

Proposal for a Council Decision amending Decision 77/270/Euratom empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations

(2003/C 45 E/22)

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(Submitted by the Commission on 6 November 2002)

EXPLANATORY MEMORANDUM

1. Legal foundation of Euratom lending

The Euratom lending instrument was established by Council Decision 77/270/Euratom of 29 March 1977 empowering the Commission to issue Euratom loans for the purpose of contributing to the financing of nuclear power stations (the 'Establishing Decision') in Member States.

The ceiling for borrowing to fund Euratom lending was originally fixed by Council Decision 77/271/Euratom of 29 March 1977. Subsequently, the ceiling was raised by various amendments of that Decision, the latest of which (Council Decision 90/212/Euratom of 23 April 1990) increased it by 1 000 million ECU to 4 000 million ECU.

The scope of the Euratom lending instrument was extended by Council Decision 94/179/Euratom of 21 March 1994 amending Decision 77/270/Euratom, to authorise the Commission to contract Euratom borrowings in order to contribute to the financing required for improving the degree of safety and efficiency of nuclear power stations in certain non-member countries (the 'Scope Extension Decision').

In particular, in Article 1 the Commission is

'... empowered to contract ... borrowings, the proceeds of which will be allocated in the form of loans to finance projects to increase the safety and efficiency of the nuclear power stations of the non-member countries listed in the Annex.'

The non-member countries defined by the Annex to the above Decision are: the Republic of Bulgaria, the Republic of Hungary, the Republic of Lithuania, Romania, the Republic of Slovenia, the Czech Republic, the Slovak Republic, the Russian Federation, the Republic of Armenia and Ukraine. The list includes some candidate countries for accession to the Community.

2. Borrowing and Lending Ceiling

An adjustment to the borrowing ceiling will be proposed separately to the Council.

3. Consolidation of the Decisions

The purpose of the present Proposal is to consolidate the set of Decisions referred to above for the following reasons:

- To ensure that there is equal treatment of current and future Member States after their accession.
- To ensure that safety and efficiency issues remain important criteria for the eligibility of projects.
- To ensure that decommissioning projects within the Community are explicitly eligible under certain conditions.

- To ensure that priority is given to projects related to improving nuclear safety and efficiency of installations in service or under construction and to the decommissioning of installations.

The Establishing Decision and the Scope Extension Decision both had Guidelines ⁽¹⁾ associated to them. This proposal to amend the Establishing Decision (as amended by the Scope Extension Decision) is accompanied by a proposal to merge these Guidelines and to introduce some modifications as detailed below.

Where relevant, the existing statements ⁽²⁾ referring to the organisation of cooperation with the EIB and the Member States' participation (via the Economic and Financial Committee) and the other statements attached to the Establishing Decision and the Scope Extension Decision remain valid.

4. Euratom Participation in a Project

Under the Guidelines associated to the Scope Extension Decision (i.e. for certain non-member countries),

'The Commission will limit its loans to 50 % of the total cost of the projects'

and

'The total Community financing for a particular project will not exceed 50 %.'

Under the Establishing Decision (for Member States), this participation is limited to 20 %.

It is proposed that the 20 % limit be maintained for new investment in the existing and new Member States after accession as defined in the Establishing Decision, whereas no such participation will be available for non-member countries. Further, it is proposed that the maximum participation of Euratom (i.e. 50 %) for a project of a safety and efficiency nature, including for completion, (all as defined in the Scope Extension Decision for certain non-member countries) be extended to apply to similar projects within the Community.

5. Decommissioning

Under the Guidelines associated to the Scope Extension Decision, (i.e. for certain non-member countries), a decommissioning project is specifically eligible:

'Projects may also relate to the decommissioning of installations for which modification to bring them up to standard is not feasible in technical or economic terms and which would pose a safety hazard if simply abandoned.'

⁽¹⁾ 'Guidelines relating to the Financing required for Improving the Safety and Efficiency of Nuclear Power Plants in Certain Non-member Countries' relating to Decision 94/179/Euratom, included in Section A of the Council minutes of 21 March 1994. These guidelines confirm that 'the guidelines relating to Decision 77/270/Euratom and contained in the Council minutes of 29 March 1977 will continue to apply to Euratom loans to Member States.' The 1977 Guidelines can be found in Annex IV of the latter minutes.

