



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

**COUNCIL DECISION**

**establishing Statutes for the Euratom Supply Agency**

(presented by the Commission)

## **EXPLANATORY MEMORANDUM**

Article 54 of the Treaty establishing the European Atomic Energy Community provides for the creation of the Euratom Supply Agency (hereinafter the 'Agency'), and sets up its tasks and obligations in guaranteeing a regular and equitable supply of nuclear materials to European Union users. The Statutes of the Agency date from 1958, and in 1978 the Agency adopted its Accounting instructions.

Taking into account the increase in the number of the Member States of the European Union as well as the need to apply modern financial provisions to the Agency and the need to fix its seat, new Statutes have to be adopted.

The new Statutes contain financial provisions that are in line with the general Financial Regulation of the European Communities. In parallel, draft Council Financial Regulation applicable to the Agency, is submitted together with this draft Decision, for adoption on the basis of Article 183 of the Euratom Treaty. The capital of the Agency and the possibility, foreseen in the Euratom Treaty, to apply a charge on transactions, are maintained.

The new Statutes of the Agency are adapted to the situation of an enlarged European Union. In particular, the size of the Agency's Advisory Committee is changed in order to improve its operation and efficiency.

In line with the administrative decision to concentrate activities of the Commission dealing with the implementation of the Euratom Treaty into Luxembourg, all the staff of the Agency were transferred from Brussels to Luxembourg in 2004. The new Statutes regularise this situation.

The proposed Council Decision would result in modest financial savings in the Community budget due to fewer reimbursements to Advisory Committee members.

Proposal for a

**COUNCIL DECISION**

**establishing Statutes for the Euratom Supply Agency**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 54 (2) thereof,

Having regard to the proposal from the Commission<sup>1</sup>,

Having regard to the opinion of the European Parliament<sup>2</sup>,

Whereas:

- (1) The Treaty in its Chapter VI provides for the creation of the Euratom Supply Agency (hereinafter the ‘Agency’), and sets up its tasks and obligations in guaranteeing a regular and equitable supply of nuclear materials to European Union users. The Statutes of the Agency were adopted on 6 November 1958. Taking into account the increase in the number of the Member States as well as the need to apply modern financial provisions to the Agency and the need to fix its seat, these Statutes should be replaced.
- (2) The new Statutes should contain financial provisions that are in line with the general Financial Regulation of the European Communities. At the same time the new financial regulation applicable to the Agency shall be adopted in accordance to Article 183 of the Treaty, which is as well in line with Council Regulation (EC; Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>3</sup>. The capital of the Agency and the possibility, foreseen in the Euratom Treaty, to apply a charge on transactions, should be maintained.
- (3) The new Statutes of the Agency should be adapted to the situation of an enlarged European Union. In particular, the size of the Agency’s Advisory Committee should be changed in order to improve its operation and efficiency.

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<sup>1</sup> OJ C [...], p. [...].

<sup>2</sup> OJ C [...], p. [...].

<sup>3</sup> OJ L 248, 16.9.2002, p. 1.

HAS DECIDED AS FOLLOWS:

*Article 1*

The Statutes of the Euratom Supply Agency, as set out in the Annex, are adopted.

**Article 2**

The Statutes of the Euratom Supply Agency of 6 November 1958<sup>4</sup> are repealed.

*Article 3*

This Decision shall enter into force on the [...] day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels,

*For the Council*  
*The President*

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<sup>4</sup> OJ 27, 6.12.1958 p. 534-540.

## ANNEX

### **Draft Statutes of the Euratom Supply Agency**

#### Chapter 1 - Internal structure and functioning

##### *Article 1 – Objectives and tasks*

1. The Euratom Supply Agency (hereafter the “Agency”) shall:
  - a) execute competencies conferred to it by the Treaty;
  - b) execute other tasks entrusted to it by the Commission;
2. The Agency may also build up a stock of nuclear materials, in accordance with the Treaty.

