Commission Regulation (Euratom) No 302/2005 of 8 February 2005 on the application of Euratom safeguards

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 77, 78, 79 and 81 thereof,

Having regard to the approval of the Council,

Whereas:

(1) Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions on Euratom safeguards[(1)] defines the nature and extent of the requirements referred to in Articles 78 and 79 of the Treaty.

(2) In view of the increasing quantities of nuclear materials produced, used, carried and recycled in the Community, of the development of trade in these materials and of the successive enlargements of the European Union, it is essential to ensure the effectiveness of safeguards. The nature and the extent of the requirements referred to in Article 79 of the Treaty and set out in Regulation (Euratom) No 3227/76 should therefore be brought up to date in the light of developments, particularly in the fields of nuclear and information technology.

(3) Belgium, Denmark, Germany, Greece, Spain, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the European Atomic Energy Community have concluded Agreement 78/164/Euratom[(2)] with the International Atomic Energy Agency in implementation of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons. Agreement 78/164/Euratom entered into force on 21 February 1977 and was supplemented by Additional Protocol 1999/188/Euratom[(3)], which entered into force on 30 April 2004.

(4) Agreement 78/164/Euratom contains a particular undertaking entered into by the Community concerning the application of safeguards on source and special fissile materials in the territories of the Member States which have no nuclear weapons of their own and which are parties to the Treaty on the Non-Proliferation of Nuclear Weapons.

(5) The procedures stipulated by Agreement 78/164/Euratom are the result of wide-ranging international negotiations with the International Atomic Energy Agency on the application of Article III(1) and (4) of the Treaty on the Non-Proliferation of Nuclear Weapons. These procedures were approved by the Board of Governors of that Agency.

(6) The Community, the United Kingdom and the International Atomic Energy Agency are parties to an Agreement for the application of safeguards in the United Kingdom

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in connection with the Treaty on the Non-Proliferation of Nuclear Weapons[4]. That Agreement entered into force on 14 August 1978, and was supplemented by an Additional Protocol which entered into force on 30 April 2004.

(7) The Community, France and the International Atomic Energy Agency are parties to an Agreement for the application of safeguards in France[5]. That Agreement entered into force on 12 September 1981, and was supplemented by an Additional Protocol which entered into force on 30 April 2004.

(8) In the territories of France and the United Kingdom some installations or parts thereof as well as certain materials are liable to be involved in the production cycle for defence needs. Special safeguard procedures should therefore be applied to take account of these circumstances.

(9) The European Council at its meeting in Lisbon on 23 and 24 March 2000 stressed the need to foster the development of state-of-the-art information technology and other telecom networks as well as the content for those networks.

(10) In response to Additional Protocol 1999/188/Euratom, Member States should be required to communicate certain information to the Commission including a general description of sites, advance notification of the processing of waste and reports on changes of location of certain conditioned waste.

(11) Guidelines adopted for the application of this Regulation should fully respect the Community commitments in this field, in particular those resulting from Additional Protocol 1999/188/Euratom and the Additional Protocols to the Agreement for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons and to the corresponding Agreement for France.

(12) The provisions on security added to the Commission rules of procedure[6] by Commission Decision 2001/844/EC, ECSC, Euratom[7] should apply to information, knowledge and documents acquired by the parties without prejudice to Council Regulation No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community[8].

(13) In the interests of clarity, Regulation (Euratom) No 3227/76 should be replaced by this Regulation,

HAS ADOPTED THIS REGULATION:

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CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

This Regulation shall apply to any person or undertaking setting up or operating an installation for the production, separation, reprocessing, storage or other use of source material or special fissile material.

It shall not apply to holders of end products used for non-nuclear purposes which incorporate nuclear materials that are in practice irrecoverable.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. ‘non-nuclear-weapon Member States’ means Belgium, the Czech Republic, Denmark, Germany, Estonia, Greece, Spain, Ireland, **[**[F1]Croatia**]**, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovenia, Slovakia, Finland and Sweden;

2. ‘nuclear-weapon Member States’ means France and the United Kingdom;

3. ‘third country’ means any State which is not a member of the European Atomic Energy Community;

4. ‘nuclear materials’ means ores, source materials or special fissile materials as defined in Article 197 of the Treaty;

5. ‘waste’ means nuclear material in concentrations or chemical forms considered as irrecoverable for practical or economic reasons and which may be disposed of;

6. ‘retained waste’ means waste, generated from processing or from an operational accident, measured or estimated on the basis of measurements, which has been transferred to a specific location within the material balance area from which it can be retrieved;

7. ‘conditioned waste’ means waste, measured or estimated on the basis of measurements, which has been conditioned in such a way (for example, in glass, cement, concrete or bitumen) that it is not suitable for further nuclear use;

