

ROADMAP

Title of the initiative: **Revision of Commission Recommendation 99/829/Euratom on the application of Article 37 of the Euratom Treaty**
Type of initiative (CWP/Catalogue/Comitology): Commission Recommendation (Catalogue)
Lead DG: DG ENER.DDG2. D.4
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Version No: 2

Initial IA screening & planning of further work

A. Context and problem definition

(i) What is the political context of the initiative? (ii) How does this initiative relate to past and possible future initiatives, and to other EU policies?

Under Article 37 of the Euratom Treaty, Member States are required to provide the Commission with a large amount of information on any plan to operate or modify an installation that may give rise to discharges of radioactive effluents. The Commission sends this information to the experts, who in conjunction with the Commission draw up a report containing a succinct description of the plan and the planned safety devices as well as an analysis of the potential radiological consequences of

- releases of gaseous radioactive effluents in normal conditions;
- releases of liquid radioactive effluents and disposal of solid radioactive waste in normal conditions, and
- unplanned releases of radioactive effluents that may occur in the event of an accident.

The report ends by stating whether, and to what extent, implementation of the plan is liable to result in the radioactive contamination of another Member State.

Based on this report, the Commission adopts an opinion which is then sent, accompanied by the experts' report, to the government of the Member State that forwarded the original waste disposal plan.

The Commission Recommendation on the application of Article 37 of the Euratom Treaty is an important tool for the Commission to fulfil its obligations under the Euratom Treaty. Since the first recommendation was adopted in 1960, the Commission has revised it on three occasions, the last being in 1999¹. These revisions were made to take account of experience gained in applying Article 37. The main purpose of the recommendation is to define the precise scope of Article 37 and specify the information which the general data to be provided by the Member States must contain. Even if a recommendation is not a binding act, almost all provisions of the current Recommendation are implicitly recognised by Member States as binding. According to ECJ (Cattenom Case C-187/87), discharge authorisations may not be granted by the competent authorities before adoption of a Commission Opinion.

What are the main problems identified?

Experience gained since 1999 and feedback received from Art. 37 Experts and from Member

¹ Recommendation of 16.11.1960, OJ, 21.12.1960, p. 1893; Recommendation 82/181/Euratom of 3.2.1982, OJ L 83, 29.3.1982, p. 15; Recommendation 91/4/Euratom of 7.12.1990, OJ L 6, 9.1.1991, p. 16; Recommendation 1999/829/Euratom of 6.12.1999, OJ L 324, p. 23.

States have shown that for certain provisions of the current Recommendation there is a need for clarification and for simplification.

Who is affected?

Commission, Competent authorities of Member States which are required to submit general data on any plan for the disposal of radioactive waste and the population from neighbouring Member States.

(i) Is EU action justified on grounds of subsidiarity? (ii) Why can the objectives of the proposed action not be achieved sufficiently by Member States (necessity test)? (iii) As a result of this, can objectives be better achieved by action by the Community (test of EU Value Added)?

As the Community's legislative powers under Title II Chapter 3 of the Euratom Treaty are exclusive in nature, they are not subject to the principle of subsidiarity.

B. Objectives of EU initiative

What are the main policy objectives?

The aim of the initiative is on the one hand to clarify the nature of the information needed by the Commission to fulfil its obligations under the Euratom Treaty and on the other hand to simplify as much as possible the whole Art. 37 procedure, avoiding, when possible, unnecessary submissions.

Indeed, the experience gained since 1999 has shown that for certain provisions of the current Recommendation there is a need for clarification and for simplification. Trivial operations and modifications of existing plans having by essence no or negligible radiological impact in other Member States should not be submitted to the Commission. For certain operations, it should be examined if an assessment of doses through effluent pathways in other Member States is needed where doses to the population in the vicinity of the plant are found to be extremely low.

On the other hand, the Judgement of the ECJ in Case C-29/99 on the safety aspects under Chapter 3 of the Euratom Treaty provides the opportunity to introduce, in the scope of the Article 37 procedure, extended requirements for safety related information in the context of the assessment of the accidental situations. In its ruling the Court of Justice recognised an intrinsic link between radiation protection and nuclear safety and declared that the provisions of Title two, Chapter 3 of the Euratom Treaty, related to health and safety (i.e. radiation protection), form a coherent whole conferring upon Euratom powers of some considerable scope in order to protect the population and the environment against risks of nuclear contamination. Therefore, data which were already requested on unplanned releases should now be extended beyond reference accidents to accidents taken into consideration by the competent authorities for the establishment of the site related national emergency plan. This would allow an estimation of the radiological impact of accidental scenarios on the population of other Member States with at least the same level of conservatism than for the population of the Member State where the operation is planned.

