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COMMUNICATION FROM THE COMMISSION TO THE COUNCIL
AND THE EUROPEAN PARLIAMENT

**THE ILLICIT TRAFFIC IN RADIOACTIVE SUBSTANCES
AND NUCLEAR MATERIALS**

INTRODUCTION

The dissolution of the Soviet Union has resulted in the fragmentation of the centralized control and management structures for nuclear materials and radioactive substances. The whole of the Soviet nuclear industry was subject to a system of security specific to the existing regime, but the stringent controls and physical security rules which were part of this system have now been considerably relaxed. The highly centralized system was based on completely different criteria from those applied in the West (absence of accounting for nuclear materials, for example), and on almost total interpenetration between civil and military activities.

This dangerous situation has become more acute because a number of States in the region, particularly Russia and Ukraine, have undertaken an ambitious programme of dismantling their nuclear arsenals, sometimes with huge support from the West, with the indirect result of a growing risk that certain fissile materials might move from an area subject to control to less well-controlled areas where malicious acts cannot be ruled out.

This combination of elements is helping to promote an illicit traffic in dangerous radioactive materials, fraudulently acquired and resold secretly.

The emergence in certain republics, including Russia, of very powerful criminal organizations adds to the risks of diversion. Such organizations could take advantage of the situation and establish export channels. In addition, where this traffic is conducted by organizations rather than isolated individuals, experience shows that the networks in question have branches throughout the entire world, and that the potential final users of the stolen materials are in all probability third countries or clandestine operators based outside the territory of the Union.

This factor, which could undermine the security of States and individuals in Europe, calls for an overall response from the Union. It is clearly in the common interest of the countries of the former Soviet Union, the Central and Eastern European countries and the European Union that a solution be found.

The joint work that needs to be embarked upon will make it possible to give firm shape to certain aspects of the *rapprochement* between the European Union and Eastern Europe through partnership with the Commonwealth of Independent States, and in particular Russia and Ukraine, and through the Europe Agreements with the Central and Eastern European countries. Stability in Europe cannot be achieved without such joint approaches and practical cooperation.

The aim of this communication is to draw attention to the gravity of this problem and suggest some ways in which it can be tackled effectively and systematically, using the various instruments at the disposal of the European Union and its Member States.

1. THE ILLICIT TRAFFIC IN RADIOACTIVE SUBSTANCES AND NUCLEAR MATERIALS

1.1 BACKGROUND

For obvious geographical reasons, there is a risk that the territory of the Union could increasingly become the hub for this dangerous trade. A number of attempted transactions of this sort have been blocked in time by the competent authorities of the Member States, mostly in Germany. Some cases have also been reported in Switzerland and Austria.

The materials concerned are generally of no interest in military terms, even if they present a real contamination hazard. However, a few cases of illegal possession of plutonium, a highly dangerous material which can be used for military purposes, have come to light recently, spectacularly raising the level of public awareness of the scope of the problem and the dangers of the situation.

The dangers inherent in this trade are considerable. The risk of radiation, which varies according to the material involved, exists for those who handle the material but in some cases there is also a risk for the general public.

As far as traffic in the most dangerous substances is concerned, such as plutonium or highly enriched uranium, there is also a risk of nuclear proliferation, since nuclear materials involved in this traffic are not only of interest to States or organizations which are seeking to by-pass the various levels of control set up at national and international level.

A note recently sent to the Council by the German delegation (No 7861/94 of 16 June 1994) reports a large increase in the number of recorded cases of illicit traffic in nuclear or radioactive materials. The document quotes the figure of 41 cases in 1991, 158 in 1992 and 241 in 1993.

An even greater source of anxiety are two cases reported in May and July 1994 concerning materials capable of being used for military purposes, namely plutonium seized in Germany and enriched uranium intercepted in St. Petersburg. The major seizures by the German authorities in August were given considerable media publicity, and undoubtedly highlighted the need for a rapid and effective response to this problem.

For the moment, the illicit presence of uranium and plutonium has been reported only in Germany and Italy. Other less serious cases involving radioactive materials such as caesium 137, which is used in hospitals, have also come to light in Germany and Belgium.

The vast majority of cases recorded so far are concerned with radioactive substances and not nuclear materials. Experience shows, however, that the people guilty of this traffic are sometimes not aware of the real nature of what they are transporting. In other cases, dealers have simply tried to pass off relatively innocuous substances as material of high value, the price being in direct proportion to the potential danger of the stolen material.

An important distinction must be made between the legal frameworks governing the materials in question. Simplifying somewhat, a distinction can be made between:

- nuclear materials, which are materials subject to "safeguards" (safety controls), whether under the Euratom Treaty, the International Atomic Energy Agency (IAEA) or the Nuclear Non-Proliferation Treaty (NPT), and in regard to which there is a substantial risk, according to the substance in question, of direct or indirect military use.

