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INTERIM REPORT

drawn up on behalf of the Committee on Energy,
Research and Technology

on the proposal from the Commission of the European
Communities to the Council (COM(82) 732 final -
Doc. 1-1164/82)

for a decision adopting new provisions relating to
Chapter VI 'Supplies' of the Treaty establishing the
European Atomic Energy Community

Part B - Explanatory statement

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PE 84.748/fin./B
Or It

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EXPLANATORY STATEMENT

1. During 1982, the Commission of the European Communities formulated a proposal for a Council decision aimed at adopting new provisions relating to Chapter VI "Supplies" of the Treaty establishing the European Atomic Energy Community. (Doc. COM (82) 732 final - Doc. 1-1164/82).
2. In connection with the work of the Committee on Energy, Research and Technology of the European Parliament, the rapporteur was instructed to analyse the above-mentioned proposal and reach conclusions on the advisability of carrying out a revision of chapter VI as proposed by the Commission.
3. The rapporteur carried out this analysis during the first few months of 1983 and it was summarized in the draft report of 18 May 1983 - Doc. No. PE 84.748 B (attached).
4. The conclusions drawn by the rapporteur in his analysis lead to a negative assessment of the Commission's proposal from both the political and technical points of view.
5. A special working party within the Committee on Energy, Research and Technology, with the rapporteur as chairman, carried out further investigations on the Commission's proposal, with the particular aim of ascertaining the position of the most representative operators in the energy field in the Member States with regard to the said proposal.
6. For this purpose a public hearing was held in Strasbourg on 24 January 1984 in which many representatives of public bodies and industries operating in the field of energy supply in general and nuclear energy in particular in Member States were invited to take part.

7. Although their approaches to the problem varied, reflecting the sometimes considerable dissimilarities between Member States as regards energy situation, nuclear development, availability of uranium resources and the industrial scale of activities in the sector of nuclear fuel cycles, the participants at the hearing expressed an almost unanimous conviction that the changes to chapter VI outlined in the Commission's proposal were not desirable.
8. Most industrial operators saw as a positive aspect the fact that one of the intentions of the proposed revision is to confirm legally a de facto principle which had long since been adopted, namely the abolition of the Agency's monopoly. Although such a positive result has been achieved in theory, a series of measures have been introduced, on the practical level, in the new system proposed for chapter VI, which will increase the workload of industries and make supply in the nuclear sector as a whole more difficult.
9. Following both the studies carried out by the working party in the Committee on Energy, Research and Technology of the European Parliament and the results emerging from the above-mentioned public hearing with operators from Member States, the rapporteur feels he must confirm the negative assessment of the Commission's proposal, emphasizing the main conclusions:
 - from the political point of view, the Commission's proposal weakens the image of Community solidarity and goes against the European Parliament's aim of achieving greater European integration,
 - from the technical point of view, the proposed outline for chapter VI seems unnecessarily cumbersome and punitive, since it creates more difficulties for the industries operating in the sector of nuclear fuel cycles than they are able to solve.
10. The rapporteur thus proposes that the Commission's proposal should be shelved, pending reconsideration of the matter when the possibility of revising Chapter VI of the Euratom Treaty on the basis of work carried out so far is tackled by the European Parliament after the elections next June in connection with the general question of the European Union.

WORKING DOCUMENT1. INTRODUCTION AND HISTORICAL BACKGROUND

1. The Euratom Treaty was signed in 1957, at a time when nuclear energy was still in its experimental phase. Nevertheless, as the Suez crisis (1956) coincided with the drawing up of the Treaty, its authors foresaw and gave clear emphasis to the vulnerability of Europe's oil imports.

At that time, nuclear energy already appeared to be a serious alternative to oil.

2. Because of the particularly unfavourable situation as far as conventional fuel supplies were concerned, the years immediately following the establishment of the Community were expected to see a period of severe shortage of conventional fuels, and also, on the basis of the data known at the time, a scarcity of uranium in the world.