##### *Article 2 - Legal status and seat*

1. The Agency has legal personality according to Article 54 of the Treaty. The Agency shall be recognised as an institution of public interest status and it shall operate on a non profit making basis.
2. The Protocol on the Privileges and Immunities of the European Communities shall apply to the Agency, its Director General and to its staff.
3. The Agency shall have its seat in one of the locations of the Commission services. The Commission shall take decision in this regard.
4. It may on its own initiative take any further measures concerning its own internal organization which may be required for the carrying out of its tasks both within and outside the Community.

##### *Article 3 - Duties and powers of the Director-General*

1. The Director General shall be appointed by the Commission.
2. The Director General shall represent the Agency. He may delegate his powers to other persons. The rules for delegating his powers shall be fixed in internal Agency documents.
3. The Director General shall be responsible:
  - for exercising the Agency’s exclusive right to conclude supply contracts for nuclear materials and its right of option;
  - for the day-to-day administration of the Agency;
  - for managing all the Agency resources;

- for the preparation of the draft statement of estimates of the Agency's revenue and expenditure, and execution of its budget;
  - for all staff matters.
4. Each year the Director General shall submit to the Commission a report covering the activities of the Agency in the previous year and a work programme for the coming year.

#### *Article 4 – Director-General and Staff*

1. The Director General and the staff of the Agency shall be officials of the European Communities governed by the Staff Regulations of officials of the European Communities and by the rules adopted jointly by the institutions of the European Communities for the purposes of the application of those Staff Regulations. The officials shall be appointed by and their salaries shall be paid by the Commission.
2. The Director-General and the staff of the Agency shall have security clearance in accordance with Article 194 of the Treaty in respect of any facts, information, knowledge, documents or objects subject to a system of security grading which come into their possession or are communicated to them.

#### *Article 5 – Supervision by the Commission*

1. The Agency shall be under the supervision of the Commission, which may issue directives to it and have a right of veto over its decisions.
2. The right of veto shall lapse after a period of ten working days following a decision of the Agency, unless during that period reservation is made by the Commission or its representative. The Commission or its representative may waive the right to make such reservation before the expiry of that period.
3. Where reservation is made by the Commission or its representative within the period prescribed in the preceding paragraph, the Commission shall adopt a definitive position not more than ten working days from the date on which the reservation was made.
4. The provisions of this article shall in no way prevent Article 53 of the Treaty from being applied.
5. Any act of the Agency referred to in Article 53 of the Treaty may be referred to the Commission by the party concerned within ten working days of notification being received, or, failing such notification, within ten working days following publication. Failing notification and publication, the period shall run from the day on which the party concerned learns of the act.

## Chapter 2 - Financial Provisions

### *Article 6 – Financial Organization*

1. The Agency shall have financial autonomy. It shall operate according to commercial rules in the area of competence of the Agency.
2. The Agency shall at all times be entitled to transfer the assets which it holds in euro into another currency in order to carry out financial or commercial operations which accord with its aims as defined by the Treaty and are consistent with these Statutes.

The Agency shall as far as possible avoid making such transfers if it has cash or liquid assets in the currency required.

The Agency may carry out financial operations in connection with meeting its objectives with funds which it does not immediately require for the purposes of meeting its obligations.

3. The Agency is empowered to contract, on behalf of the European Atomic Energy Community and within the limits fixed by the Council, borrowings, the proceeds of which will be allocated for carrying out its tasks.
4. Obligations entered into by the Agency pursuant to these Statutes are guaranteed by the European Atomic Energy Community.

### *Article 7 – Revenue and expenditure*

1. Estimates of all the revenue and expenditure of the Agency shall be prepared for each financial year and shall be shown in the budget of the Agency. The financial year shall correspond to the calendar year.
2. The revenue and expenditure shown in the budget shall be in balance.
3. The Agency's revenue shall consist of a contribution from the Community, bank interest and income from its capital and bank investments, and, if necessary, a charge as foreseen in Article 54 of the Treaty and borrowings.
4. The expenditure of the Agency shall consist of administrative expenses of its staff and of the Advisory Committee, as well as expenses resulting from contracts entered into with third parties.
5. Each year the Director General shall produce an estimate of revenue and expenditure for the Agency for the following financial year. This estimate, which shall include a draft establishment plan, shall be forwarded to the Commission by 31 March at the latest after obtaining the opinion of the Advisory Committee.