These materials (for example, plutonium or highly enriched uranium) are the most dangerous and, in addition to the danger of contamination, they present a threat in terms of nuclear proliferation; and,

- radioactive substances, which are not subject to safeguards and regarding which the threat of contamination derives from the radiation emitted by the substance, but without the possibility that the substance can be used as a fuel in its present state. This is the case, for example, with certain substances commonly used for medical purposes.

As used in the Euratom Treaty, the term "safeguards" refers to a set of measures designed to ensure that nuclear materials are not diverted from their intended uses, with the implication that any diversion would be for military purposes, and implementing at Community level the obligations incumbent on the Member States as a result of their international commitments. The question of safeguards is thus quite different from that of nuclear safety (safety of design and operation of nuclear installations), radiation protection (protection against the harmful effects of radiation), environmental protection, etc.

1.2 INVOLVEMENT OF THE COMMISSION

Since March 1992 the Commission has been involved, at the initiative of the Member State concerned, in handling numerous cases involving attempted illegal transactions.

The Commission's Euratom Safeguards Directorate (DG XVII-E), based in Luxembourg, and the Joint Research Centre's Institute for Transuranium Elements, based in Karlsruhe, have been closely involved in tackling the problem.

As far as safeguards are concerned, Chapter VII of the Euratom Treaty states that the Commission shall satisfy itself that, in the territories of Member States, ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users.

To this end the Commission established the Euratom Safeguards Directorate (ESD) in Luxembourg as part of the Directorate-General for Energy.

This Directorate has a body of specialist nuclear inspectors who are responsible for on-the-spot checks to ensure that nuclear materials for civil purposes in the possession of the 800 or so installations in the Union are not diverted from their declared uses.

The units of the ESD are responsible for:

- **auditing the materials held by installations, mainly uranium, plutonium and thorium;**
- **negotiations with the Member States and the International Atomic Energy Agency (IAEA) in Vienna;**
- **discharging the Commission's obligations under the bilateral agreements between the IAEA and the two Member States of the Union which have a nuclear capability and the Agreement between Euratom, the non-nuclear weapon Member States and the IAEA;**
- **devising control strategies, providing computer back-up, and developing and installing monitoring instruments.**

For a broader and detailed view of the activities of the Safeguards Directorate, the reader should refer to the recent report on the operation of Euratom safeguards 1991-1992 (COM(94)282 of 6 July 1994).

It should also be emphasized that, under the Euratom Treaty, the Commission is required to establish the legislative basis at Community level for radiation protection for the public and workers exposed.

Given the enormous dangers involved in illicit handling or the discharge into the environment of radioactive substances or materials, under Council Directives 80/836/Euratom and 80/467/Euratom, the Member States are required to introduce health protection measures to ensure that the maximum limit values for radioactive doses and intakes are not exceeded.

By way of illustration of the Commission's involvement in these cases, we can refer to a typical case from March 1992 which represented the start of the collaboration described.

Here the Bavarian police arrested four people trying to sell 1.2 kilos of low enriched uranium in a car park near Augsburg.

The competent authorities immediately asked the Commission to assist them in identifying the materials and where they came from.

An inspector from Luxembourg then went to the scene with the necessary instruments, and the uranium was finally conveyed to Karlsruhe where detailed analyses were carried out. The JRC was able to identify the origin of the materials and the evidence provided by the officials was crucial in the prosecution of the persons arrested.

The collaboration took place to the satisfaction of all concerned, with the result that the German authorities proposed to formalize it, and this was done by an exchange of letters between the German Permanent Representation and the Directorate-General for Energy. These letters describe methods of communication, coordination and analysis, and the organization of contacts between the various authorities and institutions involved.

1.3 THE ROLE OF THE JOINT RESEARCH CENTRE

The Institute for Transuranium Elements in Karlsruhe has the necessary resources for the reception and handling of all samples containing radioactive substances or nuclear materials. In addition, it possesses instruments capable of analysing the radioactive properties and isotopic composition of fissile elements.

These analyses make it possible to evaluate in particular the mass of fissile elements, the nature of the treatment they have undergone and the date thereof.

From the information provided by these analyses, such as the degree of purity, and by comparing this information with data in the Institute's database, the JRC is frequently able to determine the origin of these materials, the reactor for which they were prepared, and the installation in which the materials were treated.

In all the cases in which samples have been forwarded to Karlsruhe, it was possible to establish a full identity sheet for the materials, including possible uses, and precise information was sent by the JRC to the Commission Safeguards Directorate and to the national authorities in the cases referred to.

This information naturally constitutes vital assistance for police and judicial enquiries, and, generally speaking, for any organized action to combat this traffic.

1.4. THE NEED FOR A COORDINATED, COHERENT RESPONSE

It is therefore clear that the situation is ripe for what could be very dangerous traffic on the territory of the Union.

