

22 June 2017

TF50 (2017) 3 - Commission to EU 27

Subject: Position paper transmitted to EU27 on nuclear materials and safeguard equipment (**Euratom**)

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: For discussion at the Council Working party (Art. 50) of 27 June 2017

Remarks: The attached position paper on nuclear materials and safeguard equipment (**Euratom**) contains the main principles of the EU position in this regard, to be presented to the UK in the context of negotiations under Art. 50

Essential Principles on nuclear materials and safeguard equipment

On the date of withdrawal, the Treaties, including the Treaty establishing the European Atomic Energy Community (the "Treaty" and the "Community"), cease to apply to the United Kingdom.

The United Kingdom is a member of the International Atomic Energy Agency ("IAEA") and bound by international conventions to which it is a party in its own right. From the withdrawal date, the United Kingdom will have sole responsibility for ensuring its compliance with international obligations arising therefrom.

Given that the Treaty will cease to apply in the United Kingdom, it appears appropriate that the Withdrawal Agreement set out arrangements for the transfer of the ownership of special fissile materials and Community property located in the United Kingdom used for the purposes of providing safeguards to the United Kingdom, respecting the Community's obligations under international agreements.

The Withdrawal Agreement should also provide that the United Kingdom assume all rights and obligations associated with the ownership of materials or property transferred and should regulate other questions related to material and property under the Treaty, in particular safeguards obligations.

The following principles should therefore apply in accordance with Union law, as interpreted by the Court of Justice of the European Union on the date of entry into force of the Withdrawal Agreement.

I. Safeguards obligations

On the date of withdrawal, the United Kingdom should undertake all obligations currently incumbent on the Community:

- to ensure that ores, source materials and special fissile materials present on United Kingdom territory are not diverted from their intended uses as declared by the users, and
- under agreements concluded by the Community with third States or international organisations, relating to any material, equipment, installation or property present on United Kingdom territory.

As a consequence of taking over safeguards obligations, the United Kingdom will have to:

- a. ensure that all ores, source materials and special fissile materials present on United Kingdom territory are handled in accordance with applicable international treaties and conventions, including but not limited to international treaties and conventions on nuclear safety, safeguards, non-proliferation, and physical protection of nuclear materials;
- b. have in place a safeguards agreement with the IAEA under which the IAEA applies safeguards to all material and property transferred by the Community to the United Kingdom, under which the IAEA verifies that this material remains in peaceful activities and is not withdrawn from safeguards;
- c. operate a domestic nuclear safeguards system (including accountancy of nuclear materials) in line with the international standards applicable;
- d. ensure that it is in a position to assume the Community's obligations under agreements concluded by the Community with third States or international organisations relating to any equipment or material present on United Kingdom territory, or otherwise identify appropriate arrangements in agreement with the third State or international organisation concerned.

II. Equipment used to provide safeguards

- (1) On the date of withdrawal, the Community should transfer ownership to the United Kingdom of equipment and other property related to the provision of safeguards under the Treaty located in the United Kingdom. The following conditions should then be met:
 - a. The United Kingdom should reimburse the Community for this transfer;
 - b. The sum to be reimbursed should be based on the value assigned to this property in the consolidated accounts of the Union;
 - c. The sum to be reimbursed should be included in the United Kingdom's obligations under the single financial settlement.
- (2) The equipment and other property to be transferred should be set out in a separate annex to the Withdrawal Agreement.

III. Special fissile material present on United Kingdom territory

- (1) Ownership of all special fissile material¹, which is currently with the Community by virtue of Article 86 of the Treaty, that is
 - present on United Kingdom territory on the date of withdrawal, and
 - the right of use and consumption of which pursuant to Article 87 of the Treaty is with the United Kingdom or with persons or undertakings established in the United Kingdomshould be transferred to the United Kingdom or to any entity designated by common accord by the parties on the date of withdrawal.

Any existing rights to use and consumption of special fissile material with a natural or legal person should not be affected by the transfer of ownership.

- (2) In regards to special fissile material, ownership of which is currently with the Community by virtue of Article 86 of the Treaty, that is
 - present on United Kingdom territory on the date of withdrawal, and
 - the right of use and consumption of which pursuant to Article 87 of the Treaty is with an EU27 Member State, or with persons or undertakings established in the EU27

the following principles should apply:

- a. The rights of the Community arising under the Treaty from ownership pursuant to Article 86 should be preserved;
- b. Any existing rights to use and consumption of special fissile material with a natural or legal person should not be affected by the withdrawal of the United Kingdom;
- c. The Commission should be able to require that this material be deposited with the Euratom Supply Agency or in other stores which are or can be supervised by the Commission.

IV. Special fissile material present in the EU27

- (1) Ownership of all special fissile material, which is currently with the Community by virtue of Article 86 of the Treaty, that is
 - present on the EU27 territory on the date of withdrawal, and

¹ Special fissile material should have the meaning set out in Article 197 of the Treaty.

- the right of use and consumption of which pursuant to Article 87 of the Treaty is with a natural or legal person established in the United Kingdom

should be transferred to the United Kingdom or to any entity designated by common accord by the parties on the date this material is exported from the EU27 territory to the United Kingdom.

- (2) Export of this material from the Community to the United Kingdom will have to be in accordance with the Treaty, in particular Community rules governing exports of special fissile materials to third States, as well as the Community's other international obligations.

V. Spent fuel and radioactive waste

Spent fuel² and radioactive waste³ generated in the United Kingdom, and present on EU27 territory on the date of withdrawal, should remain the responsibility of the United Kingdom, as is currently the case under Community Law in accordance with Article 4 of Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste.

² Spent fuel should have the meaning set out in Article 3(11) of Directive 2011/70/Euratom.

³ Radioactive waste should have the meaning set out in Article 3(7) of Directive 2011/70/Euratom.