3. The preconditions for confronting the 'nuclear challenge', as expounded in the famous Three Wise Men report (1957), were large-scale technological and industrial progress and a more or less guaranteed access to the necessary raw material, uranium.

Hence the need to guarantee equal access to nuclear fuels for each country on the basis of its real energy requirements and regardless of whether or not uraniumiferous minerals were available in that country.

4. However, the shortage of nuclear fuels anticipated at the time of the signing of the Treaty in 1957 never materialized and, as a result, some of the provisions of Chapter VI have never been applied, although continual efforts have been made by the EEC and by its Supply Agency to retain the provisions of the Treaty in force, at least on a formal basis.

5. The proposals to revise Chapter VI, put forward at the request of the French in 1964 and 1970 in order to bring it closer into line with established practice and new requirements, were not adopted by the Council. In other words, although the provisions of Chapter VI were widely disregarded in practice, it was always preferred not to tamper with the Treaty.

II. REMARKS ON THE COMMISSION'S PROPOSAL

6. Article 2 of the Euratom Treaty, and in particular letters (d) and (g) thereof, lays down the principle that it is the duty of the Community to:

- ensure that all users in the Community receive a regular and equitable supply of ores and nuclear fuels;
- ensure wide commercial outlets and access to the best technical facilities by the creation of a common market in specialized materials and equipment.

7. Chapter VI of the Euratom Treaty lays down the procedures to be followed by the Community in order to comply with this principle.

The Euratom Supply Agency is responsible for helping the Commission to implement these procedures.

8. The fundamental precept contained in the provisions of Chapter VI, as they now stand, is that of the commercial monopoly of the Supply Agency.

9. The proposal for a revision submitted by the Commission is intended to provide a solution which satisfies the following two requirements:

- on the one hand, to enable the Community to continue to accomplish the task assigned to it under Article 2 of the Treaty;
- on the other, to bring the functioning of the Agency into line with market requirements and the new conditions which have evolved.

10. To meet these requirements, the proposal for a revision of Chapter VI put forward by the Commission provides for the Community's action to be based on the following fundamental principles:

- ensuring the unity of the Community market
- maintaining the Community's powers in the field of international relations
- reserving the right to take specific solidarity measures
- using the Supply Agency to implement the provisions of the new Chapter VI

- establishing an effective system of controls

III. MAIN CRITICISMS

11. The Commission's proposal to amend extensively the current rules of Chapter VI, one of the most important chapters of the Euratom Treaty, prompts the following considerations and comments (see also the table in Annex I showing the existing rules and proposed changes).

12. The Commission's efforts to change the present system and lay down new guiding principles for the supply of nuclear materials, capable of meeting the different requirements of the Community countries, are highly commendable.

13. Nevertheless, the impression obtained is that priority has been given to the interests of the most powerful nuclear countries. The proposal confines itself to laying down theoretical principles, the implementation of which would, once again, be left to the Commission itself, with no guarantee that this would be done in the desired time and manner.

14. The Commission has started from the principle that the new provisions should, on the one hand, leave industry the widest possible margin of freedom to fulfil its industrial function to the full, but, on the other, provide all the necessary guarantees to prevent the actions of the Member States and the operators from compromising the regular and equitable supply of all users without discrimination.

15. Careful consideration should therefore be given to the advisability of replacing the present rules which - theoretically - offer adequate protection to the weaker nuclear states (which can always invoke these provisions in the event of a crisis in the sector), by other principles, equally theoretical in nature, which do not however appear to contain the same guarantees.

16. In the opinion of the rapporteur, it would therefore be advisable to make agreement to these proposals conditional on the simultaneous presentation and adoption of secondary legislation, particularly the regulations on stockbuilding and Community aid in this field, possible exceptions to the principle of market unity, the Supply Agency, penalties and sanctions for infringements, and measures to redress market imbalances.

17. This would make it possible to make a thorough assessment - in practical terms - of the value for Europe of introducing a new Community mechanism to regulate the supply of nuclear materials.

18. Furthermore, it has always been maintained that a united front of energy consumers could provide a more effective counterpart to the oil and gas producing countries.