The current situation clearly indicates that the present level of safety controls in certain newly independent States is quite inadequate, given the quantities of dangerous products located on their territory. This means that there is a major risk of contamination, in particular by plutonium, caesium and other radioactive substances.

The effect of this information on public opinion may be considerable in view of the technical nature of the subject and the difficulty which sometimes exists in evaluating correctly and rationally the risk of contamination.

The opening of internal frontiers means that what constituted a specific danger for a limited number of Member States, for geographical reasons, is now becoming a risk throughout the Union's territory.

The **Council Working Party on Atomic Questions** displayed a major interest in this problem at an early stage. The question was raised several times and a preliminary report from the Commission's departments was presented in June 1993. This report described the ad hoc procedures set up between the Commission and the authorities of certain Member States to try to tackle the problem.

Since this report was produced, the working party has stated several times that it was in favour of a joint approach to this problem. The document already quoted from the German delegation reached the same conclusion.

The Working Party on Non-Proliferation also considered the matter on 1 September.

The question which therefore arises is what type of strategy could be adopted by the Union and the Member States to prevent this worrying problem from escalating.

Given the gravity and specific nature of the risk arising from this traffic, everything should be done to maximize the preventive impact of any measure taken at national or Union level.

The Commission considers that a response at Union level would be better suited to the scope of the problem and therefore more effective.

The Union already has at its disposal a wide range of instruments which could be used to combat this illicit trade. This integrated approach must involve the three "pillars" of **the Communities, a common foreign and security policy** and cooperation in the fields of **justice and internal affairs**, an approach already developed, for example, in communications relating to immigration and asylum, and in the European Union action plan to combat drug abuse (1995-1999).

These instruments could be grouped together under three main headings:

- A. Improvement of the operating conditions of the local nuclear sectors;
- B. Cooperation with the States concerned;
- C. Cooperation between the Member States of the Union.

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2. THE INSTRUMENTS FOR A EUROPEAN RESPONSE

A. IMPROVEMENT OF CONDITIONS IN THE NUCLEAR SECTOR IN THE COUNTRIES CONCERNED

It is clear that in the medium term the problem can only be resolved by an improvement in the economic and political conditions of the countries concerned. In the short term, however, action focusing on the control of their nuclear industries should produce positive results.

It is essential that the nuclear industry should restore an adequate level of control, and that a strict materials accounting system be reestablished, so that the authorities of the States from which the materials originate are able to cooperate fully with those of transit countries in particular in the fight against this traffic.

Unlike the measures mentioned under point C below, for example police cooperation, the forms of cooperation described below are more concerned with **prevention**.

It should be noted that the situation with regard to safeguards systems in the Central and Eastern European countries is much better than in Russia and the newly independent republics, including the Baltic States.

The Commission is contributing towards efforts to set up safeguard systems by supplying specialized technical assistance. This cooperation is being organized for the Commission by the Euratom Safeguards Directorate and in the context of the technical assistance programmes (TACIS) with the help of the Joint Research Centre.

1. COOPERATION IN THE FIELD OF SAFEGUARDS

A cooperation programme to restore a reliable safeguards system has been set up by the Euratom Safeguards Directorate and the Russian Federation. The programme was launched in 1992 and formalized in 1993.

The aim of this programme is to help design, establish and implement a strict system for the control and accounting of nuclear materials. The programme is already operational and is starting to show concrete results.

The cooperation is primarily geared to the Russian Federation and complements action by the IAEA in the same field, in particular in so far as the Vienna Agency refrains from taking action in States with a military nuclear potential except at the express request of the State in question.

The **initial phase** of this cooperation focuses on the training of inspectors and the drawing up of operational concepts in the field of safeguards.

A number of seminars have been organized and Russian experts have been invited to work temporarily in Luxembourg to gain familiarity with control methods. The aim is to help the experts to develop a satisfactory safeguards system, while supplying direct logistical assistance (documentation, computers, etc.). Russian experts have also accompanied Euratom safeguards inspectors in on-site visits, thanks to the cooperation of the Member State authorities concerned.

This first phase of cooperation will cost a total of ECU 1.5 million for 1993 and 1994 under budget heading B 4.2001.

In a **second phase**, starting in 1995, specific projects concerned with the establishment of national and installation-level nuclear control and accounting systems are to be launched. These projects are already at the study stage and relate to three main fields, namely:

- collection, processing and evaluation of information;
- inspection procedures and implementation thereof;
- accounting for materials in each installation.

The budget heading in question has so far been allocated a token entry ("p.m.") for 1995.

2. COOPERATION IN THE FRAMEWORK OF TECHNICAL ASSISTANCE

The Commission has included in the TACIS programme a project aimed at helping to establish more reliable safeguard systems, with the technical support of the Joint Research Centre.

