

ROADMAP			
TITLE OF THE INITIATIVE	Recommendation from the Commission on the application of Article 103 of the Euratom Treaty in the light of the European Energy Security Strategy		
LEAD DG – RESPONSIBLE UNIT	DG ENER.D.1	DATE OF ROADMAP	11 / 2015
This indicative roadmap is provided for information purposes only and is subject to change. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content and structure.			

A. Context and problem definition
<p>(1) What is the political context of the initiative?</p> <p>(2) How does it relate to past and possible future initiatives, and to other EU policies?</p> <p>(3) What ex-post analysis of existing policy has been carried out? What results are relevant for this initiative?</p> <p>(1) Given the recent geopolitical events and the primary importance of ensuring EU energy security of supply, the Commission published, on 28 May 2014, a comprehensive EU Energy Security Strategy (EESS) (COM(2014)330) laying down the EU's short and medium to long-term goals in this area, and covering the whole energy sector. The need to establish a European Energy Union, with energy security and energy independence amongst its central features, is also one of the political priorities of the new Commission. Nuclear energy is recognised in the Strategy as a reliable base-load and emission-free energy source which plays an important role in the secure supply of electricity in the EU.</p> <p>Under Article 103 of the Euratom Treaty, the Commission is entrusted with the task of ensuring that the draft international agreements or contracts negotiated by Member States do not contain elements which impede the application of the Euratom Treaty and/or its secondary legislation.</p> <p>(2) In the field of external energy relations, one of the challenges highlighted by the EESS is the need to ensure that international agreements negotiated by the Member States are compatible with EU and Euratom legislation and the security of supply policy. In the nuclear field, Member States are therefore called upon to cooperate with the Commission in diversifying the supply of nuclear fuel. The Commission on the other hand undertakes to systematically take into consideration aspects related to the diversification of fuel supplies when assessing new nuclear investment projects and new draft agreements or contracts negotiated by Member States with third countries.</p> <p>The proposed initiative is meant to give effect to the recommendation of the EESS, as regards the assessment of draft agreements or contracts pursuant to Article 103 Euratom. It will therefore specify which aspects will be subject to particular scrutiny by the Commission, with particular emphasis on security of supply concerns. It will draw on the whole Euratom acquis, and in particular the supply policy under Chapter 6 of Title II of the Treaty.</p> <p>(3) On the basis of past experience with the application of the Article 103 procedure, the Commission is already in a position to identify problem areas. Until now, Article 103 was considered to be self-executing, but with the progressive increase in secondary legislation adopted under the Euratom Treaty, as well as the renewed attention to the Euratom supply policy in the light of recent geopolitical events, the Commission is of the view that more detailed guidance as to the operation of the procedure is desirable.</p> <p>What are the main problems which this initiative will address?</p> <p>The absence of specific guidance for the Member States might entail doubts as to the exact scope of Article 103, in particular as regards the types of agreements that should be notified, and as to the factors taken into account by the Commission in its assessment.</p> <p>Past experience has also shown that in negotiating agreements with third states, Member States do not always consider the long-term implications of such agreements on the common nuclear market or on the EU security of supply policy.</p> <p>The need to renegotiate certain provisions in draft agreements in order to take into account the Commission's suggestions has at times also delayed the conclusion of these same agreements, to the detriment of the Member States themselves.</p> <p>Who will be affected by it?</p> <p>Primarily, the Member States. They will be able to benefit from guidance on the aspects subject to particular scrutiny by the Commission in the context of the assessment carried out under Article 103 Euratom and on how</p>

notification under this procedure should take place. This should inject some degree of certainty for Member States when negotiating international agreements in the nuclear field.
Undertakings in the nuclear sector could be indirectly affected as the agreements eventually concluded might set different parameters for cooperation with entities in third countries. They might also improve conditions in the European nuclear market in the light of the EESS.
Is EU action justified on grounds of subsidiarity? Why can Member States not achieve the objectives of the proposed action sufficiently by themselves? Can the EU achieve the objectives better?
Yes. Member States are not always in a position to adequately assess whether requirements of Euratom law are complied with, nor what is in the Union's interest in terms of security of supply. Moreover, the Article 103 procedure should be interpreted and applied in a consistent and uniform manner.
It is the Commission which, according to Article 103, is entrusted with the task of supervising compliance of draft agreements with the Euratom Treaty and which is consequently best-placed to provide guidance on the application of the procedure under Article 103 Euratom. Likewise, it is the Commission which has an overview of the European energy and nuclear markets.

<b>B. Objectives of the initiative</b>
What are the main policy objectives?
<p>The main policy objective would be to avoid a situation where the achievement of the EU/ Euratom nuclear energy policy is undermined through the unilateral action of individual Member States in the conduct of their external relations. Better coordinated action in the international sphere should result in:</p> <ul style="list-style-type: none"> <li>- a more coherent treatment of matters relating to supplies of nuclear fuel, which would in turn lead to enhanced energy independence;</li> <li>- a more competitive nuclear energy market in which the principles of free movement are observed, with a level-playing field for all operators and the avoidance of dominant positions;</li> <li>- more coordinated action on the part of Member States when conducting their external energy relations, in a more transparent context where the principles that should guide those relations are known to all;</li> <li>- more attention to safeguards matters, enabling nuclear material to be accounted for at all times irrespective of its origin under a specific agreement negotiated by a Member State with a third state.</li> </ul>
Do the objectives imply developing EU policy in new areas?
The proposed measure does not develop EU policy in new areas but merely aims at providing guidance to Member States in the framework of the Article 103 procedure, in particular as regards ensuring compliance with all provisions of Euratom law as well as the objectives of the EESS when negotiating international agreements.