8. ‘discards to the environment’ means waste, measured or estimated on the basis of measurements, which has been irrevocably discarded to the environment as the result of a planned discharge;

9. ‘categories’ (of nuclear material) are natural uranium, depleted uranium, uranium enriched in uranium-235 or uranium-233, thorium, plutonium, and any other material which the Council may determine, acting by a qualified majority on a proposal from the Commission;

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10. ‘item’ means an identifiable unit such as a fuel assembly or a fuel pin;

11. ‘batch’ means a portion of nuclear material handled as a unit for accounting purposes at a key measurement point and for which the composition and quantity are defined by a single set of specifications or measurements. The nuclear material may be in bulk form or contained in a number of items;

12. ‘batch data’ means the total weight of each category of nuclear material and, in the case of plutonium and uranium, the isotopic composition when appropriate. For reporting purposes the weights of individual items in the batch shall be added together before rounding to the nearest unit;

13. ‘effective kilogram’ is a special unit used in safeguarding nuclear material, obtained by taking:

    (a) for plutonium, its weight in kilograms;

    (b) for uranium with an enrichment of 0,01 (1 %) and above, its weight in kilograms multiplied by the square of its enrichment;

    (c) for uranium with an enrichment below 0,01 (1 %) and above 0,005 (0,5 %), its weight in kilograms multiplied by 0,0001;

    and

    (d) for depleted uranium with an enrichment of 0,005 (0,5 %) or below, and for thorium, its weight in kilograms multiplied by 0,00005;

14. ‘material balance area’ means an area such that, for the purpose of establishing the material balance:

    (a) the quantity of nuclear material in each transfer into or out of each material balance area can be determined;

    and

    (b) the physical inventory of nuclear material in each material balance area can be determined when necessary in accordance with specified procedures;

15. ‘key measurement point’ means a location where nuclear material appears in such a form that it may be measured to determine material flow or inventory, including but not limited to, the places where nuclear material enters, leaves or is stored in, material balance areas;

16. ‘book inventory’ of a material balance area means the algebraic sum of the most recent physical inventory of that material balance area, and of all inventory changes that have occurred since that physical inventory was taken;

17. ‘physical inventory’ means the sum of all the measured batch quantities or derived estimates of batch quantities of nuclear material on hand at a given time within a material balance area, obtained in accordance with specified procedures;

18. ‘material unaccounted for’ means the difference between the physical inventory and the book inventory;

19. ‘shipper/receiver difference’ means the difference between the quantity of nuclear material in a batch as measured at the receiving material balance area and the quantity as stated by the shipping material balance area;

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20. 'source data' means those data, recorded during measurement or calibration or used to derive empirical relationships, which identify nuclear material and provide batch data, including: weight of compounds; conversion factors to determine weight of element; specific gravity; element concentration; isotopic ratios; relationship between volume and manometer readings; and relationship between plutonium produced and power generated;

21. 'site' means an area delimited by the Community and the Member State, comprising one or more installations, including closed-down installations, as defined in their relevant basic technical characteristics, whereby:

    (a) waste treatment or waste storage installations do not constitute a site in themselves;

    (b) in the case of a closed-down installation where source material or special fissile material in quantities less than one effective kilogram was customarily used, the term is limited to locations with hot cells or where activities related to conversion, enrichment, fuel fabrication or reprocessing were carried out;

    (c) 'site' also includes all plants co-located with the installations which provide or use essential services including hot cells for processing irradiated materials not containing nuclear material; plants for the treatment, storage and disposal of waste; and buildings associated with activities specified in Annex 1 to Additional Protocol 1999/188/Euratom and identified by the State concerned;

22. 'site representative' means any person, undertaking or entity designated by the Member Stateas being responsible for the declarations referred to in Article 3(2);

23. 'installation' means a reactor, a critical installation, a conversion plant, a fabrication plant, a reprocessing plant, an isotope separation plant, a separate storage installation, a waste treatment or waste storage installation; or any other location where source material or special fissile material is customarily used;

24. 'decommissioned installation' means an installation for which it has been verified that residual structures and equipment essential for its use have been removed or rendered inoperable so that it is not used to store and can no longer be used to handle, process or utilise source material or special fissile material;

25. 'closed-down installation' means an installation for which it has been verified that operations have been stopped and the nuclear material removed but which has not been decommissioned.

Textual Amendments

F1 Inserted by Commission Regulation (EU) No 519/2013 of 21 February 2013 adapting certain regulations and decisions in the fields of free movement of goods, freedom of movement for persons, right of establishment and freedom to provide services, company law, competition policy, agriculture, food safety, veterinary and phytosanitary policy, fisheries, transport policy, energy, taxation, statistics, social policy and employment, environment, customs union, external relations, and foreign, security and defence policy, by reason of the accession of Croatia.