COMMISSION REGULATION (EURATOM) No 1352/2003

of 23 July 2003

amending Regulation (EC) No 1209/2000 determining procedures for effecting the communications prescribed under Article 41 of the Treaty establishing the European Atomic Energy Community

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 41 to 44 thereof,

Having regard to Council Regulation (Euratom) No 2587/1999 of 2 December 1999 defining the investment projects to be communicated to the Commission in accordance with Article 41 of the Treaty [1],

Whereas:

(1) In order to increase transparency and legal certainty, it is necessary to strengthen existing rules and formalise practices applied by the Commission to conduct the discussions and examine the investment projects which relate to the objectives of the Euratom Treaty.

(2) The communication to the Commission of investment projects relating to new installations and also to replacements or conversions which fulfil the criteria laid down by the Council in Regulation (Euratom) No 2587/1999 should be made by means of a form, which can be sent in a paper version or an electronic version. In the interests of legal certainty, it is necessary to confirm to the persons or undertakings having submitted a communication that the Commission has received it.

(3) The period within which the Commission is required to examine, discuss and adopt its views pursuant to Article 43 of the Euratom Treaty should be set at two months from receipt of a complete communication. The remarks made by third parties should be transmitted by the Commission to the persons or undertakings concerned for possible reaction from them. In the interests of legal certainty, the examination and discussion should be brought to an end by a recommendation as provided for under Article 124 of the Euratom Treaty.

(4) In all cases where, as a result of a preliminary examination, the Commission finds that doubts exist as to the objectives of the Euratom Treaty in the light of Regulation (Euratom) No 2587/1999, a detailed examination and discussion procedure should be opened in order to enable the Commission to gather all the information it needs to comply with its tasks under the Euratom Treaty and to allow the persons and undertakings concerned to submit their comments.

(5) After having considered the comments submitted by the persons or undertakings concerned, the Commission should conclude its examination by adopting a recommendation as soon as doubts have been removed.

(6) In the interest of achieving a coordinated development of investment in the nuclear field, it is appropriate to monitor effectively the measures finally taken by persons or undertakings concerned pursuant to the recommendation adopted by the Commission.

(7) In order to ensure that the provisions of the Euratom Treaty are applied correctly and effectively, the Commission should be able to revoke its recommendation if it was based on incorrect information.

(8) It is appropriate to inform the public about investment projects whilst, at the same time, observing the principle laid down in Article 44 of the Euratom Treaty that the consent of Member States, persons and undertakings concerned is necessary. In the interests of transparency and of legal certainty, it is appropriate to publish all investment projects and recommendations adopted. The Commission should also publish an annual report recording implementation of the recommendations made as well as specific measures taken by the persons or undertakings concerned in response to the views of the Commission.

(9) Should the investments not be necessary for or go beyond the objectives of the Euratom Treaty or should their public financing distort or threaten to distort competition in the internal market, this Regulation is without prejudice to the application of the EC Treaty.

(10) Commission Regulation (EC) No 1209/2000 [2] should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1209/2000 is amended as follows:

1. The title is replaced by the following:

'Commission Regulation (Euratom) No 1209/2000 of 8 June 2000 determining the procedures for the examination of the communications prescribed under Article 41 of the Euratom Treaty'.

[1] OJ L 315, 9.12.1999, p. 1.

[2] OJ L 138, 9.6.2000, p. 12.

2. Article 1 is replaced by the following:

'*Article 1*

1. Investment projects relating to new installations and also to replacement or conversions which fulfil the criteria as to type and size laid down by Regulation (Euratom) No 2587/1999 shall be communicated to the Commission by means of the form in the Annex to this Regulation.

The form may be submitted on paper or electronically.

2. The Commission shall inform the persons or undertakings concerned without delay of receipt of the communication.'

3. The following Articles 3a to 3f are inserted:

'*Article 3a*

1. The Commission shall examine the communication as soon as it is received. It shall take express its views in a recommendation.

2. Where the Commission, after an examination, finds that the communicated investment project raises no doubts regarding the objectives of and compliance with the Euratom Treaty, it shall record that finding and express its views by way of a recommendation communicated to the persons, the undertakings and the Member State concerned.