The Euratom Supply Agency - in its present institutional structure - is a model which can be used as a basis for wider intervention in the energy sector (for example, in the field of oil supplies).

19. To weaken its role, as the revision of Chapter VI proposes, would not only be a setback to Community policy in the nuclear sector, but would also mean the loss of a platform for launching a more incisive Community policy in the energy sector as a whole (the International Energy Agency, of which France is not a member and which includes in its ranks a producer of the strength of the USA, demonstrably fails to represent the interests of the Community).

20. The revision is based on the notion that the nuclear industry, which has changed considerably since 1957, should face no obstacles to its autonomous development.

In reality, the development of the nuclear industry concerns only a small number of Community countries and there is no doubt that the elimination of the Agency's 'monopoly' would facilitate the transformation of the existing monopoly in the nuclear fuel cycle sector into a legal one.

21. In fact, the proposed amendments would introduce discrimination between those countries which possess nuclear weapons and those which do not. The proposed amendment to Chapter VI specifies that the provisions concerned shall apply only to materials intended for civil and non-explosive purposes (Art. 52). Supplies destined for explosive uses in the civil field, however, are not covered by the provisions.

22. It is this initial consideration which makes it clear that the principle of market unity is not being respected.

Furthermore, discrimination of this kind infringes both the letter and the spirit of the Euratom Treaty.

23. The principle of the unity of the Community market is further jeopardized by the fact that provision is made for the rules governing the transfer of materials within the Community to be laid down by the Commission (and not by the Council).

24. In addition, amendments to these rules - if unilaterally requested by one Member State - may be adopted by the Council acting by a 'qualified majority' and not unanimously (Art. 53), thereby introducing discrimination or facilitating the establishment of 'cartels'.

25. The proposed provisions concerning transfers within or outside the Community (Art. 57) seem needlessly harsh as these transfers involve treated or processed materials for return to the original person or undertaking. Under the rules in force, such transfers are exempt from the prior approval of the Commission.

26. The proposed rules may have two consequences:

- if they wish to operate within the Community, the Community industries will not have a large turnover (which will affect their development);
- the Community industries which want to ensure an adequate turnover may prefer to operate outside the Community (which will affect employment and the strength of the Community).

27. The proposed provisions will therefore harm the development of the nuclear industry as a whole. In addition, the trend of the provisions is towards greater Community intervention, which would depend for balance on the impartiality of the Commission.

28. The proposed provisions concerning Community solidarity (Article 60-61) seem to be no more than statements of principle. They ought to be formulated in such a way as to provide an effective guarantee, to offset the hardship suffered by the weaker nuclear countries as a result of the elimination of the Agency's monopoly.

29. Controls which appear redundant are to remain in force, supplemented by others to be enforced by the Community itself and the IAEA. The proposal for a revision does not appear to take account of the fact that, as far as controls and safeguards are concerned, the situation has evolved greatly since 1957.

IV. SPECIFIC REMARKS

30. The proposed new text for Chapter VI of the Euratom Treaty consists of 25 articles (from Article 52 to Article 76), as opposed to the 55 articles of the text currently in force (from Article 52 to Article 106). Below are a number of more specific remarks on those articles of the proposed text which seem most open to criticism.

Article 52

31. The former Article 52 lays down two principles:

- the Agency should have a monopoly

- there should be no discrimination between users.

32. In the first place, the first part of the new text of Article 52 does not appear to be consistent with what follows: it states that 'the Community shall ensure that all users receive a regular and equitable supply ...'.

In subsequent articles, however, it is proposed to reduce the Community's powers to a level which would certainly not allow it to perform such an ambitious task.

33. In view of the contents of Article 53, it would be more correct to talk of the Community regulating the supply rather than 'ensuring' it.

34. In addition, the new text of Article 52 not only fails to mention the need to avoid discrimination, but it actually creates the principle of discrimination by affirming that the Community's action should apply only to materials intended for 'civil and non-explosive purposes'. It is clear that Community countries such as France and the United Kingdom, which possess nuclear weapons, will be able to enjoy a privileged market.

