

Revision of the information and procedural requirements under Articles 41 to 44 of the Euratom Treaty

Fields marked with * are mandatory.

A. General information about the respondents

This section includes questions about the background of respondents. Please note that this consultation is subject to a *Data Privacy Statement*.

*** 1. Please enter your name and, where relevant, the name of the organisation you represent.**

Fortum

*** Please include also an e-mail address for contact purposes, for use only if we need clarification about your responses.**

kim.fyhr@fortum.com

*** 2. Are you responding to this questionnaire on behalf of / as:**

- An individual
- An organisation
- A company
- A public authority
- Other

*** 3. Please indicate your country**

Finland

*** 4. From which perspective are you interested in the procedure for notification of investment projects in the nuclear sector pursuant to Articles 41 to 44 of the Euratom Treaty?**

- Investor or potential investor (e.g. utility company/consortium)
- Public authority (other than a nuclear regulatory authority)

- Nuclear regulatory authority
- Nuclear industry association
- Trade union / workers' representative
- Non-governmental organisation
- Interested citizen
- Supplier of equipment or technology for nuclear projects
- Supplier of nuclear material or nuclear fuel
- Service provider for nuclear projects/facilities (including nuclear fuel cycle services)
- Subcontractor involved in nuclear investment projects
- Researcher
- Other

*** 5. How would you prefer your contribution to be published on the Commission website, if at all?**

- (a) Under the name indicated (I consent to publication of all information in my contribution and I declare that none of it is under copyright restrictions that prevent publication)
- (b) Anonymously (I consent to publication of all information in my contribution and I declare that none of it is under copyright restrictions that prevent publication)
- (c) Not at all – keep it confidential (My contribution will not be published and it will not feature in the analysis of the results of the public consultation)

B. Specific questions

1. In what way do you consider a positive point of view from the Commission to be of most benefit to investors or other stakeholders?

- (a) It benefits the investors, Member States' authorities and all EU citizens by ascertaining that all the important aspects, such as nuclear safety, safe management of radioactive waste, decommissioning, radiation protection, diversification and security of supply as well as financial aspects have been sufficiently taken into account in the project
- (b) It is a mandatory national regulatory requirement, without which the project would not be able to proceed
- (c) It fulfils one of the conditions to obtain funding through Euratom loans or European Investment Bank loans
- (d) It helps to secure financing for the project from other sources
- (e) It allows the identification, at an early stage, of how the project would comply with Euratom requirements that apply throughout the project's lifetime
- (f) It is a useful tool to increase public acceptance of the project, by attesting that the project is in compliance with the objectives of the Euratom Treaty and is in line with the latest policy developments
- (g) It increases transparency especially if the Member States and investors concerned allow the Commission to publish the point of view
- (h) A positive point of view is of no added value
- (i) Other

Please specify:

In accordance with Section 37 a of the Finnish Nuclear Energy Decree the Ministry of Employment and the Economy shall ensure before making the decision on a construction license that the Commission has submitted its point of view on the nuclear project concerned pursuant to Chapter IV of Euratom Treaty. The point of view is hence a prerequisite for granting the construction license in national law.

2. The list of industrial activities denoting which investment projects are to be notified is contained in the Annex to Council Regulation 2587/1999, combined with the other provisions of the Regulation.

Do you think that this list needs to be modified?

No

Whilst drawing on the current list of industrial activities in Council Regulation 2587/1999, the projects could be defined in a clear and simple way on the basis of the main categories of projects notified to the Commission in the past and expected to be notified in the future, such as:

1. Creating a new nuclear installation[1];
2. Creating facilities for spent fuel or radioactive waste management other than those covered under point (a);
3. Creating facilities for mining, concentration and/or chemical processing of uranium and thorium ores (including conversion facilities);
4. Decommissioning nuclear installations or facilities covered under points (a) to (c);
5. Upgrading nuclear installations or facilities covered under points (a) to (c);
6. Replacing components on a nuclear installation;
7. Increasing the production capacity or the power of a nuclear installation;
8. Creating or increasing the production capacity of or decommissioning facilities processing irradiated fuel for the purpose of producing radioisotopes used for medical applications;

[1] Definition for 'nuclear installation' being the one provided for in Article 3 of Directive 2009/71/Euratom, as amended by Directive 2014/87/Euratom: "(a) a nuclear power plant, enrichment plant, nuclear fuel fabrication plant, reprocessing plant, research reactor facility, spent fuel storage facility; and (b) storage facilities for radioactive waste that are on the same site and are directly related to nuclear installations listed under point (a);"

Do you think such a list of categories of projects, which could eventually replace the current list of industrial activities, would bring clarity as to which projects should be notified?

No

Would you have any suggestions on how to improve the above list?

No.

3. The threshold amounts determining which projects should be notified to the Commission were laid down in Council Regulation (Euratom) No 2587/1999.

Do you think there is a need to adjust these amounts in the light of inflation as well as developments in the market?

Yes

How could the threshold amounts in Council Regulation 2587/1999 be reviewed to better reflect the current economic reality in the nuclear market?

- (a) The thresholds should not be modified
- (b) The thresholds should be updated according to inflation
- (c) The thresholds should be further adjusted periodically according to future inflation
- (d) The thresholds should be considerably increased to take account of the increased costs associated with ensuring compliance with the latest post-Fukushima regulatory requirements
- (e) Other

Please specify:

The threshold for replacements and conversions in nuclear reactors of all types and for all purposes should be increased to 100 MEUR. This would better reflect the current costs of investments in operating nuclear installations and would reduce administrative burden.

Do you consider that a single threshold per category of project would simplify the procedure?

No

4. The current information requirements do not require investors to include in their notification information on all aspects of an investment project which fall within the scope of the Euratom Treaty. In order to obtain this information, the Commission has to address requests for supplementary information to the investors.

Which of the following areas should be included in any revised requirements in order to avoid this?

- Nuclear safety
- Spent fuel/nuclear waste management
- Radiation protection
- Decommissioning
- Nuclear Safeguards
- Financing/Project feasibility
- Diversification of fuel supplies
- Other

Please specify:

No additional mandatory requirements are needed.

5. The current information requirements are not up-to-date and do not reflect the latest developments in Euratom legislation and policy.

What changes, if any, should be made to the current information and procedural requirements in order to ensure that the Article 41 procedure becomes more effective and adapted to the current legislative framework so that the point of view becomes more useful?

- (a) Investors could be required to provide information on aspects of the project related to, amongst others, nuclear safety, nuclear waste management, decommissioning, radiation protection and diversification and security of fuel supply
- (b) Investors could be required to provide information which demonstrates their project's compliance with Euratom requirements and policy priorities in the areas specified under (a)
- (c) A set of specific questions could be drawn up for each type of project, which would then have to be answered by investors in their notification in order to assess the project's compatibility with Euratom requirements and policy priorities in the areas specified under (a)
- (d) Other

Please specify:

No additional requirements are needed.

6. How can the current information requirements be made more specific in order to ensure that investors have sufficient guidance as to the level of detail that a project notification should provide and to ensure enhanced predictability as regards the information sought by the Commission, so that investors can be confident that they will be treated equally?

Fortum does not see added value in making information requirements more specific and considers that specific one-size-fits-for-all information requirements do not work in practice. It should be noted that the Commission is entitled to request more specific information from the notifying entity throughout the process.

7. Due to the lack of specificity of the current notification requirements, project notifications sometimes lack important information. The Commission has therefore established the practice of asking for supplementary information from the investor after a notification is submitted in cases where the project notification lacks substantial information. To what extent would you agree with the following statements in relation to the effects of such a practice?

	Strongly Agree	Agree	Neither agree nor disagree	Disagree	Strongly disagree
It has a positive effect by not requiring unnecessary					

information at the initial stage but rather allowing the information requested to be tailored to the specific project	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
It could delay the issuing of the point of view	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
It could delay the project's implementation	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
It could increase the administrative burden on investors, as they have to repeatedly compile the required information	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

8. Do you agree that the current notification requirements may be considered too onerous for some projects which are relatively straightforward (e.g. component replacements)?

Yes ▼

How could the information and procedural requirements be simplified in order to make them more aligned with the nature and complexity of a given project?

- (a) The scope and level of detail of the information required should be commensurate with the potential magnitude and nature of the hazard relevant for each category of projects
- (b) Straightforward projects exceeding the threshold amounts should be notified only by means of a declaration limited to the essential characteristics of the project but the discussion with the Commission, followed by the issuing of the point of view, would still have to take place
- (c) Straightforward projects exceeding the threshold amounts should be notified only by means of a declaration limited to the essential characteristics of the project and if there is no reaction from the Commission within a specified period of time, the project is presumed to be in compliance with the objectives of the Treaty
- (d) Other

9. Do you think that the procedure leading to the adoption of the Commission's point of view could be made more effective?

Yes ▼

Which of the following options would best achieve the objective of reducing the administrative burden for investors and increasing the usefulness of the point of view?

- (a) Leave the current notification requirements in place, and address any gaps in the information notified by investors through requests for supplementary information (the status quo option)
- (b) Streamline the current procedure and clarify the existing requirements by specifying the information that should be notified in the light of past experience with the assessment of

investment projects

- (c) Clarify, streamline and update the current requirements in the light of recent developments in Euratom legislation and energy policy and past experience with the assessment of investment projects in order to provide comprehensive guidance on the information to be communicated so as to cover the whole scope of discussions with the Commission as provided for in the Treaty
- (d) Other

Please specify:

See answer to question 3 in relation to thresholds triggering the notifications.

10. Some investment projects, such as stress test safety related investments, as well as investments aimed at extending the lifetime of an installation, involve various upgrades and/or modifications over a longer period of time, which could potentially involve several notifications.

How could the information and procedural requirements be adapted/simplified for investment projects of this kind?

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11. Currently, the Euratom Treaty lays down that projects should be notified to the Commission "not later than three months before the first contracts are concluded with the suppliers or, if the work is to be carried out by the undertaking with its own resources, three months before the work begins". Council Regulation 2587/1999 on the other hand requires investment projects to be notified when their costs exceed the thresholds laid down therein. No other requirement is laid down in terms of the timing of the notification. Experience has shown that in some cases projects are notified too early in the planning process, with the consequence that some essential information cannot as yet be provided or is not yet known. Sometimes the project is subject to substantial modifications following its notification, rendering the ensuing point of view obsolete. In other cases, the notification is made too late in the process, causing the point of view to be delayed, with the attendant costs that this could entail for the project's implementation.

In your opinion, which criteria should determine the stage at which a notification should be submitted, in order to maximise the usefulness of the discussions between the investor and the Commission as well as the benefits of the Commission's point of view?

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12. Do you have any comments on the time that should be taken by the Commission, depending on the complexity of the project, for the point of view to be issued?

No.

13. The Commission's point of view is based on the information contained in the notification and revealed in discussions with the investor. Subsequent changes in the project's implementation or new information which becomes available after the point of view is issued may however imply that the point of view might need to be modified in order to ensure its continued relevance.

How can the Commission ensure a better follow up of projects after it issues its point of view, in order to ensure the continued validity of its recommendations?

Should elementary changes occur in the project, that would as such require a notification, additional information should be provided to the Commission.

Following up and monitoring nuclear projects falls within the competence of national regulatory authority. Therefore, no changes in secondary Euratom legislation in this regard should be introduced.

14. In the framework of the Article 41 procedure the Commission receives extensive information on the state of investments in the nuclear market. Most of this information is, at least for an initial period following a notification, commercially sensitive. The Commission is precluded under Article 44 of the Euratom Treaty from publishing project notifications unless both the investor and the Member State concerned give their consent. This lack of disclosure, however, could give rise to a perception of a lack of transparency.

Do you think that sharing some of this information could have some benefits for potential investors, for example by identifying obstacles to project implementation, best practices and innovative financing models?

- Yes
 No

How can the Commission, while protecting commercially sensitive information and in full observance of Article 44 of the Euratom Treaty, enhance the transparency of the Article 41 procedure and better use the information gathered from individual notifications for the benefit of all stakeholders?

- (a) Introduce a more structured procedure for obtaining investors' and Member States' consent to the publication of project notifications, and publish notifications and points of view on the Commission's website when consent is given
- (b) Publish basic details of notified projects on a dedicated website as soon as a notification is received by the Commission
- (c) Publish periodic reports with aggregated data on the notifications received, identifying only projects for which both the investor's and the Member State's consent have been given to publication
- (d) Other

Please specify:

Improving transparency is important but investors should be in a position to decide on a case-by-case basis what information can be made public. This is because notifications may include sensitive commercial information and information that cannot be made public due to nuclear security reasons. Status quo should thus be maintained.

15. Do you have any additional suggestions or views?

Yes. Investors' administrative burden should be reduced in a fashion that promotes greater transparency.

It should be noted that investment notifications are important procedures, which provide the Commission with important insight into the investment environment in the field of nuclear energy. The Commission has a pivotal role to play under Article 194 of TFEU in the preparation of EU energy policy.

The Commission should use this information to tackle the competitiveness challenges that the European nuclear energy industry is currently facing. Information should be taken into account in the Commission when preparing wider EU energy policy striving for decarbonization.

Contact

✉ ENER-LUX-CONSULTATION-ART41@ec.europa.eu
