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**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**Report on the application of Article 37 of the Euratom Treaty,
July 1994 to December 2003**

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TABLE OF CONTENTS

1.	Introduction	3
2.	Procedure for application of article 37.....	3
2.1.	Background	3
2.2.	The different stages of the procedure.....	4
2.3.	Structure of the experts' report	5
2.4.	Time limits	6
3.	Implementation of the procedure	6
3.1.	Timetable for submissions and opinions.....	6
3.2.	Contents of the opinions.....	7
4.	Infringements	7
5.	Conclusion.....	7

ANNEXES Commission staff working document SEC(2005)343

ANNEX I	Commission Recommendation 1999/829/Euratom
ANNEX II	The group of experts in Article 37
ANNEX III	Activities submitted during the period in question
ANNEX IV	Details of submissions
ANNEX V	Specific points arising from the opinions
ANNEX VI	Overview of infringements of Article 37

1. INTRODUCTION

In its Resolution of 20 November 1980 on the siting of nuclear power stations in frontier regions,¹ the European Parliament calls on the Commission to submit an annual report on the application of Article 37 of the Euratom Treaty.

This Article imposes the following obligation on Member States concerning radioactive waste:

Article 37

“Each Member State shall provide the Commission with such general data relating to any plan for the disposal of radioactive waste in whatever form as will make it possible to determine whether the implementation of such plan is liable to result in the radioactive contamination of the water, soil or airspace of another Member State.

The Commission shall deliver its opinion within six months, after consulting the group of experts referred to in Article 31.”

The decrease in the number of plans submitted by the Member States and, since 1986, the systematic publication of Commission opinions pursuant to Article 37 in the Official Journal, have led to the interval between reports to the Parliament being changed.

This report summarises the current procedure taking account of the amendments introduced by the Commission Recommendation of 6 December 1999 on the application of Article 37.²

2. PROCEDURE FOR APPLICATION OF ARTICLE 37

2.1. Background

The Commission Recommendation of 12 December 1990³ on the application of Article 37 in particular introduced certain points concerning the submission of new general data in the event of the modification of a plan for the disposal of radioactive waste which has already been submitted and which was liable to cause an appreciable increase of the exposure of the population of another Member State. Furthermore, the Recommendation emphasised the importance for the Commission of being informed by the Member States about how they implement any Recommendations given by the Commission and about authorisations for radioactive waste disposal granted by the Member States.

The experience gained since this Recommendation was adopted, but especially the closure and imminent decommissioning of a large number of nuclear power plants in the enlarged EU prompted the Commission, from 1997, to start revising its Recommendation. This revision resulted in the drafting of a new Recommendation, which was adopted on 6 December 1999, the complete text of which is in Annex I.

¹ OJ C 327, 5.12.1980, p.34.

² 1999/829/Euratom, OJ L 324, 16.12.1999, p 23

³ 91/4/Euratom, OJ L 6, 9.1.1991, p 16

The main changes made as compared to the previous Recommendation are as follows.

- A clear definition of the situation regarding different types of operations which do not require general data to be submitted, and incorporation of the processing industries which emit natural radioactivity, in accordance with the basic standards (Council Directive 96/29/Euratom).
- Clarification of the requirements for general data when existing installations are modified, particularly when these have not previously been subject to procedures pursuant to Article 37 as the host country was not a Member State at the time in question.
- Simplification of the general data regarding changes to existing plants when these have previously been subject to the procedures pursuant to Article 37.
- More detailed requirements in terms of general data for decommissioning operations and for the disposal of radioactive waste in geological formations.
- Stricter requirements for the data sent to the Commission by Member States regarding the annual discharges of radioactive effluents into the environment.