At present cooperation concerns the three republics pursuing major nuclear activities: Russia, Ukraine and Kazakhstan. In Ukraine and Kazakhstan, the projects have been launched in close cooperation with the Swedish authorities and mainly concern the training of local authorities and operators.

As far as **Russia** in particular is concerned, the projects and ideas put forward by the JRC aim to ensure coherence in the action by the Community.

The main thrust of JRC cooperation is concerned with **training** for future Russian inspectors and operators. The setting up of a safeguards system will call for the use of several hundred persons by the authorities and operators. The success of the first aspect will therefore also depend on establishing a training infrastructure in Russia.

In the Community, training of Euratom inspectors is mainly provided at the JRC, which has also trained operators in the past and continues to do so for third countries at the request of the IAEA. This second aspect would have to be very much the responsibility of the JRC, given that there would have to be complementarity with the ESD action described above.

The visit to Ispra of two senior officials from the atomic energy ministry ("Minatom") and the national inspection service ("GAN") produced very encouraging reactions and has resulted in ambitious projects in keeping with the challenge which the Russian authorities are facing.

The particular importance of these contacts is that they involve the authorities directly responsible for installations where thefts of materials could have taken place.

The setting up of a training centre in Obrinsk (south of Moscow), under the responsibility of Minatom but also accessible for GAN inspectors, is under consideration. It would benefit from existing infrastructures and would contribute to the installation and operation of a modern nuclear material accounting and control system at national and installation levels.

The existence and effectiveness of such a system is a prerequisite to stop any further smuggling and, moreover, it would enable many Russian military experts to use their expertise in civil activities.

The JRC would provide technical support for the projects and provide training for the trainers, with the assistance of European Union industrial operators who have already said that they are very much in favour of such collaboration.

During their first visit to Ispra, the Russian authorities raised the question of instrumentation, equipment and reference materials for materials controls. In the official minutes of the visit, the Russians called for the establishment of cooperation with the JRC in order to develop the instruments available in Russia. Given the urgency, equipment could also be supplied both to the future training centre and in the context of direct assistance to the authorities. The JRC has every intention of meeting these requests in close collaboration with the European Union industrial operators who have said that they are very much in favour. The arrangements for financing the project as a whole will be examined in detail.

A complementary element in this cooperation could be the establishment of a **pilot installation**, as completely theoretical training would not have the desired impact. In addition, the logical complement to the training centre would be the existence of at least one installation which fully complies with internationally recognized rules on safeguards in the widest sense of the term.

The basic idea would be to choose a fuel cycle installation and perform a retrofit programme, as is done for reactors under the TACIS programme. A Russian operator would be the beneficiary here and his cooperation would be required. The task would thus fall primarily to industrial operators within the Union. However, because of the size of the task, cooperation with third partners, in particular the United States, could be envisaged. The recent events show the necessity to accelerate this technical assistance.

The JRC is also interested in **Ukraine and Kazakhstan**. An initial training programme has been organized for five future inspectors in each State. This type of cooperation should be continued and expanded, but it is also clear that the real needs of both republics are huge and go beyond the financial possibilities which are currently available. Other forms of funding are being looked at.

3. INTERNATIONAL SCIENCE AND TECHNOLOGY CENTRE

The Moscow-based International Science and Technology Centre (ISTC) was set up by an international agreement to which the European Union is a contracting party. Its aim is to prevent the proliferation of technologies and knowhow relating to weapons of mass destruction (nuclear, chemical and biological weapons and missile-launching systems). It seeks to minimize the possible incentive for scientists specializing in these areas to contribute towards such proliferation by offering them the opportunity of redirecting their expertise to peaceful activities, such as civil scientific research projects.

The Centre has been fully operational since March 1994. A hundred or so projects have been submitted to the ISTC's Governing Board, 55 of which, with a total value of over ESD 30 million, have already been approved, and some of these have already been carried out. The aim of one of them is to establish a safeguards system for nuclear materials in complex installations. Other projects concerning materials controls are envisaged in the future.

As can be seen, despite its rather different objective, the ISTC can make an important medium-term contribution to the overall effort to combat traffic in nuclear materials.

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B. COOPERATION WITH THE COUNTRIES CONCERNED

Active cooperation from the countries concerned, i.e. the countries from which the materials involved in the illicit traffic have been stolen, is clearly essential if efforts to combat such traffic are to succeed.

The Commission therefore takes the view that in order to resolve this problem there is also a need for constructive dialogue with the countries concerned, in particular Russia. Given the very high level of expertise of scientists, engineers and authorities in the Russian nuclear sector, there is considerable mutual benefit in stepping up cooperation between Russia and the Union, both between industrial operators and between the competent authorities.