35. On the one hand, material produced by these countries and supplied for explosive uses in the civil field will not be subject to the provisions of Chapter VI. In addition, all the materials produced and marketed will not be covered by these rules since they are not unequivocally earmarked for civil purposes. In other words, there is nothing to prevent a material initially designated as for 'military or explosive use' from being released onto the civil market.

Article 53

36. The replacement of the principle of non-discrimination by that of the unity of the market can be endorsed, because it includes a general prohibition of all restrictions on the transfer, use and storage of nuclear materials.

37. In order to make it fully operative and to ensure and guarantee effective equality of treatment for operators, it would still be necessary to stipulate that there can be no exceptions to this new principle.

38. The Commission's proposal to allow derogations to be introduced at Community level cannot therefore be endorsed. The Commission's justification for this approach (see the explanatory report, SEC(82) 2161) is not convincing, since specific and suitable guarantees are provided by other instruments (Euratom - IAEA agreements, international agreements) in respect of control by public authorities and any concerns which may be felt by external suppliers. Commercial or industrial requirements, also cited by the Commission as a justification for its proposal, cannot be justified since they are in sharp contrast with the principle of market unity (free movement of nuclear materials) which the proposal seeks to establish.

39. It would therefore seem advisable to delete paragraph 2 of this article or to amend it extensively.

40. It should first be noted that the proposed text (see OJ No. C 330, 16.12.1982) is not absolutely clear in defining the procedure, since it refers to requests made by a Member State to which the Commission is required to reply within three months, but without specifying what the purpose of such requests should be or whether they would be actions taken in response to the rules to be introduced by the Commission.

41. Secondly, the proposal contains a single mechanism for legislation (a Commission regulation with the possibility of an appeal to the Council), for which there is no basis in the Community Treaties and whose legitimacy should be closely examined.

42. In substance, this article says that the 'new' power which the Community will have will depend on the contents of a regulation which does not yet exist and for which no precise deadline is set.

43. It is therefore vital to know the contents of this regulation before the proposed new Chapter VI can be approved. In addition:

- it should be the task of the Council to adopt the regulation. The new text assigns to the Commission the power to adopt the contents of the regulation and thus to determine the scope of the Community's action on nuclear supplies;
- any action initiated by a Member State to repeal the regulation should be concluded by a unanimous decision of the Council and not by a decision 'by a qualified majority' as provided in the new text. The purpose of this would be to prevent the establishment of 'cartels' of countries seeking to introduce discriminatory conditions by means of the regulation;
- the possibility of using the regulation to allow exceptions to the principle of market unity, which is what the Commission intends (explanatory report SEC(82) 2161 of 17 December 1982), should be ruled out from the outset. This would render meaningless the principle of 'market unity' which the proposal seeks to introduce in place of the existing principle of 'non-discrimination'.

44. Precisely because this is a fundamental principle which should govern the regulation of nuclear supplies, the legal power to decide on exceptions should lie only with the Council and should be exercised for the first time in conjunction with the adoption of the amendments to Chapter VI.

45. This would make it possible to evaluate the exact scope of the new principle and thus assess the true value of the adoption of this new system as far as operators are concerned.

Article 54

46. Because of the very special nature of the nuclear sector, with its specific energy and strategic characteristics, the rules on competition contained in the EEC Treaty cannot be applied to the new supplies system.

The nuclear sector is already subject to so many constraints and controls that there is clearly no need to introduce additional ones of the kind provided for in the rules on competition.

47. Furthermore, there is no justification for applying the competition rules of the EEC Treaty to the nuclear sector, either from a legal, or still less, from a practical point of view.

48. Indeed, the Commission's interpretation that, by virtue of Article 232 of the EEC Treaty, the rules on competition are generally applicable to the nuclear sector except where otherwise provided, is open to doubt. On the contrary, by virtue of Article 232 of the EEC Treaty, Euratom rules take precedence over EEC rules even in matters relating to competition.

