

FORATOM position regarding the public consultation on article 41-44 Euratom

The European Atomic Forum (FORATOM) is the Brussels-based trade association for the nuclear energy industry in Europe. The membership of FORATOM is made up of 16 national nuclear associations. Through these associations, FORATOM represents nearly 800 European companies working in the industry and supporting around 800,000 jobs.

The European Nuclear Industry represented by FORATOM strongly welcomes any initiative of the European Commission (EC) which could contribute to improving investment conditions for nuclear in the Community. Chapter 4 “Investment” of the Euratom Treaty is key in promoting the development of the European nuclear industry, the cornerstone objective of the Euratom Treaty since its creation.

While the viewpoint of the EC under article 43 is not binding on the undertakings (except in some Member States (MS) where it is a mandatory requirement under the licensing procedure), it offers a useful, positive signal for the project holder. Unfortunately, there has been a lack of consistency in the handling of articles 41 to 44 Euratom . Discussions at length on investment projects risk blurring the primary objective of the Euratom Treaty, which is to facilitate nuclear investments.

FORATOM therefore believes there is **room for improvement** in the way undertakings communicate their major investment projects to the EC (article 41), in order to reconcile the practice with the objectives of the Treaty (I). Equally, there is scope for improvement to the process whereby the EC enters into discussions with undertakings and communicates its views to the MS concerned (article 43) (II). FORATOM also makes simplification proposals in order to make the process more efficient (III).

I- Proposals to improve the way undertakings communicate their investments to the EC

The communication of investment projects under article 41 should primarily **focus on the finance-related aspects** of such projects; in that view, the information requirements set out by the Annex to Commission Regulation (EC) No 1209/2000 remain valid and should be upheld.

The nuclear industry does not consider that the current information requirements need to change so as to cover all aspects of an investment project, such as safety, waste

management, radiation protection, etc, which are either covered by secondary legislation or handled by energy policy. Indeed, applicable secondary legislation should not be a basis for discussion with the undertaking concerned as it is primarily the responsibility of MS to comply with such legislation, and the EC's initiative should clearly recall this.

However it is proposed that, in order to demonstrate a project's compliance with the other objectives of the Treaty, the **communication under article 41 includes a description of the national licensing procedure the project is subject to**. This would preserve the allocation of competences between the Community, the Member States and the undertaking and avoid duplication with requirements arising from other Treaty provisions. As the national licensing procedures are presumed to incorporate the requirements arising from Euratom secondary legislation, which itself is meant to pursue the objectives of the Euratom Treaty, such description will account for the project's satisfaction of the Euratom's Treaty objectives. This description being inserted in the communication of the investment project would help the discussion under article 43 focus on investment and finance-related aspects of the project only; more specific licensing-related aspects referring to the transposition of Euratom secondary legislation should be dealt with in discussions between the EC and the respective MS.

II- Proposals to improve the discussion with the Commission

The possibility for undertakings to consult informally with the EC before communicating their investment project, as has developed in practice, should remain. It has allowed invaluable exchanges of views between the services of the EC and the undertakings and helped ensure that the formal communication satisfies the format expected by EC.

FORATOM also recommends the **setting of a firm timeframe for the EC to issue its point of view**, running from the submission by the undertaking of its communication. The EC shall be deemed to have issued a positive viewpoint on the investment project once this timeframe has elapsed. FORATOM recommends a twelve month timeframe for new investments and a two month timeframe for replacements or conversions.

III- Proposals to streamline the process

FORATOM recommends that there should be a **substantial increase in the threshold amounts** to reflect the current costs of nuclear investment and so that the EC focuses its review under article 41 only on significant investment in new installations, replacements or conversions. With regard to replacements and conversions, FORATOM recommends the threshold to be increased to 100M€. In any event, projects below the threshold are assessed by the EC services under other provisions of the Euratom Treaty and TFEU (article 35 and 37 Euratom, public procurement directives, competition rules, etc).

Moreover, **investments which are prescribed by national authorities** should be communicated to the EC via a simplified declaration on essential characteristics which should not give rise to a discussion under article 43.

FORATOM also takes the view that **expenditures which aim at decommissioning** a nuclear reactor or facility do not aim at expanding or maintaining a production capacity. They

therefore **should not be considered an investment** and should not give rise to a communication under article 41, even via a simple declaration on essential characteristics as is currently provided for¹.

FORATOM eventually suggests that in line with streamlining the current process undertakings are given the **option of making a single submission to the EC to cover several investments which each exceed the threshold** and are related to one another, at site or at national level. There shall however be **no legal requirement to do so**.

¹ See Regulation EURATOM 2587/1999, Article 1, § 2 and 3