2.2. The different stages of the procedure

In chronological order, the different stages leading to the delivery of an opinion by the Commission are as follows:

- general data are submitted by the Member State concerned to the Secretariat-General of the Commission;
- the competent Commission department which provides the Secretariat of the group of experts carries out an initial examination (Annex II). The purpose of this initial examination is to check that the data given in the Recommendation are submitted and that they form a sufficient basis for an in-depth examination of the plan;
- the Secretariat sends the experts and associated Commission departments the original version and the English translation of the general data;
- the Secretariat draws up a study or a draft report by the Commission experts (see below) based on the general data, and an inventory of any data missing and any further details required;
- the group of experts confers and develops its conclusions and the group's opinion. The group's consultation procedure varies according to the category of operations (within the meaning of paragraph 1 of the Recommendation) under which the plan comes:
 - (1) for the first two categories of operation (the operation of nuclear reactors and the reprocessing of irradiated nuclear fuel), the Secretariat sends the study it has prepared, in English or French, to the experts and the associated Commission departments, and then invites the experts and the associated Commission departments to a meeting. A delegation from the Member State which submitted the plan is also invited to take part in the meeting in order to provide any further information and details requested by the

Commission experts. Once the delegation has left, the experts, assisted by the Secretariat, make any necessary changes to the study and add a paragraph entitled “the experts’ conclusions and opinions”. They then approve the “Commission experts’ report” which consists of the finished study;

- (2) for all the other categories, the Secretariat compiles its own questions and those sent by the experts after reading the general data, sends the questions in writing to the Member State concerned and draws up a “draft report of the Commission’s group of experts”. This document, which also contains the experts’ draft conclusions and opinion, is submitted in English or French to the members of the group for comments and approval. If necessary, the Secretariat then adds the replies received from the Member State to the draft report and, where appropriate, consults the members of the group again on the modified draft report. It is then approved as the “Commission experts’ report”;
- the experts’ report is translated into English, French and German as well as the language of the Member State concerned;
 - the draft opinion is drawn up by the Secretariat;
 - there is an inter-service consultation on the Commission’s draft opinion (to which the group of experts’ report is attached for information);
 - the opinion is translated into all official languages and the Commission adopts the draft opinion by written procedure;
 - the Commission sends a letter setting out its opinion and the group of experts’ report (explaining the grounds for the opinion) to the Member State concerned;
 - the Commission’s opinion is published in the Official Journal of the European Union.

2.3. Structure of the experts’ report

For any new plan or any modification of an existing plan on which no opinion has already been given, the report contains a brief description of the site, the installations, the monitoring and safety provisions, the emergency plans, the environmental monitoring programmes and an analysis of the possible radiological consequences of:

- discharging gaseous and liquid radioactive effluents in normal operating conditions
- disposing of solid radioactive waste in normal operating conditions
- unplanned releases of radioactive waste which could occur in the event of an accident.

Information available on discharge authorisations requested by the operator is taken into account in so far as this already exists when the experts’ report is drawn up.

For any modification of an existing plan on which an opinion has already been given and which requires simplified general data to be submitted pursuant to paragraph 4.1.a) of the Recommendation, the report contains the references of the experts’ report and the opinion on the existing plan as well as a brief description of the changes planned, the authorised annual

discharge limits in the existing plan, the new discharge limits proposed following the changes, and a brief analysis of the radiological consequences of these changes on:

- the discharges of gaseous or liquid radioactive effluents in normal operating conditions;
- accidents considered;
- emergency plans and environmental monitoring.

The report concludes by stating whether or not making the changes are likely to cause significant contamination in terms of health to the territory of another Member State in normal operating conditions or in the event of an accident and the extent of any such contamination.

2.4. Time limits

The general data are usually sent to the Commission in the language of the Member State sending them. The time required for these data and any documents resulting from them (studies or draft experts' reports, experts' reports, requests for additional data from the Secretariat or experts and additional data received from the Member States, the Commission's opinion) to be translated represents a significant part of the total duration of the procedure for issuing a Commission opinion (6 months).

3. IMPLEMENTATION OF THE PROCEDURE

The data which Member States must send the Commission are set out in Annexes 1-4 of the Recommendation, paragraph 5 of which provides that these must be submitted, in general, wherever possible one year but not less than six months before any authorisation for the disposal of radioactive waste is granted by the competent authorities or before start-up of operations for which no disposal authorisation is required.

In total, the Commission issued fifty-two opinions between July 1994 and December 2003.

The opinions it issued concern plans from eight Member States. The operations involved in these plans are listed in the table in Annex III and described in detail in Annex IV.