49. If the Commission can cite the special nature of the nuclear sector as justification for drawing up a new and specific system for supplies, it is difficult to see why it should not do likewise with regard to competition. The very nature of the nuclear sector, with its strategic importance in terms of energy, makes it impossible to apply rules, such as those on competition, which have been defined and developed for industrial sectors with very different characteristics and requirements.

50. Rules on competition can be justified in a free market, where there are a variety of operators and a need to ensure the free movement of goods - conditions which do not prevail in the nuclear sector. The movement of nuclear materials is already subject to so many constraints and controls that it seems inappropriate to introduce new ones, even in a formal area such as competition (cf. the aims referred to by the Commission in its remarks in the abovementioned explanatory report, particularly Articles 72 and 74).

51. In addition, the application of these rules to the nuclear sector would involve, in practice, the application of secondary legislation deriving from Articles 85 (agreements between undertakings) and 90 (transparency of financial dealings between public undertakings and Member States), which would have significant effects. In the first instance, the implementation of agreements between suppliers and producers would be dependent in practice on the opinion of the competition services, with no deadline set for the delivery of this opinion.

52. It would therefore be appropriate to delete Article 54 and retain the provisions on competition policy contained in the present Chapter VI.

Article 55

53. The experience gained in the international agreements concluded by the Commission shows the need to find a procedure which allows effective protection of the Member States' interests.

The proposed provision should therefore be amended so as to define the role, tasks and composition of the special committee suggested by the Commission.

54. The reference to the similar committees provided for in Article 113 of the EEC Treaty, which the Commission uses as justification for this provision, is inadequate for this purpose.

On the contrary, it is necessary to ensure that this committee participates effectively in the negotiations and to provide for the possibility of submitting a report/opinion to the Council, which forms an integral part of the adoption procedure laid down by the second paragraph of Article 101.

Article 57

55. The Commission has used the present Article 59 of Chapter VI as the basis for this provision, which stipulates that all exports of nuclear materials shall require the authorization of the Commission.

As it stands, this article would assign to the Commission substantial powers to intervene and impose conditions in the export sector, to the detriment of the industries operating in the nuclear fuel cycle. This would extend the requirement for prior approval by the Commission to exports of materials processed for a person or undertaking from a third country, whereas the original text (Article 75) exempted them from this requirement.

56. It is clear that a strict application of this new article could:

- dissuade clients in third countries from using the Community's processing industries, for fear that conditions imposed by the Commission and not known beforehand could create difficulties for the return of the materials;

- encourage Community industries to exploit their production capacity in third countries so as to enjoy maximum freedom of action;
- dissuade other countries from participating in nuclear development in the Community (for example, the leasing of materials and services for the fuel cycle), for fear of seeing the object of the transaction 'frozen' in the Community.

57. Under the present rules the need for authorizations derives - as the Commission points out - rather from the need to guarantee the general interests of the Community than from the existence of the Agency's monopoly, although it is true that special fissile materials are exempt from this, as are the commitments referred to in Article 75, which are not covered by the monopoly.

58. Once the Agency's monopoly is broken, there is therefore no need for a control of this kind on exports. Particularly as this would have the effect of creating, for no good reason, a disparity between the treatment of exports and that of imports, for which, under the new rules, only subsequent notification would have to be given.

59. This provision should therefore be deleted and provision should be made for the rules laid down in Articles 66 and 72 to apply also to export contracts.

Article 58

60. The industries of the Member States need to be reassured as to the Community's intention to support common projects. As it stands, however, Article 58 would only be a source of concern for these industries, because:

- it explicitly requires them to provide information about investment projects and this could undermine industrial confidentiality;
- it gives an extremely general idea of what the Community's aid would be.

Article 60

61. This article lays down the possible action the Council may take to build up stocks (it would be preferable to replace 'may decide' by 'shall decide').