<b>C. Options</b>
<p>(1) What are the policy options (including exemptions/adapted regimes e.g. for SMEs) being considered?</p> <p>(2) What legislative or 'soft law' instruments could be considered?</p> <p>(3) How do the options respect the proportionality principle?</p>
<p>(1): The proposed initiative could include the following elements:</p> <p>a. It could limit itself to outlining the Commission's understanding of the scope of the Article 103 procedure and the aspects it takes into account in making its assessments under that Article.</p> <p>b. It could go further by specifying which principles should be taken into account by the Member States when negotiating international agreements.</p> <p>(2):</p> <p><u>Option 1:</u> A legally-binding act could be envisaged in order to ensure that unilateral action by the Member States does not jeopardise the attainment of the objectives of the Euratom Treaty and of commonly-agreed policies, such as the EESS.</p> <p><u>Option 2:</u> Another possibility would be the issuing of a Commission recommendation on the application of Article 103, outlining the Commission's understanding as to how the procedure should function and the aspects that should be taken into account by Member States in the current scenario of increased political attention to security of supply concerns.</p> <p>(3) None of the options under (1) may be said to go beyond what is necessary to achieve the objectives of the Euratom Treaty. Member States alone are often not in a position to adequately assess what is in the Union's</p>

best interest, and therefore the involvement of the Union's institutions in the achievement of common goals must be deemed necessary.

A legally binding act could be seen as not respecting the principle of proportionality as Member States are already legally bound to conform to the requirements of the Euratom Treaty when conducting their external relations. The aim of the proposed measure will merely infuse the procedure with more predictability.

As a measure of "soft law", a recommendation would not go beyond what is necessary to achieve the relevant objectives of the Euratom Treaty and the EESS, and would therefore be fully compliant with the proportionality principle.

#### D. Initial assessment of impacts

What are the benefits and costs of each of the policy options?

Benefits: Contributing to a more coordinated approach to external energy relations, while fully respecting Member States' freedom to conclude cooperation agreements with third countries in the nuclear field.

The Article 103 procedure is also rendered more transparent for the Member States, allowing them to see what factors drive the Commission's assessment under that procedure, which in turn would simplify the process of negotiation and conclusion of international agreements. The proposed initiative would enable them to negotiate agreements and contracts which from the outset are more in line with the objectives of the Euratom Treaty and the EESS.

Costs: n/a for a legally binding act given that, as mentioned above, Member States are already legally bound to conform to the requirements of the Euratom Treaty when conducting their external relations.

A non-binding measure on the other hand implies that enforcement mechanisms will be limited. The risk will remain that individual Member States might choose to pursue their individual short-term interests as opposed to the long-term interest of the Union as outlined in the EESS. On the other hand, should Member States choose to abide by the recommendation, there could be added costs for certain operators, who might have to make different technological choices. However, in the long term, a more diversified market would avoid situations of dominant positions, which would almost certainly lead to anti-competitive practices and increased costs for businesses.

Could any or all of the options have significant impacts on (i) simplification, (ii) administrative burden and (iii) on relations with other countries, (iv) implementation arrangements? And (v) could any be difficult to transpose for certain Member States?

(i) Simplification:

The proposed measure will provide more clarity and certainty to Member States when negotiating international agreements in the nuclear field.

(ii) Administrative burden:

Member States will have to take into account the principles laid down in the recommendation when negotiating international agreements. Ultimately however this should lead to a reduced need for the Commission to object or make suggestions to the Member States at the conclusion of the procedure, which could in turn necessitate further rounds of negotiations with the third country in question.

(iii) Relations with other countries:

The initiative could affect the parameters within which the external relations of Member States in the nuclear energy field are conducted, in that they will be encouraged to take into account the Union interest in terms of diversification of fuel supply, free movement in the nuclear common market, safeguards and energy security.

(iv) & (v): N/A.

(1) Will an IA be carried out for this initiative and/or possible follow-up initiatives?

(2) When will the IA work start?

(3) When will you set up the IA Steering Group and how often will it meet?

(4) What DGs will be invited?

No. The proposed measure will merely infuse the procedure with more predictability and should not entail any significant impacts that would warrant an IA. In addition, it appears that a non-binding measure would be the preferred option to achieve the policy objectives identified.

(1) Is any option likely to have impacts on the EU budget above €5m?

(2) If so, will this IA serve also as an ex-ante evaluation, as required by the Financial Regulation? If not, provide information about the timing of the ex-ante evaluation.
No.

<b>E. Evidence base, planning of further work and consultation</b>
<p>(1) What information and data are already available? Will existing IA and evaluation work be used?</p> <p>(2) What further information needs to be gathered, how will this be done (e.g. internally or by an external contractor), and by when?</p> <p>(3) What is the timing for the procurement process &amp; the contract for any external contracts that you are planning (e.g. for analytical studies, information gathering, etc.)?</p> <p>(4) Is any particular communication or information activity foreseen? If so, what, and by when?</p>
<p>(1) As already explained above, the Commission will be able to draw on experience gained in the application of the Article 103 procedure. Certain recurrent problems have arisen in the past which will be addressed in the proposed initiative.</p> <p>(2) N/A.</p> <p>(3) N/A.</p> <p>(4) N/A.</p>
Which stakeholders & experts have been or will be consulted, how, and at what stage?
N/A.