⁽²⁾ Statements contained in Annexes III and V of the Council minutes relating to the Establishing Decision and Sections B and C of the Council minutes relating to the Scope Extension Decision.

under certain conditions:

'The financing of decommissioning measures will be considered only where no provision to finance these measures has been made during the operating life of the installation.'

Since, in addition to countries outside the Union, the enlarged Union will also soon need to address decommissioning challenges, it is proposed that the Guidelines be modified to make clear that such projects within the Community be eligible for Euratom finance. Further, to enable the intervention of Euratom in such projects (both within and outside the Community), it is proposed that the reference to the availability of decommissioning finance is clarified so that the financing will be considered 'only where no adequate provision to finance these measures has been made during the operating life of the installation, especially if it is to be shut down earlier than originally envisaged.'

For linguistic reasons a technical adjustment is proposed in item 2.4.4.3. of the Guidelines.

6. Conclusion

The proposals made herein will allow an enhanced flexibility in the application of Euratom finance, as it is oriented towards projects that address, in particular, the real concerns of nuclear safety and decommissioning in Europe. Individual projects will continue to be examined on their particular merits within the Guidelines and will require specific Commission approval.

The Commission is of the opinion that nothing in the Guidelines annexed to the draft Council Decision would require a formal classification. It further proposes that these Guidelines shall be included as an annex to the Council Decision.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 1, 2, 172 and 203 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

(1) Council Decision 77/270/Euratom⁽¹⁾ has empowered the Commission to issue Euratom loans for certain purposes concerning non-member countries.

(2) Nuclear energy has to be seen as part of overall energy options within the Community as well as outside.

(3) The accession to the Community of some countries listed in the Annex to Decision 94/179/Euratom should not lead to an unjustified difference in the treatment, under the Euratom financing instrument, of new Member States with respect to the existing Member States, or vice versa.

(4) The decommissioning of existing nuclear installations is becoming an issue equally important within the Member States as in the countries listed in the Annex to Decision 94/179/Euratom.

(5) The issue of the safety of nuclear installations within the Member States is as important as it is in those countries.

(6) Priority should be given to projects related to nuclear safety and efficiency of installations in service or under construction, as well as to the decommissioning of installations.

(7) Decision 77/270/Euratom should therefore be amended accordingly,

⁽¹⁾ OJ L 88, 6.4.1977, p. 9. Decision as amended by Council Decision 94/179/Euratom (OJ L 84, 29.3.1994, p. 41).

HAS DECIDED AS FOLLOWS:

Sole Article

Article 1 of Decision 77/270/Euratom shall be replaced by the following:

'Article 1

The Commission is hereby empowered to contract, on behalf of the European Atomic Energy Community (Euratom), and within the limits fixed by the Council, borrowings, the proceeds of which will be allocated in the form of loans to finance, within the Community, investment projects relating to the industrial production of electricity in nuclear power stations and to industrial installations in the nuclear fuel cycle. The Commission shall also be empowered to contract, within the same limits, borrowings, the proceeds of which will be allocated in the form of loans to finance projects to increase the safety and efficiency of the nuclear power stations within the Member States or the non-member countries listed in the Annex to Decision 94/179/Euratom. For these projects to be eligible they must:

- relate to nuclear power stations or installations in the nuclear fuel cycle which are in service or under

construction, to fuel and material testing reactors that are necessary for safety and efficiency improvements or to the dismantling of installations where modification cannot be justified in technical or economic terms,

- have received all the necessary authorisation at national level and in particular the approval of the safety authorities,

- have received a favourable opinion from the Commission in technical and economic terms.

The Commission may borrow only within the limits of loans requested of it.

The borrowing and corresponding lending operations shall be denominated in the same monetary unit and carried out under the same conditions as regards repayment of the principal and interest payments. Costs incurred by the Community in concluding and executing each operation shall be borne by the recipient undertakings.'