Cooperation could also take a bilateral form, as part of **association or partnership agreements** concluded or to be concluded with the countries in question, and a multilateral form, and in connection with the efforts to renew the **Nuclear Non-Proliferation Treaty**, in the context of joint action by the European Community.

Use of the **Conference on Security and Cooperation in Europe (CSCE)** in this context could also be looked at.

In addition, there could also be, if necessary, contacts and cooperation with **other countries** which are concerned by the problem.

1. COOPERATION IN THE EXISTING CONTRACTUAL FRAMEWORK

In addition to the technical assistance already described, the European Union can make use of dialogue and cooperation opened up by:

- the partnership and cooperation agreements with Russia and some of the republics of the CIS;
- the Europe Agreements concluded with the six Central and Eastern European countries.

These agreements provide for political dialogue and offer possibilities for specific forms of administrative cooperation, in particular on the basis of existing protocols relating to administrative assistance on customs matters which enable there to be active cooperation between the authorities concerned, with a view to combating illicit traffic.

The fight against nuclear proliferation is a major objective for the European Union, and an in-depth dialogue has already been set in motion with the Central and Eastern European countries on these issues. It could be beneficial to supplement this dialogue with discussions on specific aspects.

The partnership and cooperation agreements will complement the technical assistance currently provided, both politically and through the technical cooperation opportunities they provide.

With regard to the future agreements with the Baltic Republics and Slovenia, and the partnership and cooperation agreements to be negotiated with other CIS Republics, two lines of action should be explored for the future:

- firstly, the insertion of **specific clauses** based on provisions in the existing agreements relating to drugs and the laundering of proceeds;
- secondly, taking as a model Article 84 of the cooperation and partnership agreement with Russia, the use of the general provisions on the **prevention of illegal activities**, including fraudulent transactions involving nuclear materials and radioactive substances.

Up to February 1994 the Commission was negotiating **an agreement with Russia on the trade in nuclear materials**. The negotiations were not wholly successful in as much as outstanding issues were finally resolved in the context of the partnership agreement. This is only a temporary solution, however, since the agreement states that a text specifically relating to the nuclear trade will be the subject of a separate agreement, as intended at the outset. The draft nuclear agreement contained useful provisions on safeguards, physical protection and administrative cooperation which could be taken over in the additional agreement to be negotiated.

During discussions on the interim agreement to be concluded with Russia pending the entry into force of the partnership agreement, Russia proposed the inclusion of provisions on cooperation on the prevention of illicit activities. Since this form of cooperation is essentially the responsibility of the individual Member States, the Russian proposal has not so far been accepted. The partial inclusion of certain specific areas could be a possibility.

The Commission recently asked the Council for authorization to negotiate bilateral nuclear cooperation agreements with Kazakhstan, Kyrgyzstan, Tajikistan, Ukraine and Uzbekistan which would also include such provisions. In addition, in its proposals for a new Union strategy vis-à-vis Ukraine, the Commission emphasized the urgent need to improve the quality of nuclear activities.

As regards radiation protection, it should be pointed out that, where the international transport of materials is concerned the Convention on physical protection requires its signatories to apply physical protection measures plus sanctions. Euratom and the Member States, Russia, Bulgaria, Hungary, the Czech and Slovak Republics and Rumania are parties to this convention. In addition, voluntary guidelines have been adopted by the Vienna Agency.

Moreover, in order to guarantee the protection of the public against radiation hazards, there would have to be a firm commitment from the various authorities responsible for radiation protection and, if necessary, the means for increased cooperation with them.

It should also be pointed out that Council Directive 89/618/Euratom concerning information for the public provides for prior information (Article 8) and information in emergencies (Article 6). The Commission could examine with the competent national authorities in the Member States the possibility of including the illicit traffic in radioactive materials in this directive (Article 2.2).

The possibility should also be examined of helping to launch publicity campaigns in Russia to inform the general public of the risks of holding dangerous materials. Such publicity could also contribute indirectly towards the successful stamping out of illicit practices.

2. COMMON FOREIGN AND SECURITY POLICY

The aim of **joint action** based on the guidelines of the Corfu European Council, confirmed by the July General Affairs Council, is to strengthen the international system of nuclear non-proliferation by promoting the universality of the Non-Proliferation Treaty (NPT), in particular by extending it on an unlimited and unconditional basis.

Accession by a State to the NPT implies that the State agrees to conclude an agreement with the IAEA which provides for the application of safeguards to all the nuclear activities pursued on the State's territory ("*full scope safeguards regime*"). This involves the setting up of a national safeguards system with the objective of monitoring the application of this agreement.

The joint action approved by the Council provides explicitly for the possibility of the European Union assisting States which, desiring accede to the NPT, face the obligation of setting up control procedures. This joint action therefore constitutes an instrument which, among other things, helps to combat the illicit trade in nuclear materials.