62. The decisions on stocks and on possible Community aid are of the utmost importance.

Firm commitments are therefore required by the Community in this field. The provision proposed by the Commission, however, does not seem to offer adequate guarantees in this respect. It should also be noted that, in the Commission's proposal, the adoption of these measures is purely hypothetical and no provision is made to compel the Council to act on this matter.

63. It would therefore be appropriate to amend this article so as to oblige the Council to act on the initiative of the Commission or at the request of a Member State and to adopt the decisions on this matter unanimously. In addition, procedures should be established for the use of the stocks at the same time as the adoption of the amendment.

Article 61

64. It is difficult to see how the elimination of the Agency's monopoly can be reconciled with the contents of this article, which, in substance, would allow the Council to take action on prices and imports on the basis of its own evaluation of the balance between supply and demand, without taking account of industrial strategies.

65. The remarks made in connection with the previous article also apply to this one.

In particular, it does not seem right to adopt by a qualified majority provisions which are intended to remedy the imbalance between supply and demand by means of measures to diversify the sources of supply and to give Community preference to producers from the Member States.

66. Here again, the Council ought to decide on a request from a Member State or on the initiative of the Commission.

Article 62

67. The introduction of the amendments proposed to the previous article and the fact that the measures it suggests are only guidelines, make this article redundant.

It should therefore be deleted.

Article 65

68. Despite its modified functions, the Agency would be a Community organ and, under new Article 52, would be assigned the essential task of contributing to the implementation of the supplies policy.

In view of the above consideration, the Agency should be financed from the general budget of the Community, while maintaining its financial autonomy. However, the part of the article which seeks to fix a charge on transactions and to control the formation of the Agency's capital - which would be open, moreover, to third countries - is unacceptable. It would therefore be appropriate to delete the second and third indents of the first paragraph of this article.

Article 66

69. In conformity with the remarks made in connection with Article 57, it is necessary to propose an amendment to this article to the effect that the Agency should also be informed of export contracts.

Article 69

70. In the frequently referred to explanatory report which accompanies its proposal, the Commission specifies that the Agency may conclude contracts not only when provision to this effect is made in international agreements but also under the circumstances provided for in Articles 62 and 63 (imbalance between supply and demand).

Article 70

71. It would be necessary to know the contents of the Commission regulation establishing the procedure for applying Section IV, the Supply Agency, (see Art. 71) before defining what information the Member States should make available to the Agency.

Article 72

73. The Commission is proposing post facto communication of contracts because it believes this will avoid obstacles and delays.

74. However, the Commission's interpretation cannot be accepted, as the proposal includes a provision subjecting the contracts to a suspending condition in conformity with the rules of Chapter VI.

This condition could impede the conclusion of contracts for immediate implementation which - in the event of irregularity - could be declared null and void, with the inevitable legal and economic consequences for the obligations incurred during the time limit laid down by the Commission (in total, 45 days for the Commission to give its ruling).

75. In fact, as far as operators are concerned, the form of the communication (prior or post facto) is less important than the exact scope of the field of inquiry allowed to the Commission.

76. It would therefore be appropriate to amend this article so as to:

- indicate clearly what form the Agency's verification should take;
- extend this verification to include export contracts (see remarks on Art. 57);
- in cases of post facto communication, provide for partial annulment, to allow exemption for any effects produced by the contract pending the Commission's ruling.

Article 73

77. This article provides for the possibility of Community controls over persons and undertakings which seem excessive and, in any case, redundant given the competent controls already in operation (Luxembourg security control, IAEA controls, national controls).

78. The power granted to Commission officials, particularly in respect of access to premises, sites and means of transport, should be confined to the controls they require to exercise in order to verify whether contracts comply with the rules in force.

79. There is in fact a danger that these controls could overlap with the security controls performed by the appropriate services, but without the specific guarantees provided for the latter (Articles 81 and 82).

80. Since the Commission specifies in its explanatory report that the aim of the controls relates to the communication of contracts or the failure to do so, it would be appropriate to amend this article in such a way as to make explicit the object of the required verifications and to limit the powers of the Commission's representatives accordingly.