The provisions in the Annex form an integral part of this Decision.

ANNEX

GUIDELINES

The Council invites the Commission to observe the following guidelines, which the Commission has agreed to adopt for the borrowing and lending operations that it carries out pursuant to Council Decision 77/270/Euratom, as amended.

1. BORROWING

- 1.1. The costs of arranging loans must be the same as those paid by prime issuers, and the Commission will take all measures necessary to ensure that Euratom loans enjoy the same favourable terms as other Community loans.
- 1.2. Bearing in mind the nature of the investments which the borrowing is intended to help finance, maturities must be as long as market conditions permit; should the undertakings concerned so require, short or medium-term loans may also be arranged.
- 1.3. Repayment programmes must, wherever possible, provide for periods of grace.

2. LOANS

- 2.1. Euratom loans can be granted for two types of projects:
 - For new investments in Member States
 - For safety and efficiency in Member States and eligible non-member countries
- 2.2. Priority shall be given to projects related to safety and efficiency of installations in service or under construction, including decommissioning of installations.

2.3. FOR NEW INVESTMENTS IN MEMBER STATES

2.3.1. **Acceptability of requests**

From the point of view of energy policy, the Commission will grant loans only for projects of which it has been notified in accordance with the investment notification procedure provided for in Articles 41 et seq. of the Euratom Treaty and which have been approved by the Commission, particularly in the light of the aims of the Community's energy and environmental policies.

From the financial point of view, the Commission, taking into account the results of the examination of the loan application carried out by its agent, will grant loans only:

- after checking the financial soundness of the undertaking and, in particular, after examining its balance sheet;
- on the basis of first-class guarantees, for example:
 - security in the form of real property, conservatively valued, and subject to negative covenants,
 - guarantees by first-class banks or private guarantees of the same value,
 - assignment of revenue from long-term electricity supply contracts,
 - public-sector guarantees, if any.

Where appropriate, several guarantees may be combined.

No distinction will be made between the two types of guarantee (public- or private-sector) as regards priorities or the conditions under which loans will be granted.

However, should it appear during or after the examination of the loan application that, when the usual banking criteria are applied, private guarantees would not be sufficient to cover all the risks of the project, the Commission must require a public guarantee for the grant of the loan.

2.3.2. **Ceilings for loans**

- (a) The Commission will grant loans only to supplement those which the undertaking concerned must obtain elsewhere.
- (b) The Commission will in principle limit its loans to 20 % of the total cost of a project (in one or more instalments).

2.3.3. **Loan grant sequence**

- (a) Consideration will be given to requests for the financing of investment costs submitted after 1 January 1976 and relating to projects for which firm orders were placed after 1 January 1974.
- (b) Funds will be borrowed to the extent required by the applications which the Commission has agreed to approve.
- (c) Other factors being equal, the Commission will give special consideration to projects involving several Member States.

2.4. FOR SAFETY & EFFICIENCY (Member States and eligible non-member countries)

2.4.1. **Technical and economic acceptability of applications**

2.4.1.1. *Types of project involved*

The projects must give priority to improving the safety and efficiency of nuclear power stations and installations in the nuclear fuel cycle which are in service or under construction (see points 2.4.1.2 and 2.4.1.3). To this end, projects concerning the construction or improvement of Fuel and Material Testing reactors could be eligible.

Projects may also relate to the decommissioning of installations for which modification to bring them up to safety requirements acceptable to the EU is not feasible in technical or economic terms and which would pose a safety hazard if simply abandoned. The financing granted may relate to investment during the period between shutdown and the start of decommissioning and to the decommissioning measures themselves. The financing of decommissioning measures will be considered only where no adequate provision to finance these measures has been made during the operating life of the installation, especially if it is to be shut down earlier than originally envisaged.

2.4.1.2. *Obtaining authorisation at national level*

Financing will be granted only to projects that have received the approval of the competent national authorities, particularly the safety authorities.

2.4.1.3. *Obtaining a favourable opinion from the Commission in technical and economic terms*

- (a) At technical level, the Commission will (with the support of experts from the Member States in the case of projects in the eligible non-member countries) examine the extent to which the project provides a solution to the safety problem which exists. The examination will also include an assessment of the environmental impact of the project.