The European Union could examine in this connection whether new measures should be proposed to deal with this problem.

3. COOPERATION WITH CERTAIN THIRD COUNTRIES

Other States outside the Union have also voiced their concern at the risks associated with the illegal trade in nuclear materials. They have initiated various kinds of action to provide assistance to the competent authorities of the CIS republics concerned, and to intensify the prevention of all forms of criminal activity.

This assistance is either channelled by an international organization (IAEA) or based on bilateral cooperation.

In the latter connection, mention can be made of Sweden which, in close liaison with the JRC, has undertaken assistance projects in Ukraine and Kazakhstan, and the United States which wishes to combine its efforts with those of the Union and the Member States. Following a preliminary technical meeting held in Washington at the end of July at the request of the Department of Energy, an American delegation returning from Moscow will go to Ispra at the end of September.

The United States clearly stated its intention recently to step up the fight against this form of criminal behaviour. At the opening of the Moscow office of the Federal Bureau of Investigation (FBI), Louis Freeh, director of the FBI, described efforts to combat the traffic in nuclear materials as a priority area of cooperation with the Russian authorities.

As regards customs matters, the fruitful contact between the Directorate-General for the Customs Union and the American Customs Administration and in particular the forthcoming signature of a customs cooperation agreement between the Union and the United States, should make it possible to gradually coordinate the respective endeavours of these services in this connection. This is likely to concern in particular technical assistance and specific training to be provided to the customs administrations of the countries concerned.

In general terms, going beyond the specific forms of cooperation already mentioned, the problem of the illicit nuclear traffic is expected to be on the agenda in connection with relations with third countries for which the Council meeting on Justice and Home Affairs is due to establish the framework shortly, on the basis of work in progress.

In view of this, the fact that the Council Presidency, at the request of the European Council in Corfu, put this question on the agenda of the Conference on drugs and organized crime held in Berlin on 8 September 1994, where the EU Member States, the Commission, the candidates for accession and Central and Eastern European countries with association agreements were represented at ministerial level, certainly represents a significant first step. This matter will also be referred to other Council meetings and the informal Usedom meeting.

Setting such cooperation in motion should eventually achieve concrete operational results, such as the identification of contact points in the third countries most directly affected by the origin, transit or destination of products, and the expansion of the role of liaison officers seconded to these countries by the police services of the Member States.

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C. COOPERATION BETWEEN THE MEMBER STATES

Given the elimination of controls at borders between Member States, there is a need for greater cooperation between Member States to deal with this problem. As with other threats currently facing the Union as a whole, there should be cooperation at several levels:

- (1) the development of cooperation already established on an informal ad hoc basis by the **Euratom Safeguards Directorate**;
- (2) the development of customs cooperation between Member State administrations and between them and the Commission departments;
- (3) in the context of the cooperation structures established in the field of **justice and home affairs**;
- (4) the exchange of information on **industrial cooperation**.

The complexity of the problem and the variety of players and instruments means that very intensive coordination will be crucial for the success of any attempt to put a stop to this traffic.

In this connection, the setting up of an ad hoc Council working party, as proposed by the Presidency, would certainly be useful, particularly as such a working party would be in a good position to make use of the considerable work carried out in the existing bodies.

1. COOPERATION IN THE CONTEXT OF EURATOM SAFEGUARDS

Cooperation between Commission departments and the national and local authorities affected by the problem has been highly successful.

However, a new situation is emerging from the fact that, firstly, cases of illicit traffic are increasing and, secondly, there is a very real risk that such activities may spread throughout the territory of the Union.

The Commission is therefore of the opinion that informal cooperation on an ad hoc basis should be **extended to the Member States concerned**.

The Commission believes that only concerted and in some cases structured action involving total cooperation with the territorial and judicial authorities will be capable of putting a stop to this illicit trade in the Union.

The possibility should be examined as to whether and for what specific area it would be beneficial to make use of Article 135 of the Euratom Treaty (consultations and setting up of committees by the Commission).

Cooperation could cover the following fields, the objective being to monitor the materials and achieve the widest possible coordination, without prejudging at this stage which authorities should be responsible for inspections, or which instruments it would be desirable to mobilize:

- prevention of illicit entry and transportation of materials into/within the Union;
- seizure, transportation, storage of and access to illicit materials;
- coordination of action;
- identification of contacts in the Member States;
- identification of contacts in third countries.

2. CUSTOMS COOPERATION

The Member States' customs administrations are the first line of defence at the Union's external frontiers and will have a decisive role to play in the action to combat this traffic. Their activities can be divided into two main areas:

(1) Tighter controls at the external frontiers

There is a need for more uniform and more effective checks at the external frontiers. In order to achieve more targeted customs controls, the Directorate-General for the Customs Union is endeavouring to develop the risk analysis technique through specific measures.