Main Modifications

Clarification

- Clarify the terminology used in the current Recommendation (disposal, discharge, release, decommissioning, dismantling, storage, etc.).
- Clarify when Member States have to submit decommissioning/dismantling operations of nuclear reactors and reprocessing plants and limit the amount of information requested. However, it is now proposed to request also a submission of general data for the dismantling of mixed oxide fuel fabrication plants.
- Clarify (in a new Annex) the amount of information to be provided for a modification of a plan on which no opinion has already been given.
- Clarify the information to be provided in the case where Member States communicate an integrated submission of a complex nuclear site where major changes are scheduled to be

carried out over long periods of time.

- Clarify and limit (in a new Annex) the amount of information to be provided for the predisposal management and the storage of radioactive waste.
- Clarify and limit the amount of information to be provided for the emplacement above and under the ground of radioactive waste without the intention of retrieval.

Simplification

- Avoid submissions of "trivial operations": Power thresholds have been introduced for the operation and the dismantling of small research reactors below which no submission is requested. Storage facilities of irradiated nuclear fuel in casks licensed for transport and storage, on existing nuclear sites, should not be submitted.
- Avoid detailed information on the assessment of doses to the population in other Member States under normal conditions and accidental situations when the doses to the population in the vicinity of the plant are below defined thresholds (except for nuclear reactors and reprocessing plants).

Extension

- Extend the information requested on unplanned releases beyond reference accidents to the accidents taken into consideration by the competent authorities for the establishment of the site related national emergency plan. This additional requirement would only apply for new nuclear power plants, research reactors and reprocessing plants. For modified plans, it would not be requested if an opinion was already issued for the existing plan.

Do the objectives imply developing EU policy in new areas or in areas of strategic importance?

Not applicable

C. Options

(i) What are the policy options? (ii) What legislative or 'soft law' instruments could be considered?
(ii) Would any legislative initiatives go beyond routine up-date of existing legislation?

1. No revision of the Commission Recommendation
2. Revision limited to the proposed clarifications
3. Revision limited to the proposed clarifications and simplifications avoiding "trivial operations" and unnecessary detailed estimations of doses when the doses in the vicinity are very low.
4. Revision including all modifications proposed (see above)

Option 1 is not acceptable as the provisions of Art 37 Euratom are rather vague and the Commission must try to constantly improve its implementation based on its own experience as well as the feedback received from Member States and Euratom experts. In addition, when possible the Commission should avoid unnecessary administrative burden for Member States fulfilling their obligations under Community law.

Option 2 is not acceptable. It would clarify the provisions under Article 37 Euratom but would not reduce unnecessary workload for Member States in preparing the general data to fulfil their obligations under Community law.

Option 3 seems adequate from the point of view of clarification and simplification. However the Article 37 procedure would not take advantage of the judgement of the ECJ in case C-29/99 on the safety aspects under Chapter 3 of the Euratom Treaty allowing for more severe accidents taken into consideration for the dose calculation to the population of other Member States.

Option 4 seems the most adequate option.

Does the action proposed in the options cut across several policy areas or impact on action taken/planned by other Commission departments?
Not applicable.

Explain how the options respect the proportionality principle

The proposed revision sets out clearer instructions to Member States how to implement Article 37 Euratom, it decreases globally the amount of information to be submitted by Member States to the Commission and improves the credibility of the Commission's opinions in particular as regards the examination of the radiological consequences of accidental situations for the population of other Member States.

D. Initial assessment of impacts

What are the significant impacts likely to result from each policy option (cf. list of impacts in the Impact Assessment Guidelines pages 32-37), even if these impacts would materialise only after subsequent Commission initiatives?

Not applicable – no impact assessment required

Could the options have impacts on the EU-Budget (above 5 Mio €) and/or should the IA also serve as the ex-ante evaluation, required by the Financial Regulation?

Not applicable.

Could the options have significant impacts on (i) simplification, (ii) administrative burden or on (iii) relations with third countries?

As mentioned above, the proposed option will reduce the administrative burden for Member States fulfilling their obligations under Community law as well as for the Commission. Submissions to the Commission of "trivial operations" as well as unnecessary data will be avoided.

E. Planning of further impact assessment work

When will the impact assessment work start?

Not applicable.

(i) What information and data are already available? (ii) Will this impact assessment build on already existing impact assessment work or evaluations carried out? (iii) What further information needs to be gathered? (iv) How will this be done (e.g. internally or by an external contractor) and by when?

(v) What type and level of analysis will be carried out (cf. principle of proportionate analysis)?

Not applicable.

Which stakeholders & experts have been/will be consulted, how and at what stage?

Group of Experts referred to in Article 37 of the Euratom Treaty.