For projects in the eligible non-member countries, the Commission's examination will refer to the studies on nuclear safety carried out by the international bodies, IAEA and WANO, and under the PHARE and TACIS programmes, and will, with the support of experts from the Member States, assess the project in comparison with measures implemented in the Member States to solve similar types of problem, taking account of the recommendations made by the international bodies.

Although the list below is not exhaustive, the Council invites the Commission to give particular consideration to the following modification measures:

- improving the containment of the primary circuit (reactor vessel and primary piping);
- improving the reactor cooling system, particularly the emergency cooling system;
- fire detection and extinguishing systems;
- installation of specific and independent alarm systems;
- improving the reactor protection and monitoring system;
- control room equipment.

Other measures resulting from the studies under way will also be taken into consideration.

- (b) At economic level, the Commission will establish that the projects are justifiable, by comparing the economic characteristics and the efficiency of the projects in question with those of non-nuclear alternatives that are potentially available. Investment must relate to installations that are economically viable. The opinion will refer to the overall energy plan that has been defined for the recipient country, insofar as such guidelines exist.

The economic and efficiency studies will be based on assumptions which reflect the reality of a market economy in terms of both the positive financial flows (price and quantity produced) and the negative financial flows (investment costs, cost of factors utilised, etc.).

- (c) For projects in the eligible non-member countries, the Commission will establish regular contacts with the EBRD, with which it will seek to promote the closest possible mutual cooperation.

2.4.2. **Necessity of close cooperation with at least one Community enterprise**

This condition will be considered to have been met if a major proportion of the capital goods item or service that is to be financed is provided by a Community enterprise.

2.4.3. **Securities**

For projects in the eligible non-member countries, the guarantee of the State on whose territory the project is situated will be required and the Commission will ensure that in prudential terms the securities obtained are equivalent to those provided for in operations within the Community.

Where appropriate, other first-class securities will also be contemplated.

For projects in Member States, guarantees will be required as described in 2.3.1 above.

2.4.4. **Limits of loan amounts**

2.4.4.1. The Commission will grant only loans that supplement those which the enterprise has contracted with other parties.

2.4.4.2. The Commission will limit its loans to 50 % of the total cost of the projects mentioned in point 2.4.1.1 (in one or several tranches). The total Community financing for a particular project will not exceed 50 %.

2.4.4.3. In the event of co-financing with the EBRD, the cumulative total together with Community financing will under no circumstances exceed 70 % of the total cost of the project mentioned in point 2.4.1.1.

2.4.5. **Order of granting of loans**

2.4.5.1. Applications concerning the financing of expenditure effected after 1 July 1992 will be acceptable.

2.4.5.2. The Commission will use the technical and economic studies to decide, if necessary, which projects are to receive priority treatment.

2.4.6. **Other financing conditions**

2.4.6.1. *Currencies*

Loans will be paid out in several currencies (a combination) or in a single currency, according to the recipient's preferences and subject to availability. The main currencies used will be those of the EC Member States, the Euro, the US dollar, the Swiss franc and the yen.

2.4.6.2. *Duration*

Loans will be granted on a medium and long-term basis, with the particular duration depending on the type of project and life of the assets financed. The maximum duration of loans will be twenty years.

2.4.6.3. *Interest rates*

The interest rates will closely follow the cost of the borrowings from which the loans are granted, and they will not vary according to the nature or location of the project, nor according to the type or nationality of the recipient. Rates will be set for each of the currencies used.

The loans will be at a fixed or variable rate, according to the recipient's preferences and subject to availability.

2.4.7. **Reimbursement**

Reimbursement of the loans will be carried out in line with reimbursement of the borrowings utilised. Reimbursements will be made in the same currencies and in the same proportions as the loan disbursements.

The Decision and the present guidelines are without prejudice to the provisions of the EC- and Euratom-Treaty.

These guidelines replace the guidelines recorded in the minutes relating to Council Decision 77/270/Euratom and the guidelines recorded in the minutes relating to Council Decision 94/179/Euratom.