6. On the basis of the estimate, the Commission shall enter in the preliminary draft general budget of the European Union the estimates it deems necessary for the establishment plan and the amount of the subsidy to be charged to the general budget.
7. In the framework of the budgetary procedure, the budget authority shall authorise the appropriations for the subsidy to the Agency and shall adopt the establishment plan for the Agency, which shall appear separately in the establishment plan of the Commission.
8. The budget shall be adopted by the Commission. It shall become final following final adoption of the general budget of the European Union. Where appropriate, it shall be adjusted accordingly. The Agency's budget shall be published on its website.
9. Any modification of the establishment plan and of the budget of the Agency shall be the subject of an amending budget adopted by the same procedure as the initial budget. Modifications of the establishment plan are submitted to the budget authority. The amending budgets are forwarded for information to the European Parliament and Council.

*Article 8 – Budget execution, financial control and financial rules*

1. The Director General shall implement the budget of the Agency.
2. Following each financial year the Agency's accounting officer shall submit the Agency's provisional accounts:
  - a) by 1 March at the latest to the Accountant of the Commission, for consolidation purposes, and
  - b) by 31 March at the latest following each financial year to the Court of Auditors.
3. On receipt of the Court of Auditors' observations on the Agency's provisional accounts, the Director General shall draw up the Agency's final accounts under his own responsibility and submit them to the Advisory Committee for an opinion.
4. The Advisory Committee of the Agency shall deliver an opinion on the Agency's final accounts.
5. The Director General shall, by 1 July at the latest following each financial year, forward the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Advisory Committee's opinion.
6. The final accounts shall be published on the Agency's website.
7. The Agency's Director General shall send the Court of Auditors a reply to its observations by 30 September at the latest.
8. The Director General shall submit to the European Parliament, at the latter's request, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director General in respect of the implementation of the budget for year N.
10. The financial regulation applicable to the Agency shall be adopted in accordance to Articles 183 of the Treaty.

*Article 9 - Capital*

1. The capital of the Agency shall be EUR 5 824 000.
2. The capital shall be subscribed as follows:

Belgium	EUR	192 000
Bulgaria	EUR	96 000
Czech Republic	EUR	192 000
Denmark	EUR	96 000
Germany	EUR	672 000
Estonia	EUR	32 000
Greece	EUR	192 000
Spain	EUR	416 000
France	EUR	672 000
Ireland	EUR	32 000
Italy	EUR	672 000
Cyprus	EUR	32 000
Latvia	EUR	32 000
Lithuania	EUR	32 000
Luxembourg	EUR	-
Hungary	EUR	192 000
Malta	EUR	-
Netherlands	EUR	192 000
Austria	EUR	96 000

Poland	EUR	416 000
Portugal	EUR	192 000
Romania	EUR	288 000
Slovenia	EUR	32 000
Slovakia	EUR	96 000
Finland	EUR	96 000
Sweden	EUR	192 000
United Kingdom	EUR	672 000

3. An instalment of 10 % of the capital shall be paid at the time of a Member State's accession to the Community. In addition, further instalments of the capital may be called up by decision of the Council acting by a qualified majority on a proposal from the Commission. The amount of the instalment called up shall be paid to the Agency within thirty days following that decision.
4. Participation in the capital shall not confer any entitlement to dividend or interest. It shall carry the right to repayment of the nominal amount of the instalments of the paid up capital in the sole event of the Agency being wound up.
5. All payments shall be made in euro.

#### *Article 10 - Charges*

1. The Agency may, in accordance with Article 54 of the Treaty, levy a charge on transactions in which the Agency takes part by exercising its right of option or its exclusive right to conclude supply contracts. The proceeds of such a charge shall be used solely to defray its operating expenses.

The provisions concerning this charge shall be detailed in an implementing decision.

