RECOMMENDATIONS

COMMISSION

COMMISSION RECOMMENDATION

of 4 December 2008

on criteria for the export of radioactive waste and spent fuel to third countries

(notified under document number C(2008) 7570)

(2008/956/Euratom)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 33, second paragraph, and 124, second indent, thereof,

Having regard to Council Directive 2006/117/Euratom of 20 November 2006 on the supervision and control of shipments of radioactive waste and spent fuel [1], and in particular Article 16(2) thereof,

Whereas:

(1) Radiation protection principles agreed at international level form the basis of the measures protecting against the danger of ionising radiation emitted by radioactive waste or spent fuel.

(2) Such principles, to be effective, have to be part of a national regulatory system.

(3) In accordance with the safety culture prevailing in the Community as regards activities involving radioactive substances, an effective independence of roles between regulatory authorities and operators is required to ensure the appropriate management of radioactive waste or spent fuel.

(4) The decision to authorise shipments of radioactive waste or spent fuel to third countries is the responsibility of the competent authorities of the exporting Member State.

(5) The competent authorities of the exporting Member State should form an opinion, in accordance with the criteria referred to in Article 16(1)(c) of Directive 2006/117/Euratom, on the third countries' administrative and technical capacity for the safe management of radioactive waste and spent fuel, as well as the appropriateness of their regulatory structures.

(6) Member States, in implementing those criteria, should apply a principle of hierarchy among them.

(7) The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management is the fundamental relevant international legal instrument addressing the safety of spent fuel and radioactive waste management.

(8) In addition to the compliance with the set of criteria, other considerations, such as political, economic, social, ethical, scientific and public security matters, may be taken into account for authorising shipments of radioactive waste or spent fuel to a third country.

(9) Article 2 of Directive 2006/117/Euratom deals with the right of a Member State or an undertaking in the Member State to which radioactive waste is to be shipped for processing or other material is to be shipped with the purpose of recovering the radioactive waste, to return the radioactive waste after treatment to its country of origin. It also provides that Directive 2006/117/Euratom does not affect the right of a Member State or an undertaking in that Member State to which spent fuel is to be shipped for reprocessing to return to its country of origin radioactive waste recovered from the reprocessing operation.

(10) The criteria established by this recommendation are in accordance with the opinion of the Advisory Committee instituted under Article 21 of Directive 2006/117/Euratom,

[1] OJ L 337, 5.12.2006, p. 21.

HEREBY RECOMMENDS:

1. The main requirements relating to the export of radioactive waste or spent fuel to third countries referred to in Article 16(1)(c) of Directive 2006/117/Euratom should be as follows:

   (a) appropriate national provisions for radiological protection for workers and the general public should be established and enforced; they should be consistent with relevant internationally endorsed standards on radiation protection;

   (b) a coherent legislative framework for the regulation of activities involving a hazard from radioactive substances, including radioactive waste and spent fuel should be laid down;

   (c) effective independent regulatory authorities should be set up being competent for issuing licences, reviewing them, assessing demands, being in charge of inspection and enforcement functions and having adequate resources;

   (d) a clear allocation of responsibilities of the bodies involved in the different steps of spent fuel and radioactive waste management, particularly between operators and regulatory authorities should be provided for;

   (e) a system of reporting to, or authorising by, such authorities for organisations managing radioactive waste or spent fuel;

   (f) the assurance that the prime responsibility for the safety of spent fuel or radioactive waste management rests with the holder of the relevant licence and that each such licence holder meets its responsibilities;

   (g) the availability of qualified staff as needed for safety-related activities during the operating lifetime of a spent fuel and a radioactive waste management facility; and of adequate financial resources to support the safety of facilities for spent fuel and radioactive waste management during their operating lifetime and for decommissioning;

   (h) the establishment and enforcement of an adequate national third party liability regime;

   (i) the establishment and implementation of appropriate quality assurance programmes concerning the safety of spent fuel and radioactive waste management;

   (j) adequate protective and corrective measures, including the provision of information to the population groups concerned and the preparation and testing of emergency plans, which will apply in the event of a radiological emergency in order to control the release and mitigate its effects.

2. In order to evaluate whether the above requirements for exports of radioactive waste and spent fuel to third countries are met, Member States should take into consideration the third countries' compliance with the following criteria:

   (a) leading criteria:

   — IAEA membership and resultant adherence to the relevant safety standards of the International Atomic Energy Agency,

   — signature and ratification of, and compliance with the Joint Convention on the Safety of Radioactive Waste Management and the Safety of Spent Fuel Management, thus showing willingness to fulfil the obligations arising from the Joint Convention and demonstrating compliance with their relevant provisions addressing the safety of spent fuel and radioactive waste management,

   — signature and ratification of the Convention on Physical Protection of Nuclear Material and its amendment as expression of the obligation with prevention, detection and punishment of offences relating to nuclear material,

   — signature and ratification of, and compliance with the Convention on Nuclear Safety (CNS) as the most important legal instrument in the field of nuclear safety that also contains important provisions on emergency preparedness and radiation protection,

   — submission of spent fuel facilities to an IAEA safeguards agreement in connection with the signature and ratification of the Non-Proliferation Treaty (NPT) and related additional protocols to demonstrate that spent nuclear fuel is not diverted from its intended peaceful uses,

   — signature and ratification of, or compliance with either the Vienna Convention on Civil Liability for Nuclear Damage, the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage, the Convention for Supplementary Compensation for Nuclear Damage or the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982 (Paris Convention) in order to demonstrate that the licence holder carries the main responsibility in the event of nuclear damage;

(b) additional criteria:

— signature and ratification of, and compliance with the Convention on Assistance in the Case of a Nuclear Accident and Radiological Emergency (AC) and the Convention on Early Notification in a Nuclear Accident (ENC) to demonstrate that appropriate information will be given to the affected population in the event of a radiological emergency and that adequate protective and corrective measures, including the preparation and testing of emergency plans, will apply in the event of a radiological emergency in order to control the release and mitigate its effects,

— compliance with international instruments concerning transport safety of dangerous goods, particularly the SOLAS and the Chicago Conventions, to demonstrate that effective checks on maritime and air transports of dangerous goods are actually carried out.

3. Without prejudice to paragraph 1, other considerations, for example regarding political, economic, social, ethical, scientific and public security matters, may be taken into account by the competent authorities of Member States when considering whether to authorise shipments of radioactive waste or spent fuel to third countries.

4. Competent authorities of Member States cooperate with a view to exchanging information on the application of this Recommendation.

This Recommendation is addressed to the Member States.

Done at Brussels, 4 December 2008.

For the Commission
Andris PIEBALGS
Member of the Commission