In addition, in 1995 under the MATTHAEUS programme there are plans for training schemes, seminars and exchanges between customs officials of the Member States with expertise in the combating of traffic in nuclear materials.

(2) Action to combat illicit traffic

In the case of materials covered by the EAEC Treaty, cooperation between Member States, and between the latter and the Commission is based on the provisions governing mutual assistance on customs matters (Council Regulation 1468 of 19 May 1981).

The customs information system (CIS) administered by the Commission is of vital importance to the efforts to combat illicit traffic. The CIS ensures real-time communication between the 240 terminals installed in the frontier posts of the Union and supplements the secure customs enforcement network (SCENT) whereby information is exchanged confidentially between the competent authorities in connection with suspected or established cases of illicit traffic.

In addition, cooperation is being established with the customs authorities of the third countries concerned by this traffic on the basis of the provisions of the cooperation, association and partnership agreements (where mutual administrative assistance is

concerned) and in the PHARE and TACIS framework (where technical assistance is concerned, e.g. training schemes and detection equipment).

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3. JUSTICE AND HOME AFFAIRS

As the Brussels European Council emphasized, *the fact that all questions relating to justice and home affairs cooperation are now handled in the new single institutional framework, with a bigger role for the Commission and the Council Secretariat, will ensure greater coherence between the various levels of Community or intergovernmental intervention - and will therefore enhance the overall efficiency of the action of the Union.*

With due regard for the institutional balance defined by Title VI of the Treaty on European Union, the Commission therefore thinks it essential to bring a number of considerations to the Council's attention, without it being able to claim, in relation to many of the points referred to, any right of initiative under Article K.3.

In accordance with Article K.1 of the Treaty on European Union, for the purposes of achieving the objectives of the Union and without prejudice to the powers of the European Community, the Member States regard a number of areas as **matters of common interest**. Of these, judicial cooperation in criminal matters, customs cooperation in the non-harmonized sectors, and police cooperation for the purpose of preventing and combating serious forms of international crime would appear to be the most concerned by action to combat the illicit trade in nuclear materials. The possibility of specific initiatives with a view to combating fraud on an international scale (Article K.1(5)) is also opened up by Title VI of the Treaty on European Union.

In the context of cooperation in the fields of justice and home affairs, there would appear to be a need, first and foremost, for measures of the type referred to in Article K.3(1) of the Treaty, whereby *"Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations"*.

If necessary, these measures could take the form of **joint action** *"in so far as the objectives of the Union can be attained better by joint action than by the Member States acting individually, on account of the scale or effects of the action envisaged"* (Article K.3(2)(b)). If, on scrutiny of national legislation, there would appear to be a need, the Member States could envisage concluding a **convention** on the subject, as mentioned below. The possibility should also be borne in mind of adopting **joint positions** which would subsequently be expressed by the Member States in the international organizations and at international conferences in which they participate.

It is already apparent that completion of work in progress in the context of this cooperation, work which was assigned priority in the 1994 work programme adopted by the Justice and Home Affairs Council on 30 November 1993, could make a significant contribution to stepping up the action to combat this form of traffic.

Among other things, this includes the adoption of the Convention establishing a European information system, the implementation of various recommendations concerning action

to combat organized international crime, as approved by the Council last November, tougher action to combat the laundering of the proceeds of crime, scientific and technical research into this particular form of crime, the training of the members of the services concerned, and the speeding up and simplification of mutual assistance in judicial matters. This work should contribute in particular to three objectives which now seem essential in order to bring the situation under better control, namely a joint assessment of the phenomenon, the establishment of rapid communication networks, and the identification of partners in the Member States and within the Commission.

Where customs cooperation is concerned, and without prejudice to what was mentioned above, special attention should be paid to the early finalization of the Convention on the customs information system and the development of a control strategy at external frontiers.

As regards **police cooperation**, the Commission can only approve the possibility, currently under consideration, of extending the authority of the future European Police Office (Europol) to the traffic in nuclear materials and radioactive substances, under the heading of "other serious forms of international crime" with which the Office would be dealing under Article K.1(9) of the Treaty on European Union.

POSSIBLE FORMS OF COOPERATION

I. Illicit import and transport of nuclear materials

For obvious practical reasons, the first stage in any attempt to stop this illegal trade would be to prevent nuclear materials and radioactive substances from **entering** the territory of the Union illegally. This is mainly the task of customs cooperation, as described above.

This objective would be more easily achieved if the capacity of frontier posts (including airports) outside the Union for detecting and handling such materials was improved; special equipment and training is necessary.

Coordination of such efforts between the Member States would be sure to have a positive impact, for example by reducing the cost of training and equipment, by organizing control exercises, and by exchanging information on the identity and movements of persons suspected of involvement in this trade.