3. Where the Commission, after an examination finds that the communicated investment project raises doubts regarding the objectives of and compliance with the Euratom Treaty, it shall initiate a detailed examination procedure to further discuss in detail all aspects of the investment project which relate to the objectives of that Treaty.

4. A recommendation in accordance with paragraph 2 and the opening of the detailed examination procedure, referred to in paragraph 3, shall be made within 2 months. That period shall begin on the day following receipt of a complete communication complying with the provisions of this Regulation and of Regulation (Euratom) No 2587/1999. The communication shall be considered complete if within two months of its receipt, or of receipt of any additional information requested, the Commission does not request any further information.

5. Where the Commission has not issued a recommendation in accordance with paragraph 2 nor acted within the period laid down in paragraph 4, the investment project shall be deemed to be in compliance with the objectives and provisions of the Euratom Treaty.

Article 3b

1. Where the Commission considers that information provided by the person or undertaking concerned with regard to an investment project communicated to it, is incomplete, it shall request all necessary information. Where the person or undertaking concerned responds to such a request, the Commission shall inform that person or undertaking of receipt of the response.

2. Where the person or undertaking concerned does not provide the information requested within a prescribed period provided by the Commission or provides incomplete information, the Commission shall send a reminder, allowing an appropriate additional period within which the information shall be provided.

Article 3c

1. When opening the detailed examination procedure, the Commission shall summarise the relevant issues of fact and law and include a preliminary assessment of the investment project in relation to the provisions and objectives of the Euratom Treaty and Regulation (Euratom) No 2587/1999. The Commission shall call upon the persons or undertakings concerned to submit comments and to further discuss with the Commission within a prescribed period that shall normally not exceed two months.

2. The persons or undertakings concerned are recommended not to put the investment project into effect before the Commission has issued its recommendation on that project or it is deemed to be in compliance with the objectives and provisions of the Euratom Treaty as provided for in Article 3a(5).

Article 3d

1. Where the Commission finds, following discussion and/or modification by the person or undertaking concerned, that the investment project is in compliance with the objectives and provisions of the Euratom Treaty, it shall record its views by way of a recommendation communicated to the persons, undertakings and Member State concerned.

2. Where the Commission finds, following discussion and/or modification by the person or undertaking concerned, that the communicated investment project is not in compliance with the objectives and provisions of the Euratom Treaty, it shall express its views by way of a recommendation communicated to the persons, undertakings and Member State concerned.

3. The views taken pursuant to paragraphs 1 and 2 shall be taken as soon as the doubts referred to in Article 3a(3) have been removed. The Commission shall as far as possible endeavour to adopt a recommendation within a period of six months from the opening of the detailed examination procedure.

4. Once the period referred to in paragraph 3 has expired, and should the person or undertaking concerned so request, the Commission shall, within two months, issue its recommendation on the basis of the information available to it.

Article 3e

After having issued its recommendation on the investment project in question, the Commission shall monitor, and where appropriate, discuss with the persons or undertakings concerned, the specific measures taken or intended to be taken pursuant to the Commission's recommendation.

Article 3f

The Commission may revoke a recommendation pursuant to Articles 3a and 3d where information which was a determining factor for that recommendation was incorrect, after giving the persons or undertakings concerned the opportunity to submit observations.

Before revoking its recommendation and adopting a new recommendation, the Commission shall open the detailed examination procedure pursuant to Article 3a(3).'

4. The following Articles 4a and 4b are inserted:

'*Article 4a*

The Commission shall transmit to the persons or undertakings having communicated an investment project possible comments or views from third parties on the project which will influence the Commission's recommendation.

Article 4b

1. The Commission shall, with the consent of the Member States, persons and undertakings concerned, publish any investment projects communicated to it as well as the recommendations issued pursuant to this Regulation.

2. The Commission shall publish an annual report recording implementation of the recommendations made as well as specific measures taken by the persons or undertakings concerned in response to the views of the Commission.

This report shall respect, where necessary, the rules on professional secrecy if the consent referred to in Article 44 of the Euratom Treaty is finally not given.'

Article 2

This Regulation shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 23 July 2003.

For the Commission
Loyola DE PALACIO
Vice-President