Euratom directives, by consistency with international conventions, especially the IAEA Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management (which Euratom is a party to), by clarifying the procedures in practice and by extension of the scope to spent fuel.

Special attention is to be paid to the extended scope of the Directive, the automatic consent procedure for shipments and the separation between intra- and extra-community shipments.

The scope of the Directive is extended to spent fuel for reprocessing and disposal. It is a logical step from the radiological point of view.

The automatic approval procedure is introduced, and no country will have an option to the similar non-acceptance procedure like in the old Directive.

In the Council some Member States may want radioactive waste and spent fuel to be separated and, possibly, spent fuel to be excluded from this Directive. In such a case the option of non-acceptance of the automatic approval procedure on spent fuel for disposal should be honoured.

As to intra-community shipments of radioactive materials which may involve transit through third countries, only informing them is required (Article 7.1) once the shipment has been authorised. They should also give their consent, and such an amendment is needed.

The question of the spent fuel for disposal needs to be clarified.

The Preamble (xii) of the IAEA Joint Convention recognises that "any State has the right to ban imports into its territory of foreign spent fuel and radioactive waste";.

The Article 27(1.i) of the same Convention says that "a Contracting Party which is a State of origin shall take the appropriate steps to ensure that transboundary movement is authorized and takes place only with the prior notification and the consent of the State of destination";.

In its report on a Council Directive (Euratom) on "the management of spent fuel and radioactive waste" (PE 322.031 def) the European Parliament says (Recital 12.a) that "no Member State shall ever be obliged to accept imports of any kind of radioactive waste

from other member states";.

In the Recital (Paragraph 3.6) of this Directive proposal is said: "The provisions of this Directive should therefore be without prejudice to the right of Member States to export their spent fuel for reprocessing and to their right to refuse the entry into their territory of radioactive waste for final treatment or disposal, except in the case of reshipment."

Further, in the text (Article 6.3.b) the refusal of the Member State to grant a consent should be based: "for the Member State of destination, on relevant legislation applicable to the management of radioactive waste or spent fuel and on relevant national, Community or international legislation applicable to transport of radioactive material";.

The word "and" in the middle of the sentence raises the question, if the unambiguous right of the recipient country not to give its consent for the importation of spent fuel for final disposal is in doubt. In this respect, the text does not answer to the question: has every country the right to ban foreign nuclear spent fuel to be finally stored into the repositories in or on its soil.

Radioactive waste and spent fuel are, in the European common market legislation, goods which must be separated from each other. One needs to make a distinction between these different goods.

To clarify the text the Rapporteur proposes amendments to the text (and not to the legally less binding Recital) which make it clear that any country has the right to ban imports both of foreign radioactive waste and of foreign nuclear spent fuel for final disposal.

The Rapporteur understands the need (Article 16.1) to provide for solution for small producers of radioactive waste and accepts the idea

of promoting voluntary agreements between member states in this field, but to give (Article 16.4) the Commission the status of a referee to say what is "lack of cooperation" is an overreaction on the part of the Commission.

In the justification text of Article 16 the Commission says: "A specific duty of cooperation needs to be enounced in order to avoid situations where the authorisation/consent procedure might be misused for dilatory purposes and constitute an unjustified obstacle e.g. to the free movement of spent fuel within Community."

This above mentioned expression says that there is a free movement of spent fuel within the Community, without taking into account the right of a recipient country to ban, according to the IAEA Joint Convention, imports of foreign spent fuel for final disposal.

Waste, recyclable or not, and spent fuel, are, according to the Articles of the EC treaties to be regarded as goods, the movement of which, in accordance with Articles 28 and 29 EC, must not be hindered. As goods, radioactive waste and spent fuel for disposal fall under Article 28 et seq. EC.

In the Article 30 EC the "provisions of Articles 28 and 29 shall not prelude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of... the protection of health and life of humans..."

The treaties recognise the right of a Member State to ban imports of radioactive waste and spent fuel for final disposal. The recipient country needs only to refer to the protection of the health of workers and the general public. The non-discriminatory hindrance of the free of movement of spent fuel for disposal, even though it is a good, is justified.

In order to make this clear, such an amendment needs to be added to the text of the Commission proposal.