

# Consultation on the revision of the existing information and procedural requirements under Articles 41 to 44 of the Treaty establishing the European Atomic Energy Community (Euratom)



Pursuant to the procedure laid down in Articles 41 to 44 of the Euratom Treaty (the "Treaty"), the Commission reviews nuclear investment projects scheduled in the Member States and makes its views known on all aspects of those projects which relate to the objectives of the Treaty. In this context, the Commission has already examined nearly 300 projects in relation to both their merits and their compatibility with the Treaty objectives and issued 'Points of View'. Assessments are carried out under the requirements of the Euratom Treaty, without prejudice to any applicable additional assessments to be carried out under the Treaty on the Functioning of the European Union and the obligations stemming from it and its secondary legislation, particularly as regards environmental, competition and public procurement aspects.

In the period 2010-2014, investment projects notified to the Commission under Article 41 amounted to €42.3 billion, comprising €36 billion for new nuclear power plants, €3.6 billion for radioactive waste management and spent fuel management projects, €1.3 billion for nuclear power plant refurbishment, €1.2 billion for decommissioning activities, and €0.2 billion for uranium mining projects.

The projects that must be notified to the Commission are those which relate to new installations or replacements and conversions which are planned by persons or undertakings engaged in a number of industrial activities listed in Annex II of the Treaty. These include, amongst others, the mining of uranium ore, the fabrication of nuclear fuel elements, the production of enriched uranium and nuclear reactors of all types and for all purposes.

The projects that must be notified to the Commission are further defined in Council Regulation (Euratom) 2587/1999<sup>1</sup>. This Regulation specifies that a notification is mandatory when a project's cost exceeds certain threshold amounts, which vary according to the type of industrial activity and whether the project concerns a new installation, a

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<sup>1</sup> Council Regulation (Euratom) No 2587/1999 of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty establishing the European Atomic Energy Community, OJ L 315, 9.12.1999, p. 1-3.

replacement or a conversion. Commission Regulation (EC) 1209/2000<sup>2</sup> on the other hand specifies the information that must be notified for each type of investment project and provides a model form for that purpose.

The current information and procedural requirements are therefore fragmented across different instruments. This makes it difficult for investors to identify: (i) **which** projects they should notify, (ii) **what** information about those projects they should provide, and (iii) **how** they should communicate that information to the Commission. This lack of clarity is compounded by the fact that the implementing Commission Regulation 1209/2000 was amended in 2003<sup>3</sup>.

Moreover, since the adoption of the above-mentioned Regulations, the legal landscape has changed considerably. New Euratom directives have been adopted in the fields of nuclear safety<sup>4</sup>, spent fuel and radioactive waste management (including decommissioning)<sup>5</sup> and radiation protection<sup>6</sup>. The current information requirements are therefore no longer adequate in the light of the purpose of the Article 41 procedure, which is to assess a project's compatibility with the objectives of the Treaty and its secondary legislation.

The Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy emphasised the importance of diversification of fuel supplies. In this Communication the Commission indicated its intention to update and enhance the requirements on the information to be provided on nuclear installation projects in accordance with Article 41 of the Euratom Treaty. The European Energy Security Strategy (EESS) states that the Commission will systematically take into consideration the possibility of diversification of fuel supplies when assessing new nuclear investments projects.

Due to gaps in these requirements and their lack of clarity and specificity, the information notified to the Commission by the investors is often incomplete or not sufficiently detailed, and the quality of the information provided varies considerably. This hampers the Commission's ability to assess the project and entails substantial delays impacting on the investment project, as the Commission has to, sometimes repeatedly, request additional information from the investors. The notification requirements can also be seen as onerous for some investment projects e.g. straightforward component replacement of existing installations, and could be simplified. Finally, due to the lack of specificity of the

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<sup>2</sup> Commission Regulation (EC) No 1209/2000 of 8 June 2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community, OJ L 138, 9.6.2000, p. 12-14.

<sup>3</sup> Commission Regulation (Euratom) No 1352/2003 of 23 July 2003 amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community, OJ L 192, 31.7.2003, p. 15-17. This amendment was annulled by Judgment of the Court of First Instance in Case T-240/04, French Republic v Commission of the European Communities, ECR (2007) II-04035.

<sup>4</sup> Council Directive 2014/87/Euratom of 8 July 2014 amending Directive 2009/71/Euratom establishing a Community framework for the nuclear safety of nuclear installations, OJ L 219, 25.7.2014, p. 42-52.

<sup>5</sup> 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, OJ L 199, 2.8.2011, p. 48-56.

<sup>6</sup> Council Directive 2013/59/Euratom of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, OJ L 13, 17.1.2014, p. 1-73.

requirements, the investors devote different degrees of time and effort in preparing their notifications. This runs the risk of creating a perception that investors are not being treated equally.

It follows from the above that the current notification requirements are no longer effective enough to allow the Commission to issue a meaningful and well-founded point of view within a reasonable period of time. The existing requirements also fall short of the Commission's commitment to make EU legislation simpler and to reduce administrative costs for businesses.

As a preliminary step in addressing the above-mentioned shortcomings, the Commission is currently assessing areas where the information and procedural requirements for notifications under Article 41 could be clarified, streamlined and/or updated, in the light of recent experience in the assessment of investment projects, as well as the latest developments in Euratom law and policy outlined above. Any revision will be aimed at making the current framework more efficient and effective, thereby reducing the administrative burden for investors in support of growth and jobs.

*In this context, the on-line questionnaire below seeks the views of stakeholders and other interested parties on the need for a revision of the existing information and procedural requirements under Articles 41 to 44 of the Euratom Treaty. The Commission will evaluate the feedback to this consultation and ensure practical follow-up.*

*The consultation will remain open until **25.01.2016**.*

*Thank you for your participation.*