3.1. Timetable for submissions and opinions

Regarding plans for which an opinion has been given during the period in question, the six-month deadline which the Commission is allowed has generally been adhered to. Occasional slight delays resulted for the most part from the excessively long time taken by the competent authorities to reply to the Secretariat's requests for further information. This is often information which, in accordance with the Recommendation, should have been included in the general data, or details which were required for the submitted data to be understood. The average period allowed for the authorities is three weeks. However, in many cases the actual time taken for replies to be sent to the Commission is longer. This is why the Commission's opinion generally indicates the date on which the additional data was submitted to it by the Member State concerned. The six-month deadline set by the Euratom Treaty is very short, in particular in view of the numerous stages leading to the adoption of an opinion by the College. It should be noted that, when the Member State needs 4 to 8 weeks or even longer to submit the additional data requested by the Commission, it becomes very difficult, if not impossible, to adhere to the six-month deadline provided in the Treaty. The Commission will

raise the possibility of considering the date on which this information is submitted as the new date from which the six-month deadline stipulated in the Treaty begins in cases when the time taken to submit essential additional data is out of all proportion.

3.2. Contents of the opinions

For all the plans examined during the period in question, the Commission delivered the opinion that *“the plan for the disposal of radioactive waste in whatever form, both in normal operating conditions and in the event of an accident of the type and extent considered in the general data, is not likely to result in significant contamination in terms of health, water, soil or airspace of another Member State”*.

Some opinions do, however, contain specific points regarding both normal operating conditions and accidents:

On the subject of solid radioactive waste from decommissioning operations, the Commission notes that, as a general rule, solid non-radioactive waste or residual matter which is no longer subject to regulatory control will be disposed of as conventional waste or reused or recycled in accordance with the criteria set out in Community legislation. The Commission has twice deemed it necessary to reiterate that the levels for release of materials no longer subject to regulatory control must be fixed so as to ensure that the criteria defined in Community legislation are respected. In two other cases the Commission requested the competent authorities of the Member States to provide it with information on the quantities and types of materials which will be recycled as solid waste.

In the context of potentially hazardous situations, the Commission has in two cases recommended that bilateral intergovernmental cooperation regarding information be strengthened by implementing existing agreements and, if necessary, by concluding new ones.

Details of the specific points arising from these opinions are found in Annex V.

4. INFRINGEMENTS

Since July 1994 the Commission has launched twelve infringement procedures concerning the application of Article 37 (see Annex VI). In eight cases the dialogue during the preliminary procedure between the Commission and the Member State concerned allowed matters to be resolved. Three infringement procedures were referred to the Court of Justice. These cases are still before the Court.

5. CONCLUSION

During the period July 1994 to December 2003 the Commission delivered fifty-two opinions. These opinions concern plans from eight Member States and cover almost the entire nuclear fuel cycle. A significant rise in the number of submissions to the Commission by Member States can be seen from 1997, in particular concerning plans directly or indirectly linked to the decommissioning or dismantling of nuclear power stations and research reactors.

In all these opinions, the Commission concluded that the disposal of radioactive waste was not likely to result in significant radioactive contamination in terms of health of the territory of another Member State. The Commission has, however, on several occasions included

observations or recommendations concerning two important aspects resulting from the plans submitted to it. These are, firstly, the coherent application of the clearance criteria for releasing solid waste resulting from decommissioning operations and secondly, intergovernmental bilateral cooperation in respect of potentially hazardous situations. The Commission furthermore twice recommended that the competent authorities extend their planned environmental monitoring programme.

It should be noted that the judgment of the Court in case C-29/99⁴ introduces a new approach regarding the aspects linked to safety under Chapter 3 of the Euratom Treaty. Until now the experts have not been asked to give their assessment of the appropriateness of the accidents taken into consideration in the general data for evaluating the unplanned discharges of radioactive effluents. This judgment opens up new prospects, including in the context of the application of Article 37.

Finally, the Commission ensures that Article 37 is strictly applied, and this has led it to launch twelve infringement procedures.

⁴ Judgment of the Court of Justice of 10 December 2002, *Commission v Council*, Case C-29/99.