Once materials and substances are brought into Community territory, **handling** and **transportation** thereof are covered by Community, national and regional rules and regulations regarding radiation protection, under which prior notification and authorization are necessary. Lack of such authorization makes these operations illegal, except where the level of radioactivity is very low.

Penalties are provided for in cases where these regulations are not observed. Substantial differences in penalties between Member States could create the risk that materials would be channelled towards the States where legislation was less strict. It would therefore be desirable to see whether such differences exist and how great the need is for laws in the

Member States to be aligned with regard to illegal imports and carriage of nuclear materials.

With this in mind, the legal instrument to be envisaged would no longer be joint action but the convention drawn up by the Council which "it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements", based on Article K.3(2)(c). This convention could be established in the context of judicial cooperation in criminal matters or police cooperation.

II. Access to materials held by the competent authorities

If it appears that seized materials contain uranium or plutonium, the relevant provisions of the Euratom Treaty will apply, in particular as regards safeguards. The competent Commission departments must therefore be informed thereof. If necessary, an inspector may be sent to the scene to identify the materials.

The materials seized may be transported to a national or Community research centre so that analyses may be carried out to identify, among other things, the exact origin of the materials.

III. Identification of contact points in the Member States

Each Member State possesses its own structures for handling the different stages of an operation, such as seizure, storage of seized materials, etc., which involve various national or local authorities. Study of recent cases shows that there is a clear need to identify well-defined, rapid channels of communication. This is a crucial point in the smooth functioning of the system.

4. COORDINATION OF INDUSTRIAL ASSISTANCE

Several Member States have already embarked upon industrial cooperation in the nuclear field with certain CIS republics and certain Central and Eastern European countries. The European industry wishes to establish links with its counterparts and very often the authorities are keen to facilitate such contacts. In addition, the European Union has launched assistance projects to improve the safety of nuclear installations, including fuel cycle installations.

Clearly the presence of national or Community officials or industry representatives in an installation which proved to be the origin of illicit traffic would create a delicate situation.

The industry and the authorities are perfectly aware of this potential problem and are ready to take the action needed to avoid it. The cooperation of the local authorities is necessary, but they tend to make the same requests to several parties.

The need for a degree of coordination therefore quickly became apparent. The ESD and the JRC have reacted to this need. In June the JRC held a first meeting, which was

attended by representatives of the Member States' authorities and industries. This meeting identified certain joint priority lines of action, particularly as regards the instrumentation needed.

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CONCLUSIONS

The problem of the illicit traffic in radioactive substances and nuclear materials is serious, complex and of a wide geographical range, thus necessitating a suitably large-scale response.

That response must involve the various instruments which can make a major contribution, each in its own legal context, but bearing in mind the common final objective. In the light of all this, a European Union response should be directed towards the following objectives:

- (1) **The conditions of operation of the nuclear sector, i.e. nuclear safeguards, in the countries concerned by the traffic in certain dangerous materials need to be improved.**

The Commission proposes that maximum use be made of the possibilities of the assistance programmes already operational in this area, and in particular:

- the assistance provided by the Euratom Safeguards Directorate;
- the technical assistance provided under the TACIS programme, with the support of the Joint Research Centre;
- the Moscow-based Science and Technology Centre.

In addition, the industrial assistance provided by the various donors and operators should be the subject of information and coordination.

- (2) **Every effort must be made to ensure that the introduction of nuclear materials into the territory of the European Union is stopped at the Union's external frontiers.**

To this end:

- the Commission intends to strengthen customs cooperation, with the aim of boosting the capacity of the services responsible for preventing and detecting attempted illicit traffic;
- the possibilities offered by Title VI of the Treaty on the European Union (Justice and Home Affairs) should be explored and utilized to the full;
- the Euratom Safeguards Directorate and the Joint Research Centre will continue, as in the past, to place their expertise at the disposal of the national authorities confronted with this problem.

(3) The cooperation of all the States concerned is absolutely necessary.

The Commission therefore considers that:

- all the possibilities for cooperation offered by the agreements already concluded, in particular the partnership agreements and the Europe agreements, should be exploited in order to ensure a common approach to the problem and practical responses;
- future agreements should, where necessary, include provisions to enable such cooperation to take place;
- in the context of the common external and security policy, the possibility of making use of the joint action already decided upon concerning nuclear non-proliferation should be examined, as should any other action likely to help combat this traffic;
- close cooperation should be maintained or established with third countries likely to help combat this traffic, in particular the United States.

Only a comprehensive response will make it possible to combat the illicit traffic in nuclear materials effectively. Hence the various suggestions contained in this communication should be looked at by the Council in such a way as to guarantee the success of the integrated approach proposed by the Commission.

Where the budgetary aspects are concerned, it should be noted that any Community action has to be examined in the context of the budget resources available.

The Council and Parliament are invited to take note of this communication and support the suggestions it contains.