Article 74

81. The possibility of applying fines and/or penalties is an essential element of the new Chapter VI.

The proposal to grant the Commission legal authority in this field is puzzling, not only because of the importance of the subject, but also because the new rules - as the Commission itself affirms in its explanatory report - should also apply to infringements of international agreements (new Article 55).

82. It is therefore necessary, on the basis of the contents of this article, for the new control system, under the jurisdiction of the Council of Ministers, to enter into force at the same time as the new supplies system.

V. CONCLUSIONS

83. In the opinion of the rapporteur, the proposal for a revision submitted by the Commission is politically inopportune and unacceptable, because it would weaken the image of Community solidarity (it is not enough to say that the Agency would not function according to the Statutes) and goes against the trend towards greater European integration which the European Parliament has so far followed (resolutions of 9 July 1981 and 6 July 1982, setting up a Committee on Institutional Affairs with the task of drawing up a draft treaty for European Union).

84. Secondly, as we have tried to show in the present document, the proposal is technically deficient, because it creates more difficulties than it solves. If the functioning of the Agency was already complex, the amendments proposed by the Commission would render it still more so.

85. In the rapporteur's view, the revision would be likely to give public opinion - which already has valid reasons for concern - the impression of an uncommitted, laissez-faire approach by the Community.

86. In this respect, there are serious risks because of the absence of one of the guarantees which are for the moment formal, but which should be essential for safely extending the use of nuclear energy and for reassuring public opinion in its acceptance of it.

87. In conclusion, the rapporteur takes the view that, in addition to the need to construct a united Europe, there is also the very important matter of public opinion, which is increasingly calling for fresh guarantees before it will accept the siting of nuclear power stations. To accept this proposal would be to betray those expectations.

Chapter VI - Proposed revision

ANNEX II

<u>TEXT IN FORCE</u>		<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
<u>ARTICLE</u>	<u>SUBJECT</u>			
Art. 52	Principle of the monopoly of the Agency	This principle has been avoided in practice by means of free negotiation - a practice subsequently endorsed by the Agency	This principle is abolished. Provision is made instead for the Community to <u>ensure</u> regular and equitable supplies	Given the nature of the full proposed text, the Community can, at most, <u>regulate</u> rather than <u>ensure</u> supplies
- 26 -	Principle of non-discrimination	This principle has been respected by the Agency	Community action should only concern materials intended for 'civil and non-explosive purposes'	The new text establishes the principle of discrimination in favour of countries with nuclear weapons: . with regard to materials intended for explosive uses, countries with nuclear weapons will enjoy a privileged market, not subject to regulation by the Community;
				PE 84.748/fin./Ann.II

<u>TEXT IN FORCE</u>		<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
<u>ARTICLE</u>	<u>SUBJECT</u>			
Articles 53 to 56	Role of the Agency	The Agency has certainly not been allowed - by any of the Member States - to fulfil its most important task, i.e. the 'right of option'	The new text (Articles 64 to 71) is based on the principle of abolishing the Agency's monopoly and right of option	<p>there is nothing to prevent materials initially earmarked for explosive uses - and thus exempt from Community regulation - from being released onto the civil market</p> <p>The new text confirms the 'academic' role of the Agency. The respect of the old text would create many problems so far evaded, if it became binding.</p>
57 to 66	Right of option on all materials coming from inside the Community	Rarely exercised	Abolished	Abolishing this principle will deprive the Agency of its potential role as a powerful protector of the weaker countries. The natural consequence will be the creation of special relationships between the stronger countries.