### Chapter 3 - Advisory Committee

#### *Article 11 - Composition of the Advisory Committee*

1. The Advisory Committee (hereinafter: the 'Committee') shall be composed of one member for each Member State without nuclear fuel cycle activities and two members for each Member State with nuclear fuel cycle activities. However a Member State may choose not to participate in it. Each member may have an alternate member who may participate in the meetings of the Committee in addition to the full member but may not vote if the full member is also present. If a member resigns or is unable to perform his/her duties, a successor shall be appointed for the remainder of the term of office.

Committee members and their alternate members shall be appointed by their respective Member States on the basis of their degree of relevant experience and expertise in the field of the nuclear fuel cycle or nuclear power generation. The duration of the term of office shall be three years. The term of office may be renewed once.

#### *Article 12 - Chairmanship of the Committee*

1. The Committee shall nominate a Chairperson and two Vice-Chairpersons from the members of the Committee. These executive officers shall represent different sides of the industry, both producers and users. The most senior of the two Vice-Chairpersons takes the place of the Chairperson if he/she is unable to fulfil his/her duties.
2. The terms of office of the Chairperson and the Vice-Chairpersons shall be three years. Their term of office shall not be renewable, and the chairmanship shall alternate between different sides of the industry. The mandate of the Chairperson or any Vice-Chairperson shall automatically terminate, if his/her term of office as member of the Committee expires without renewal.

#### *Article 13 - Terms of reference of the Committee*

1. The Committee shall assist the Agency in carrying out its tasks by giving opinions and providing information. It shall act as a link between the Agency and both producers and users in the nuclear industry.
2. The Committee may be consulted upon all matters within the competence of the Agency in verbal form at its meetings or written form in between such meetings. The Committee may also issue opinions upon any such matters on the initiative of at least one third of its members.
3. The Committee shall be consulted before any decision is taken by the Director General concerning the following matters:
  - (a) the rules to be followed for balancing supply and demand (Article 60 (6) of the Treaty);
  - (b) the capital of the Agency; its increase or decrease or further capital subscription (Article 54 (4) of the Treaty);
  - (c) the application of a charge on transactions, designed to defray the operating expenses of the Agency (Article 54 (5) of the Treaty);
  - (d) the conditions applicable to the building up of commercial stocks by the Agency (Article 72 (1) of the Treaty);
  - (e) the financial regulation for the Agency annual budget, accounts, market report and work programme.

4. The Director-General may, if necessary, fix a time limit for the Committee to submit its opinion. This time limit shall not be less than a month from the date on which the communication for this purpose is sent to the members of the Committee.
5. If the opinion of the Committee cannot be obtained within this period, the Director-General may take the decision.
6. The decisions which are within the competence of the Director-General and relate to matters specified in this Article shall not be taken before ten working days have elapsed since the opinion of the Committee was given, if those decisions are at variance with the said opinion.
7. The Committee shall adopt its rules of procedure for all matters that are not provided for by the present Statutes.

#### *Article 14 – Meetings of the Committee*

1. The Committee shall be convened at the seat of the Agency:
  - (a) normally twice every year;
  - (b) at the request of the Director-General of the Agency;
  - (c) at the request in writing of not less than one third of the members of the Committee, specifying the items to be placed on the agenda.
2. Meetings of the Committee require a quorum of the majority of its members. Opinions may be given if approved by a majority of the members present or represented.
3. Each member of the Committee shall have one vote. If a member and his alternate member are unable to attend, the full member may designate in writing another member to vote on his/her behalf. No member may be designated to vote on behalf of more than one other member.
4. The Director-General or a person designated to represent him/her shall attend meetings of the Committee but shall not have the right to vote. Other persons who are not staff of the Agency may participate in the meeting only with the consent of all members present and subject to the obligation under paragraph 5 of the present Article.
5. The members of the Committee shall be bound to secrecy in accordance with Article 194 of the Treaty in respect of all facts, information, knowledge or documents subject to a security grading which come into their possession or are communicated to them in their capacity as members of the Committee.
6. The secretariat for the Committee shall be provided by the Agency.
7. Travel expenses of one Committee member shall be reimbursed by the Agency.

## Final provisions

### *Article 15 – Legal capacity of the Agency*

In each of the Member States, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under their laws. It may in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings.