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## **REPORT**

on the proposal for a Council regulation (Euratom) laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast)

(COM(2010)0184 – C7-0137/2010 – 2010/0098(CNS))

Committee on Industry, Research and Energy

Rapporteur: Ivo Belet

(Recast – Rule 87 of the Rules of Procedure)

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council regulation (Euratom) laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast)  
(COM(2010)0184 – C7-0137/2010 – 2010/0098(CNS))**

**(Special legislative procedure - consultation – recast)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2010)0184),
  - having regard to Article 31 of the Euratom Treaty, pursuant to which the Council consulted Parliament (C7-0137/2010),
  - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts<sup>1</sup>,
  - having regard to the letter of 29 June 2010 from the Committee on Legal Affairs to the Committee on Industry, Research and Energy in accordance with Rule 87(3) of its Rules of Procedure,
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Rules 87, 55 and 37 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, Research and Energy (A7-0001/2011),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 106a of the Euratom Treaty;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;

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<sup>1</sup> OJ C 77, 28.3.2002, p. 1.

4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a regulation

#### Citation 1

*Text proposed by the Commission*

Having regard to the Treaty ***establishing*** the European ***Atomic Energy Community***, and in particular Article ***31*** thereof,

*Amendment*

Having regard to the Treaty ***on*** the ***Functioning of the European Union***, and in particular Article ***168(4) and Article 169(3)*** thereof,

#### *Justification*

*To ensure a high level of health protection for EU citizens in the event of radioactive contamination and to give democratic legitimacy to the adoption of this Regulation, the legal basis should be changed under the new Lisbon Treaty to give the European Parliament a decision-making role on a regulation potentially affecting public health. The proposal is to consider public health (Article 168) and consumer protection (Article 169(1)).*

## Amendment 2

### Proposal for a regulation

#### Recital 2

*Text proposed by the Commission*

***(2) Article 2(b) of the Treaty requires that the Council establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied, as further set out in Title Two, Chapter III, of the Treaty.***

*Amendment*

***deleted***

#### *Justification*

*The reference to the Euratom article is unnecessary in view of the adoption of Directive 96/29/Euratom, which lays down these standards and which is mentioned in Recital 3. The*

*reference to health protection and to the Lisbon Treaty replaces this recital.*

### **Amendment 3**

#### **Proposal for a regulation**

##### **Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) In accordance with Article 168 of the Treaty on the Functioning of the European Union, a high level of human health protection should be ensured in the definition and implementation of all EU policies and activities.***

### **Amendment 4**

#### **Proposal for a regulation**

##### **Recital 4**

*Text proposed by the Commission*

*Amendment*

(4) Following the accident at the Chernobyl nuclear power-station on 26 April 1986, considerable quantities of radioactive materials were released into the atmosphere, contaminating foodstuffs and feedingstuffs in several European countries to levels significant from the health point of view.

(4) Following the accident at the Chernobyl nuclear power-station on 26 April 1986, considerable quantities of radioactive materials were released into the atmosphere, contaminating foodstuffs and feedingstuffs in several European countries to levels significant from the health point of view; ***the soil was also contaminated with radioactive fallout, which increased the radioactivity of forest and agricultural foodstuffs obtained from the affected areas.***

#### *Justification*

*The effect of contamination with radioactive substances can be indirect and delayed (even by many years).*

## Amendment 5

### Proposal for a regulation Recital 5 a (new)

*Text proposed by the Commission*

*Amendment*

*(5a) A high level of human health protection is one of the objectives the Union shall achieve when defining and implementing its policies. Article 168(4)(b) of the Treaty on the Functioning of the European Union provides for the adoption of common measures in the veterinary field which have as a direct objective the protection of human health. Member States are responsible for monitoring compliance with the levels laid down in this Regulation, namely through the surveillance of the safety standards of foodstuffs and feedingstuffs.*

## Amendment 6

### Proposal for a regulation Recital 6

*Text proposed by the Commission*

*Amendment*

(6) The need arises to set up a system allowing the European **Atomic Energy Community**, following a nuclear accident or any other case of radiological emergency which is likely to lead or has led to a significant radioactive contamination of foodstuffs and feedingstuffs, to fix maximum permitted levels of radioactive contamination in order to **protect the population**.

(6) The need arises to set up a system allowing the European **Union**, following a nuclear accident or any other case of radiological emergency which is likely to lead or has led to a significant radioactive contamination of foodstuffs and feedingstuffs, to fix maximum permitted levels of radioactive contamination in order to **ensure a high level of public health protection**.



## Amendment 7

### Proposal for a regulation Recital 8

*Text proposed by the Commission*

(8) The Commission should , ***if the circumstances so require***, immediately ***adopt a Regulation rendering applicable*** pre-established maximum permitted levels.

*Amendment*

(8) The Commission should immediately ***apply the*** pre-established maximum permitted levels ***of contamination to a particular nuclear accident or radiological emergency***.

*Justification*

*Recital modified to be consistent with Article 2 as amended by the Rapporteur (Amendment 10).*

## Amendment 8

### Proposal for a regulation Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(8a) The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the adaptation to technical progress of the maximum permitted levels of radioactive contamination of foodstuffs and feedingstuffs (Annexes I and III), and of the list of minor foodstuffs (Annex II). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level.***

*Justification*

*Recital introduced to be consistent with Amendment 15 and the following ones by the Rapporteur, modifying the Article 5.*

## Amendment 9

### Proposal for a regulation Recital 9

*Text proposed by the Commission*

*Amendment*

*(9) On the basis of current data available in the field of radiation protection, derived reference levels have been established and these levels may be used as a basis for the fixing of maximum permitted levels of radioactive contamination to be applied immediately following a nuclear accident or any other case of radiological emergency which is likely to lead or has led to significant radioactive contamination of foodstuffs and feedingstuffs.*

*deleted*

#### *Justification*

*The Rapporteur is of the opinion that this Recital is vaguely drafted - what are "derived reference levels" - and does not correspond to the application of the maximum levels by the Commission as described both in the current Article 2 and in its amended version (Amendment 10 by the Rapporteur on Article 2 - paragraph 1).*

## Amendment 10

### Proposal for a regulation Recital 10

*Text proposed by the Commission*

*Amendment*

(10) **Such** maximum permitted levels take due account of the latest scientific advice as presently available on an international scale **whilst reflecting** the need for reassuring the public and **avoiding** divergences in international regulatory practice.

(10) **The derived reference levels and the** maximum permitted levels **should be regularly revised to** take due account of the latest scientific **advances and** advice as presently available on an international scale, **to reflect** the need for reassuring the public **and to provide them with a high level of protection** and **avoid** divergences in international regulatory practice.

### *Justification*

*The current values in the Regulation have not been updated since they were adopted. Since then, advances have been made in the assessment of exposure doses and health impacts. The US FDA revised the derived reference values and the maximum permitted levels in 1998, and recommended values much stricter than those in force in the EU, which must be brought into line with international advances in this field.*

## **Amendment 11**

### **Proposal for a regulation**

#### **Recital 10 a (new)**

*Text proposed by the Commission*

*Amendment*

***(10a) It must be acknowledged that the levels of radioactivity caused by contamination following a nuclear accident or any other case of radiological emergency should be taken into account together with the natural levels of radioactivity already present which can sometimes be above the safety limits established.***

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 10 b (new)**

*Text proposed by the Commission*

*Amendment*

***(10b) Annexes I, II and III should take into account the effect of the partial decay of radioactive isotopes during the shelf life of preserved foodstuffs; depending on the type of contamination, e.g. with iodine isotopes, the radioactivity of these products should be constantly monitored.***

### *Justification*

*Ionizing radioactivity diminishes over time.*

## Amendment 13

### Proposal for a regulation Recital 11

*Text proposed by the Commission*

*Amendment*

**(11) However, it is necessary to take due account of the particular conditions applying and, therefore, to establish a procedure allowing the rapid adaptation of these pre-established levels to maximum permitted levels appropriate to the circumstances of any particular nuclear accident or any other case of radiological emergency which is likely to lead or has led to significant radioactive contamination of foodstuffs and feedingstuffs.** **deleted**

#### *Justification*

*The "procedure allowing the rapid adaptation of this pre-established levels" refers to the procedure laid down in Article 3, which the Rapporteur proposes to delete (see, Amendment 13 by Rapporteur on Article 3).*

## Amendment 14

### Proposal for a regulation Recital 12

*Text proposed by the Commission*

*Amendment*

**(12) A Regulation rendering applicable maximum permitted levels should also maintain the unity of the Internal Market and avoid deflections of trade within the Union .** **deleted**

#### *Justification*

*In amending the Article 2, the Rapporteur intends to delete the "Regulation rendering applicable" which is not legally accurate (see, justification of amendment to Article 2 - paragraph 1).*

*In addition, by applying levels laid down in the basic regulation itself, the decision as such will have no effect on the unity of the internal market or distortions of trade.*

## Amendment 15

### Proposal for a regulation Recital 13

*Text proposed by the Commission*

*Amendment*

***(13) In order to facilitate the adaptation of maximum permitted levels, procedures should be provided for allowing the consultation of experts including the Group of Experts referred to in Article 31 of the Treaty.*** ***deleted***

#### *Justification*

*These procedures are now clearly described in the revised Article 5 and in the Articles 5a to 5c which provide for the consultation of experts of Article 31 of the Treaty. The corresponding Recital 8b (new) sufficiently covers the consultation of experts and refers to the appropriate legal procedure as regards "the adaptation of the levels".*

## Amendment 16

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

*Amendment*

***(15) It is appropriate for the Council to reserve the right to exercise directly the power to adopt a Regulation to timely endorse measures proposed by the Commission in the first month after a nuclear accident or a radiological emergency. The relevant proposal for the adaptation or confirmation of the provisions laid down in the Regulation adopted by the Commission, in particular the establishment of maximum permitted levels of radioactive contamination, should be based on Article 31 of the Treaty, in view of the health protection of the population. This is without prejudice to the possibility that in the long term after the accident or the radiological*** ***deleted***

***emergency other legal instruments or another legal basis may be used for the purpose of controlling foodstuffs or feedingstuffs being placed on the market.***

*(Second and third sentence of the justification repeated (slightly modified) in the Explanatory Statement (ii) Assessment)*

#### *Justification*

*For the Rapporteur, this Recital does not clearly motivate the need to reserve implementing powers to the Council in Article 3, as regards the context, the nature and the content of the basic act to be implemented. Furthermore, the Rapporteur is not convinced by the added-value of this two-level approach, where the Council can at the end validate or adapt decisions of the Commission which should be the only executive authority in the normal course of the events. (See also, justification to Amendment 13 introduced by the Rapporteur.)*

### **Amendment 17**

#### **Proposal for a regulation**

##### **Recital 16**

###### *Text proposed by the Commission*

(16) Compliance with the maximum permitted levels should be the subject of appropriate checks,

###### *Amendment*

***(16) The general principles of food law as laid down in Articles 5 to 21 of Regulation 178/2002 shall apply.*** Compliance with the maximum permitted levels should be the subject of appropriate checks ***and official controls by Member States, as provided for in Article 17 of Regulation 178/2002,***

### **Amendment 18**

#### **Proposal for a regulation**

##### **Article 2 – paragraph 1**

###### *Text proposed by the Commission*

1. In the event of the Commission receiving — in particular according to either the European Atomic Energy Community arrangements for the early exchange of information in case of a radiological emergency or under the 1

###### *Amendment*

1. In the event of the Commission receiving — in particular according to either the European Atomic Energy Community arrangements for the early exchange of information in case of a radiological emergency or under the 1

IAEA Convention of 26 September 1986 on early notification of a nuclear accident — official information on accidents or on any other case of radiological emergency, substantiating that the maximum permitted levels for foodstuffs laid down in Annex I or the maximum permitted levels for feedingstuffs laid down in Annex III are likely to be reached or have been reached, it shall immediately adopt, *if the circumstances so require, a Regulation rendering applicable* those maximum permitted levels.

IAEA Convention of 26 September 1986 on early notification of a nuclear accident — official information on accidents or on any other case of radiological emergency, substantiating that the maximum permitted levels for foodstuffs laid down in Annex I or the maximum permitted levels for feedingstuffs laid down in Annex III are likely to be reached or have been reached, it shall immediately adopt *a decision declaring a nuclear accident or radiological emergency and applying* those maximum permitted levels.

*(If this amendment is adopted, the reference to "Regulation" in subparagraph 1 of Article 6 (1) shall be changed to "decision".)*

#### *Justification*

*The application of the maximum permitted levels of contamination to a specific situation is clearly an implementing power that should be conferred on the Commission, in accordance with Article 291 TFEU (applicable by reference of 106a Euratom Treaty).*

### **Amendment 19**

#### **Proposal for a regulation Article 2 – paragraph 2**

##### *Text proposed by the Commission*

2. The period of validity of *any Regulation within the meaning of* paragraph 1 *shall be as short as possible and* shall not exceed three months, *subject to the provisions of Article 3(4).*

##### *Amendment*

2. The period of validity of the *decision referred to in* paragraph 1 shall not exceed three months.

#### *Justification*

*See justification of Amendment 10.*

## **Amendment 20**

### **Proposal for a regulation**

#### **Article 2 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. For the purpose of this Regulation, the Commission shall be assisted by a committee of independent scientific experts on public health and food safety. The members of the committee shall be selected according to scientific criteria. The Commission shall make public the composition of the committee of experts and its members' declaration of interests.*

## **Amendment 21**

### **Proposal for a regulation**

#### **Article 3**

*Text proposed by the Commission*

*Amendment*

#### **Article 3**

*deleted*

*1. After consultation with experts, which shall include the group of experts referred to in Article 31 of the Treaty, hereinafter “group of experts”, the Commission shall submit to the Council a proposal for a Regulation to adapt or confirm the provisions of the Regulation referred to in Article 2(1) of this Regulation within one month of its adoption.*

*2. When submitting the proposal for a Regulation referred to in paragraph 1, the Commission shall take into account the basic standards laid down in accordance with Articles 30 and 31 of the Treaty, including the principle that all exposures shall be kept as low as reasonably achievable, taking the aspect of the protection of the health of the*



*general public and economic and social factors into account.*

*3. The Council shall, acting by a qualified majority, take a decision on the proposal for a Regulation referred to in paragraphs 1 and 2 within the time limit set out in Article 2(2).*

*4. In the event that the Council does not decide within this time limit, the levels set out in Annexes I and III shall continue to apply until the Council does decide or until the Commission withdraws its proposal because the conditions set out in Article 2(1) no longer apply.*

*(If this amendment is adopted, the reference to Article 3 in subparagraph 1 of Article 6 (1) shall be deleted.)*

*Justification contains slightly modified text from Explanatory Statement (ii) Assessment*

#### *Justification*

*The regime set out in Article 3, whereby the Council can adopt a regulation so as 'to adapt or confirm the provisions' of the 'ad hoc' regulation of the Commission seems unnecessary and a source of legal uncertainty. It seems that those Council measures can qualify as 'implementing acts' of the current regulation. However, according to Article 291 TFEU (applicable by reference of Article 106a Euratom), it is only in 'duly justified specific cases' that such a power can be conferred on the Council, the Commission being normally responsible for exercising that power.*

## **Amendment 22**

### **Proposal for a regulation Article 4**

*Text proposed by the Commission*

*Amendment*

#### **Article 4**

**deleted**

*The period of validity of any Regulation within the meaning of Article 3 shall be limited. This period may be revised at the request of a Member State or on the initiative of the Commission in accordance with the procedure laid down in Article 3.*

## *Justification*

*Deletion as a consequence of the deletion proposed for Article 3.*

### **Amendment 23**

#### **Proposal for a regulation Article 5**

##### *Text proposed by the Commission*

1. In order to *ensure that the maximum permitted levels laid down in* Annexes I and III take account of any new scientific data becoming available, the Commission shall, *from time to time, seek the opinion of experts, which shall include the group of experts.*

2. *At the request of a Member State or the Commission, the maximum permitted levels laid down in Annexes I and III may be revised or supplemented, upon the submission of a proposal from the Commission to the Council in accordance with the procedure laid down in Article 31 of the Treaty.*

##### *Amendment*

In order to *take account of any new scientific data becoming available, or, if necessary after a nuclear accident or any other case of radiological emergency, the Commission shall adapt* Annexes I, II and III *by means of delegated acts in accordance with Article 5a and subject to the conditions of Articles 5b and 5c.*

### **Amendment 24**

#### **Proposal for a regulation Article 5 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

##### *Article 5a*

##### *Exercise of delegation*

*1. The power to adopt the delegated acts referred to in Article 5 shall be conferred on the Commission for a period of five years beginning on ...\*. The Commission shall draw up a report in respect of the delegated power not later than six months*

*before the end of the five-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 5b.*

*2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*3. The power to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 5b and 5c.*

*\* OJ: Please insert date of entry into force of this Regulation.*

*(See wording already adopted in the Regulation 438/2010 on pet animals, OJ L 132, 29/05/2010 pp. 3-10 and Directive 2010/30/EU on the labelling of energy-related products OJ L 153, 18/06/2010 pp. 1-12.)*

#### *Justification*

*The wording of Articles 5a, 5b and 5c is identical to that of legal acts (ex. pets regulation; energy labelling of the consumption of energy by energy-related products) recently adopted and which provide for delegated acts.*

#### **Amendment 25**

##### **Proposal for a regulation Article 5 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 5b**

##### **Revocation of the delegation**

*1. The delegation of power referred to in Article 5 may be revoked at any time ) by the European Parliament or by the Council.*

*2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a*

*reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation and possible reasons for a revocation.*

*3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

#### *Justification*

*See justification of Amendment 16 introduced by the Rapporteur.*

#### **Amendment 26**

##### **Proposal for a regulation Article 5 c (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 5c*

##### *Objections to delegated acts*

*1. The European Parliament or the Council may object to a delegated act within a period of two months from the date of notification.*

*At the initiative of the European Parliament or the Council that period shall be extended by two months.*

*2. If, on expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union and shall enter into force on the date stated therein.*

*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period, if the European Parliament and the Council have both informed the*

*Commission of their intention not to raise objections.*

*3. If the European Parliament or the Council objects to the delegated act within the period referred to in paragraph 1, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.*

#### *Justification*

*See justification of Amendment 16 introduced by the Rapporteur.*

#### **Amendment 27**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 1 – subparagraph 2**

###### *Text proposed by the Commission*

*For the purposes of applying this Regulation, foodstuffs or feedingstuffs imported from third countries **shall be considered to be placed on the market if, on the customs territory of the Community, they undergo a customs procedure other than a transit procedure.***

###### *Amendment*

*This Regulation **shall also apply to** foodstuffs or feedingstuffs imported from third countries, **in customs transit or intended for export.***

#### **Amendment 28**

##### **Proposal for a regulation**

##### **Article 6 – paragraph 2 a (new)**

###### *Text proposed by the Commission*

###### *Amendment*

***2a. Member States shall monitor compliance with the maximum permitted levels. For that purpose Member States shall maintain a system of official controls of foodstuffs and feedingstuffs, and other activities as appropriate in the circumstances, including public communication on food and feed safety and risks, in accordance with Article 17 of***

**Amendment 29**

**Proposal for a regulation  
Article 8**

*Text proposed by the Commission*

*Amendment*

**Article 8**

***deleted***

*Rules for implementing this Regulation and adaptations to the list of minor foodstuffs, together with the maximum permitted levels of radioactive contamination to be applied thereto, as set out in Annex II, and to the maximum permitted levels for feedingstuffs set out in Annex III shall be adopted in accordance with the procedure referred to in Article 195(2) of Council Regulation (EC) No 1234/2007, which shall apply by analogy. To this end the Commission shall be assisted by an ad hoc Committee.*

*Justification*

*Article 8 was merged with Article 5, since both refer to revision of maximum levels (Annexes I and III) and/or adaptation of the list of Annex II, which can be treated jointly through a delegation of powers (delegated acts) to the Commission.*

**Amendment 30**

**Proposal for a regulation  
Article 8 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 8a**

***1. The Commission shall submit, by March 2012, a report to the European Parliament and the Council on the appropriateness of the maximum permitted levels laid down in Annexes I***

*and III, and on the appropriateness of maintaining a list of minor foodstuffs as laid down in Annex II.*

*2. That report shall in particular examine the compliance of the maximum permitted levels with the effective dose limit of 1 mSv/y for members of the public under the conditions laid down in Directive 96/29 Euratom and consider the possible inclusion of additional relevant radionuclides in Annex I and III. In assessing the levels, the report shall focus on the protection of the most vulnerable population groups, in particular children, and examine whether it would be appropriate to set maximum permitted levels for all categories of population on that basis.*

## **Amendment 31**

### **Proposal for a regulation Annex I – footnote 19**

#### *Text proposed by the Commission*

19 Infant food is defined as *those* foodstuffs intended for *the feeding of* infants *during the first four to six months of life*, which meet, in themselves, the nutritional requirements of this category of person and are put up for retail sale in packages which are clearly identified and labelled "food preparation for infants";

#### *Amendment*

19 Infant food is defined as *infant formulae, including formula milk, follow-on formulae and equivalent* foodstuffs, intended for infants *under the age of twelve months*, which meet in themselves, the nutritional requirements of this category of person and are put up for retail sale in packages which are clearly identified and labelled "food preparation for infants";

## EXPLANATORY STATEMENT

### Nature of the proposal:

The ITRE Committee is consulted under the Euratom Treaty on the proposal for a Council Regulation referred to above, pursuant to Rule 87 of the Parliament's Rules of Procedure.

The proposal mainly consists of a codification of unchanged provisions from three regulations adopted between 1987 and 1990 laying down levels of radioactive contamination in case of radiological emergency. However, the insertion of a new recital (Recital 15), bringing the necessary motivation to an existing article (Article 3 par. 3) which provides for a reservation of implementing powers by the Council, implies a substantive change justifying the use of the recasting technique.

In accordance with Rule 87, amendments to the recasting proposal are admissible only if they concern those parts of the proposal which contain changes, after preliminary verification by the committee responsible for legal affairs (JURI) that the proposal entails no substantive changes other than those identified as such in the proposal.

The technical checking of the adequacy of the legislative technique of recasting was confirmed by the JURI Committee by letter of 29 June, allowing the Rapporteur of the ITRE Committee to proceed with the examination of the substance of the proposal.

### Assessment by the Rapporteur:

#### *(i) Content of the proposal:*

Through a recital, the recast proposal provides an ex-post justification to provisions which remain unchanged (as incorporated in the 1987 regulation and its amended versions).

The content of the regulation consists in a mechanism of two levels of intervention in case of radiological emergency or nuclear accident:

- an immediate adoption by the Commission of an 'ad hoc' regulation to apply to a specific case, in a defined area and for a limited period of validity, the maximum permitted levels of radioactive contamination as provided for in the Annex I and III of the proposal;
- within one month of its adoption, a proposal from the Commission to the Council to adapt or confirm this 'ad hoc' regulation.

The aim of the recast technique is precisely to justify the right for the Council "to exercise directly the power to adopt a Regulation to timely endorse measures proposed by the Commission". It does so by laying down in the new Recital 15 that "it is *appropriate* for the Council to reserve" such a right.

The recast proposal might lead the Rapporteur to address the following questions:

- whether this justification provides for sufficient motivation of the reservation of implementing powers by the Council, which in any case is a derogation to the normal rule reserving implementing power to the Commission;
- whether those implementing powers delegated to the Council are as such properly defined and framed, in particular under the new provisions of the Lisbon Treaty in light of the



'delegated' and 'implementing acts' (Articles 290 and 291 of the Treaty on the Functioning of the European Union), also applicable in the Euratom field (see Article 106a par. 1 of the consolidated version of the Euratom Treaty according to which articles 285 to 304 of the TFEU shall apply to the Euratom Treaty).

*(ii) Assessment:*

The Rapporteur is of the opinion that Recital 15 - which is the only part containing changes - cannot be dissociated from the article to which it refers to. In doing so, the Rapporteur would have to consider the validity of article 3 and subsequently, the mechanism stemming from those powers given to the Council in the following articles of the proposal.

Therefore, beyond the sole recasting technique, there is a need to consider the whole consistency of the regulation. To that extent, the mechanism - which consists in the immediate adoption of an 'ad hoc' regulation in case of radiological emergency to apply the maximum permitted levels of contamination as provided for in the current regulation, possibly directly through the Council - seems to be highly questionable for the Rapporteur.

The Rapporteur would like to express the following reservations:

- *those arrangements, which were defined in the post Chernobyl context, would need to be aligned with the current regime of implementing powers*

- The 'ad hoc' Regulation adopted by the Commission according to Article 2 of the proposal is too vaguely defined. As it stands, it tends to confer on the Commission the right to take immediately appropriate measures, consisting in 'implementing' measures of this basic act in the sense of Article 291 TFEU.

Without denying the necessity for the Commission to adopt those measures, the Rapporteur considers that their regime should be clearly settled in line with Article 291, as well as their modalities of revision.

- The regime set out in Article 3, whereby the Council can adopt a regulation so as 'to adapt or confirm the provisions' of the 'ad hoc' regulation is unclear. Here again it seems that those Council measures can qualify as implementing acts of the current regulation. However, it is only in 'duly justified specific cases' that such a power can be conferred on the Council, the Commission being normally responsible for exercising that power<sup>1</sup>.

It is the opinion of the Rapporteur that the current proposal does not clearly motivate the need to reserve implementing powers to the Council as regards the context, the nature and the content of the basic act to be implemented. Furthermore, the Rapporteur is not convinced by the added-value of this two-level approach, where the Council can at the end validate or adapt decisions of the Commission which should be the only executive authority in the normal course of the events.

- *the maximum permitted levels set out in the proposal (Annex I and III) are themselves subject to legal uncertainty*

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<sup>1</sup> Article 291(2) TFEU reads as follows: 'Where uniform conditions for implementing legally binding Union acts are needed, those acts shall confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council'.

- According to Article 5(1), those levels can be 'revised or supplemented' through a proposal from the Commission to the Council, 'at the request of a Member state or the Commission'. This amounts to supplement or amend certain non-essential elements of the legislative act, which should be aligned with the regime of the 'delegated acts' in accordance with Article 290 TFEU. Therefore the right of initiative should rest with the Commission only. Any initiative from a Member State would be a clear violation of the Treaty rules.
- By codifying existing regulations adopted in the 1990's, the proposal continues to make reference to obsolete texts: see the definition of "infant food" in Annex I.

### Recommendations:

Although this proposal is dealt with through the recasting technique, the Rapporteur invites the ITRE Committee to substantially amend the proposal beyond the sole grey part identified, so as to ensure the legal certainty and coherence of the text.

The Rapporteur would therefore propose detailed amendments to the codified parts of the proposal with the aim:

***- to streamline the procedure in case of nuclear emergency by clearly giving a supervisory role to the Commission and clarifying the regime of its acts (adoption, revision). To this end, the rapporteur would suggest that the Commission should be empowered to:***

*(i) immediately apply the maximum permitted levels of radioactive contamination as defined in the Annexes (see Article 2 amended);*

*(ii) adopt 'delegated acts' to revise and supplement the levels of contamination and the list of minor foodstuffs and feedingstuffs, to take due account of the latest technical progress (see Article 5 amended and the following procedure of Articles 5a to 5c).*

***- to serve the interest of the citizens through a better management of the post-accident situation by limiting the intervention and margins of manoeuvre given to Member States:***

*(i) on one hand, since the procedure of 'confirmation' or 'adaptation' of the application of the maximum permitted levels by the Council seems unnecessary and a source of legal uncertainty, the Rapporteur suggests deleting this level of intervention (Article 3 and Article 4);*

*(ii) on the other hand, the initiatives of Member States as regards the revision or addition to the levels of contamination (Article 5 and 8), as well as rules for implementing the regulation (Article 8), are respectively streamlined through delegated/implementing acts regime (Article 2 amended and 5 amended).*

***- to ensure legal certainty of the whole proposal through:***

*(i) the alignment of obsolete procedures - 'comitology' procedures in the field of Euratom adopted by analogy - that this proposal intends to codify, with the Lisbon Treaty provisions;*

*(ii) where necessary, the updating of definitions.*

In procedural terms, those proposed substantive changes would entail notification of the

Rapporteur's intention to the Council and the Commission prior to the vote of the draft report, as provided for in Rule 87.

## ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2010)32731

Mr Herbert REUL  
Chair of Committee on Industry, Research and Energy  
ASP 10E206  
Brussels

**Subject:    *Proposal for a Council regulation laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (Recast).  
COM(2010)184 final of 27.4.2010 - 2010/0098 (CNS)***

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

*"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.*

*In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.*

*However, if in accordance with point 8 of the Interinstitutional Agreement the committee responsible intends also to submit amendments to the codified parts of the Commission proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."*

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal or in the opinion of the Consultative Working Party and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 23 June 2010, the Committee on Legal

Affairs, by 19 votes in favour and no abstentions<sup>1</sup>, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in keeping with its suggestions and in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

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<sup>1</sup> Klaus-Heiner Lehne (Chair), Raffaele Baldassarre, Sebastian Valentin Bodu, Marielle Gallo, Rainer Wieland, Tadeusz Zwiefka, Luigi Berlinguer, Françoise Castex, Lidia Joanna Geringer de Oedenberg, Antonio Masip Hidalgo, Bernhard Rapkay, Evelyn Regner, Alexandra Thein, Diana Wallis, Zbigniew Ziobro, Piotr Borys, Kurt Lechner, Angelika Niebler, József Szájer, Sajjad Karim.

# **ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 4 June 2010

## **OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**Proposal for a Council regulation on laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast)  
COM(2010)0184 of 27.4.2010 – 2010/0098(CNS)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 6 May 2010 for the purpose of examining the aforementioned proposal submitted by the Commission.

At that meeting<sup>1</sup>, an examination of the proposal for a Council regulation recasting Council Regulation (Euratom) No 3954/87 of 22 December 1987 laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency, Commission Regulation (Euratom) No 944/89 of 12 April 1989 laying down maximum permitted levels of radioactive contamination in minor foodstuffs following a nuclear accident or any other case of radiological emergency, and Commission Regulation (Euratom) No 770/90 of 29 March 1990 laying down maximum permitted levels of radioactive contamination of feedingstuffs following a nuclear accident or any other case of radiological emergency resulted in the Consultative Working Party's establishing, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

existing texts, without any change in their substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Jurisconsult

L. ROMERO REQUENA  
Director General

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE PROPOSED LEGAL BASIS**

Mr Herbert Reul  
Chair  
Committee on Industry, Research and Energy  
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Council regulation on laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast)(COM(2010)0184 – C7-0137/2010 – 2010/0098(CNS))

Dear Mr Chair,

By letter of 11 November 2010 you asked the Committee on Legal Affairs pursuant to Rule 37(2) to consider whether Article 31 of the Euratom Treaty (EAEC) was the appropriate legal basis for the above Commission proposal and whether it might not be more appropriate to opt for Article 168(4)(b) TFEU.

The committee considered the above question at its meeting of 22 November 2010.

### **I - Background**

The Commission adopted its proposal for a recast of the Council Regulation laying down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (hereinafter "the proposal") on 27 April 2010 and submitted it to the Parliament under the consultation procedure. The Committee on Legal Affairs examined the proposal in accordance with Rule 87 of the Rules of Procedure (recasting) and on 23 June 2010 recommended to the Committee on Industry, Research and Energy (ITRE) that it should proceed with its examination of the substance of the proposal. The Committee on Industry, Research and Energy is currently examining the substance of the proposal and the rapporteur, Ivo Belet, has tabled a draft report (hereinafter "the Draft Report").

By letter of 11 November the Chair of ITRE requested the opinion of the Committee on Legal Affairs as to the choice of the legal basis for the proposal after amendments seeking to alter the legal basis were tabled in that committee.

### **II - Legal basis**

#### **1. Legal basis of the Commission proposal**



The Proposal is based on Article 31 (Title II Chapter 3: Health and Safety) EAEC, which reads as follows:

*"Article 31*

*The basic standards shall be worked out by the Commission after it has obtained the opinion of a group of persons appointed by the Scientific and Technical Committee from among scientific experts, and in particular public health experts, in the Member States. The Commission shall obtain the opinion of the Economic and Social Committee on these basic standards.*

*After consulting the European Parliament the Council shall, on a proposal from the Commission, which shall forward to it the opinions obtained from these Committees, establish the basic standards; the Council shall act by a qualified majority."*

The "basic standards" referred to in Article 31 are defined in Article 30 EAEC, which reads as follows:

*"Article 30*

*Basic standards shall be laid down within the Community for the protection of the health of workers and the general public against the dangers arising from ionizing radiations.*

*The expression 'basic standards' means:*

- (a) maximum permissible doses compatible with adequate safety;*
- (b) maximum permissible levels of exposure and contamination;*
- (c) the fundamental principles governing the health surveillance of workers."*

Finally, Article 32 EAEC provides as follows:

*"Article 32*

*At the request of the Commission or of a Member State, the basic standards may be revised or supplemented in accordance with the procedure laid down in Article 31.*

*The Commission shall examine any request made by a Member State."*

2. Proposed amendments to the legal basis

As notified by the Chair of ITRE in his letter, the rapporteur, Ivo Belet, seeks to modify the legal basis of the proposal by replacing it with a reference to the Treaty on the Functioning of the European Union (TFUE), specifically Article 168(4)(b) thereof, which reads as follows:

*"Article 168  
(ex Article 152 TEC)*

4. By way of derogation from Article 2(5) and Article 6(a) and in accordance with Article 4(2)(k) the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee and the Committee of the Regions, shall contribute to the achievement of the objectives referred to in this Article through adopting in order to meet common safety concerns:

(...)

(b) measures in the veterinary and phytosanitary fields which have as their direct objective the protection of public health;

(...)"

In the justification to the tabled amendment the rapporteur submits that Article 168(4)(b) "allows for the adoption of measures in the phytosanitary field. The aim of the regulation is to set maximum permitted levels of radioactive contamination of foodstuffs and feedingstuffs following a nuclear accident or emergency, whereas Council Directive 96/29/Euratom, based on Article 31 EAEC, focuses on the group of persons which might be subject to a possible radioactive contamination. The reference to the EAEC is therefore inappropriate since the main purpose of the regulation is the protection of public health, which is an area regulated by Article 168 TFUE."

It should be noted that taking Article 168 as a legal basis would imply a change from consultation to the ordinary legislative procedure with the full participation of Parliament.

### **III - Analysis**

According to the case-law of the Court of Justice, "the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, including in particular the aim and the content of the measure"<sup>1</sup>. Therefore the aim and content of the measure must likewise comply with the scope of the legal basis.

The EAEC contains provisions allowing the Community to regulate the use of nuclear energy by the Member States, in particular as regards nuclear safeguards and health protection. Pursuant to Article 2(b) EAEC, the Community shall, as provided in that Treaty, "establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied". Chapter 3 of Title II of the Treaty, concerning health protection, contains provisions concerning basic standards with regard to protection against ionising radiation.

The proposed regulation lays down the procedure for determining the maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs which may be placed on the market following a nuclear accident or any other case of radiological emergency which is likely to lead to or has led to significant radioactive contamination of foodstuffs and feedingstuffs<sup>2</sup>. At the same time, Annexes I and III set out the maximum permitted levels of contamination of foodstuffs and feedingstuffs. It is to be adopted as a Euratom regulation.

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<sup>1</sup> See most recently Case C-411/06 *Commission v Parliament and Council* (judgment of 8 September 2009), not yet reported in the ECR.

<sup>2</sup> Article 1(1) of the proposal.

The Court of Justice has already examined on one occasion the choice of legal basis for Council Regulation No 3954/87, which is the subject of the current proposal for a recast and held that: "The purpose of Regulation No 3954/87 is to establish uniform safety standards to protect health of workers and of the general public, as provided in Article 2(b) of the EAEC Treaty. It lays down maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs and requires the Commission to adopt, in the event of a nuclear accident or any other case of radiological emergency, if the circumstances so require, a regulation rendering applicable those maximum permissible levels. Since its purpose is to protect the population against the dangers arising from foodstuffs and feedingstuffs which have undergone radioactive contamination it was possible for it to be adopted on the basis of Article 31 of the EAEC Treaty."<sup>1</sup> In that case, the Court was asked to decide whether the more appropriate legal basis would have not been Article 100a<sup>2</sup> of the EEC Treaty and the Court responded that "The fact that it [the regulation] also provides for the prohibition of placing on the market of foodstuffs and feedingstuffs with radioactive contamination level in excess of the maximum permitted levels did not make it necessary to have recourse at the same time to Article 100a of the EEC Treaty. In fact as that prohibition is only one condition for the effectiveness of the application of maximum permitted levels, the regulation has only the incidental effect of harmonising the conditions for the free movement of goods within the Community by avoiding the adoption of unilateral measures by the various Member States." The Court stated also that: "The indications are rather that the purpose of the articles referred to is to ensure the consistent and effective protection of the health of the general public against the dangers arising from ionizing radiations, whatever their source and whatever the categories of persons exposed to such radiations".

The Court subsequently referred to this judgment in its judgment in Case C-29/99 Commission v Council<sup>3</sup> to stress that "the Court refused to uphold the restrictive interpretation of Article 30 et seq. EAEC proposed by the Parliament. It held that the purpose of those articles was to ensure consistent and effective protection of the health of the general public against the dangers arising from ionising radiations, 'whatever their source'."

The Court also pointed that the interpretation *"must be carried out in the light of the objective, set out in the preamble to the EAEC, to 'create the conditions of safety necessary to eliminate hazards to the life and health of the public'"*<sup>4</sup>.

It appears that Articles 30 et seq. EAEC provide an autonomous legal basis for establishing basic safety standards that aim at the protection of the health of general public (public health) against any danger arising from ionizing radiations, and in particular enable the adoption of maximum permissible levels of contamination.

Nevertheless, given the fact that Article 168 TFEU concerns public health and requires a high level of human health protection to be ensured in the definition and implementation of all Union policies and activities, it can be argued that it should in fact be used as a legal basis for the adoption of the measure in question. The Parliament's Legal Service in its note of 18 November 2010 develops several arguments in this regard before concluding in favour of

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<sup>1</sup> C-70/88 *European Parliament v Council* [1991] ECR 1991 I-4529.

<sup>2</sup> Approximation of laws procedure in the internal market (now Article 114 TFEU).

<sup>3</sup> C-29/99 *Commission v Council* [2002] ECR 2002 I-11282, paragraph 80.

<sup>4</sup> *Ibid.*, paragraph 75.

Article 168(4)(b) TFEU.

First of all, the fact that the Court rejected previous claims arguing for a legal basis concerning the internal market and confirmed Article 31 EAEC as the sole valid legal basis does not preclude a new approach by the Court. In fact, the legal basis referred to in the amendment tabled by the rapporteur did not exist at the time of the ruling in Case C-70/88. Article 168(4)(b) TFEU was only introduced by the Maastricht Treaty in 1992<sup>1</sup>.

Secondly, it must also be recalled that the simple fact that a nuclear accident or emergency is involved does not automatically imply a legal basis in the EAEC. The Court thus ruled in Case C-62/88<sup>2</sup> concerning Regulation 3955/87<sup>3</sup> that: "Recourse to Article 113 [now Article 207 TFEU] as the legal basis for the contested regulation cannot be excluded on the ground that Article 30 et seq. of the EAEC Treaty lay down specific rules governing the basic standards for protection of the health of the general public against the dangers arising from ionizing radiation. Those provisions, which appear in a chapter entitled "Health and Safety", which forms part of the second title of the EAEC Treaty entitled "Provisions for the encouragement of progress in the field of nuclear energy", are intended to provide for the protection of public health in the nuclear sector. They are not intended to regulate trade between the Community and non-member countries."

Thirdly, the proposal itself refers in recital 5 to a series of measures "*adopted to ensure that certain agricultural products are only introduced into the Union according to the common arrangements which safeguard the health of population*". The measures referred to include Council Regulations (EEC) No 1707/86<sup>4</sup>, (EEC) No 3020/86<sup>5</sup>, (EEC) No 3955/87. These legal acts confirm that a legal response to a nuclear accident does not necessarily call for an act based on the EAEC.

Finally, Article 168(4)(b) TFEU could indeed provide an adequate legal basis for the proposal. This article requires that the measures adopted on its basis should "*have as their direct objective the protection of public health*", which is undoubtedly true in the case of the present proposal, which "*lays down maximum permitted levels of (...) contamination of foodstuffs and of feedingstuffs*"<sup>6</sup>. One additional argument in support of this position is Article 6, which prescribes that only foodstuffs and feedingstuffs in compliance with the maximum

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<sup>1</sup> At the time it was Article 129(4)(b) of the EC Treaty, amended by the Amsterdam Treaty and renumbered Article 152(4)(b) TEC.

<sup>2</sup> Case C-62/88 Greece v Council [1990] ECR I-1527, paragraphs 16-18.

<sup>3</sup> Council Regulation (EEC) No 3955/87 of 22 December 1987 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station, OJ L 146, 30.12.1987, p. 14.

<sup>4</sup> Council Regulation (EEC) No 1707/86 of 30 May 1986 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station, OJ L 14, 31.5.1986, p. 88. This regulation refers to the EEC Treaty; however, it does not refer to any particular article thereof.

<sup>5</sup> Council Regulation (EEC) No 3020/87 of 30 September 1987 extending Regulation (EEC) No 1707/86 on the conditions governing imports of agricultural products originating in third countries following the accident at the Chernobyl nuclear power-station, OJ L 280, 1.10.1986, p. 79. This regulation refers to the EEC Treaty; however, it does not refer to any particular article thereof.

<sup>6</sup> See Joined Cases C-453/03, C-11/04, C-12/04 and C-194/04 ABNA e.a. [2005] ECR I-10423.

permitted levels laid down in the regulation are to be placed on the market. The definition of foodstuffs and feedingstuffs laid down in Article 1(2) of the proposal ("*products which are intended for human consumption either immediately or after processing*" and "*products which are intended only for animal nutrition*", respectively) underlines the purpose of the proposal. Below is a list of some legal acts adopted under Article 168(4)(b) TFEU:

- Regulation (EC) No 1069/2009 of the European Parliament and of the Council of 21 October 2009 laying down health rules as regards animal by-products and derived products not intended for human consumption and repealing Regulation (EC) No 1774/2002 (animal by-products Regulation)<sup>1</sup>,
- Regulation (EC) No 183/2005 of the European Parliament and of the Council of 12 January 2005 laying down requirements for feed hygiene<sup>2</sup>,
- Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC<sup>3</sup>,
- Regulation (EC) No 854/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption<sup>4</sup>.

It follows therefore that the proposal could be considered as being a measure in the phytosanitary and/or veterinary field which has as its direct objective the protection of public health.

#### **IV - Conclusion and recommendation**

In light of the foregoing analysis it should be concluded that the fact that before the introduction of Article 168 TFEU in 1992 the Court considered Article 31 EAEC to be the appropriate legal basis for the regulation which it is proposed to recast is not a strong argument for ruling out recourse to Article 168 (4)(b) - which did not exist at the time and which concerns the protection of public health - as the legal basis.

At its meeting of 22 November 2010 the Committee on Legal Affairs accordingly decided, by unanimity<sup>5</sup>, to recommend that the proposal be based on Article 168(4)(b) TFEU.

Yours sincerely,

Klaus-Heiner Lehne

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<sup>1</sup> OJ L 300, 14.11.2009, p. 1.

<sup>2</sup> OJ L 35, 8.2.2005, p. 1.

<sup>3</sup> OJ L 70, 16.3.2005, p. 1.

<sup>4</sup> OJ L 139m 30.4.2004, p. 206.

<sup>5</sup> The following were present for the final vote: Klaus-Heiner Lehne (Chair), Luigi Berlinguer (Vice-Chair), Raffaele Baldassarre (Vice-Chair), Evelyn Regner (Vice-Chair), Sebastian Valentin Bodu (Vice-Chair), Eva Lichtenberger (rapporteur), Lidia Joanna Geringer de Oedenberg, Antonio López-Istúriz White, Jiří Maštálka, Alajos Mészáros, Bernhard Rapkay, Francesco Enrico Speroni, József Szájer, Alexandra Thein, Cecilia Wikström and Tadeusz Zwiefka.

## PROCEDURE

<b>Title</b>	Maximum permitted levels of radioactive contamination of foodstuffs and of feedingstuffs following a nuclear accident or any other case of radiological emergency (recast)
<b>References</b>	COM(2010)0184 – C7-0137/2010 – 2010/0098(CNS)
<b>Date of consulting Parliament</b>	28.5.2010
<b>Committee responsible</b> Date announced in plenary	ITRE 15.6.2010
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 15.6.2010
<b>Rapporteur(s)</b> Date appointed	Ivo Belet 16.6.2010
<b>Legal basis disputed</b> Date of JURI opinion	JURI 22.11.2010
<b>Discussed in committee</b>	26.10.2010                      1.12.2010
<b>Date adopted</b>	13.1.2011
<b>Result of final vote</b>	+:                      45 -:                      4 0:                      0
<b>Members present for the final vote</b>	Jean-Pierre Audy, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Christian Ehler, Lena Ek, Adam Gierek, Norbert Glante, Fiona Hall, Jacky Hénin, Edit Herczog, Romana Jordan Cizelj, Arturs Krišjānis Kariņš, Lena Kolarska-Bobińska, Bogdan Kazimierz Marcinkiewicz, Marisa Matias, Judith A. Merkies, Angelika Niebler, Jaroslav Paška, Miloslav Ransdorf, Herbert Reul, Teresa Riera Madurell, Michèle Rivasi, Jens Rohde, Paul Rübig, Francisco Sosa Wagner, Konrad Szymański, Britta Thomsen, Claude Turmes, Marita Ulvskog, Alejo Vidal-Quadras
<b>Substitute(s) present for the final vote</b>	Maria Badia i Cutchet, Françoise Grossetête, András Gyürk, Jolanta Emilia Hibner, Yannick Jadot, Ivailo Kalfin, Eija-Riitta Korhola, Marian-Jean Marinescu, Alajos Mészáros, Vladko Todorov Panayotov, Peter Skinner, Hannes Swoboda
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Norica Nicolai, Britta Reimers
<b>Date tabled</b>	18.1.2011