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<u>TEXT IN FORCE</u>		<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
ARTICLE	SUBJECT			
67 to 69	Prices policy	Never implemented	Provision is made (Art. 61) for the possibility of intervention - by means of a Council decision by a qualified majority - in the event of an imbalance between supply and demand	Council intervention could affect industrial strategies
Art. 70 - 28 -	Prospecting programmes in the Member States	Occasionally implemented	The new text reaffirms in briefer and more realistic terms the contents of the article, adapting them to take account of the abolition of the principle of equal access	None
Art. 71	Recommendations on revenue or mining regulations	Respected	Not mentioned	Uninfluential
Art. 72	Building up of stocks	Never applied	Same general formulation as the old text, with mention of the need for prior consultation of the Assembly (Art. 60)	In this area, a more binding policy on stocks was intended to provide partial compensation for the weaker nuclear countries

<u>TEXT IN FORCE</u>		<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
ARTICLE	SUBJECT			
Art. 74	Exemption for materials used for research	Applied	Not mentioned (under the system proposed, the exemption is for <u>all materials</u>)	None
Art. 75	Exemption for materials processed for a person or undertaking from a third country	Applied	Provides for prior Commission approval to be required also for 'exports' of materials processed for persons or undertakings from a third country	The new text is damaging because: <ul style="list-style-type: none"> - it would discourage clients from third countries - it would encourage the Member States to take initiatives outside the Community
Art. 76	Amendment of the provisions of Chapter VI	Never applied	Provision is made for the amendment of the regulation establishing the conditions for the transfer of materials	The regulation in question is not known. It is dangerous that the regulation: <ul style="list-style-type: none"> . is to be adopted by the Commission (instead of the Council) . can be amended by a Council decision (by a qualified majority instead of unani- mously)

<u>TEXT IN FORCE</u>		<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
<u>ARTICLE</u>	<u>SUBJECT</u>			
77 to 85	Safeguards	Partially applied	<ul style="list-style-type: none"> . Increases the bureaucratic load (documentation, notification, etc.) . Increases the scope for inspection controls 	<p>. can include derogations from the principle of market unity</p> <p>Fails to take account of developments in controls and creates additional controls which are redundant</p>

<u>TEXT IN FORCE</u>	<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
Principle of non-discrimination	Applied	Unity of market (Art. 53)	<ul style="list-style-type: none"> . Risk of discrimination between countries with nuclear weapons and those without them (Art. 52) . Risk of derogations being introduced by means of amendments to the regulation (Art. 53) . Unorthodox procedure for issuing the regulation (issued by the Commission with possibility of appeal to the Council)
Right of option (Art. 52)	Never applied in practice	Abolished	<ul style="list-style-type: none"> . Risk of replacing the Agency's monopoly by a monopoly of the strongest countries

<u>TEXT IN FORCE</u>	<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
Exemption from provisions for materials processed for a person or undertaking from a third country (Art. 75)	Applied	No exemption (Art. 57)	<ul style="list-style-type: none"> . Increases Commission's power of intervention . Dissuades third country clients from operating in the EEC . Provides an incentive for EEC industries to transfer their activities away from the Community
Prices policy (Articles 67 and 69)	Never applied	Majority decision by the Council (Art. 61)	<ul style="list-style-type: none"> . Risk of impromptu intervention by the Council on prices and imports, affecting industrial strategies
Incentives policy (Art. 70)	Applied sporadically	Extended to activities in third countries (Art. 58)	<ul style="list-style-type: none"> . Requests information which would undermine industrial confidentiality . Is vague about Community aid <p style="text-align: right; margin-top: 20px;">PE 84.748/fin/Ann.III</p>

<u>TEXT IN FORCE</u>	<u>PRACTICAL APPLICATION</u>	<u>PROPOSED TEXT</u>	<u>REMARKS</u>
Policy on stocks (Art. 72)	Never implemented	Decentralization instead of centralization of stocks (Art. 60)	<ul style="list-style-type: none"> As in the past, there are no guarantees concerning the building up of stocks
Community controls (Arts. 77 and 85)	Only formal	Increased intervention (Articles 72 and 73) and heavier penalties (Article 74)	<ul style="list-style-type: none"> More onerous for users and made partly redundant by other Community and non-Community controls
Role of the Agency (Articles 53 and 56)	Some Member States have disregarded the rules	'Academic' function of the Agency (Articles 65 and 71)	<ul style="list-style-type: none"> In some areas the Agency's power is reduced and that of the Commission extended. If applied, the new rules as a whole would place greater burdens and constraints on users.