



Manual of European Environmental Policy

The following pages are a section from the Manual of European Environmental Policy written by the Institute for European Environmental Policy.

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This section is the text of the Manual as published in 2012. It is therefore important to note the following:

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Emergency food protection

Formal references	
<i>Contamination of food and feedstuffs</i>	
86/156/EEC (OJ L118 07.05.86)	Recommendation concerning the coordination of national measures on agricultural products after Chernobyl
Regulation (EURATOM) No 3954/87 (OJ L371 30.12.87)	Regulation on radioactive contamination of foodstuffs and feedingstuffs following a radiological emergency
Proposed 2.7.87 – COM(87)281 (OJ C174/6)	
Regulation (EURATOM) No 2218/89 (OJ L211 22.07.89)	Amendment
Council Resolution (OJ L352 30.12.87)	Maximum permitted levels of radioactive contamination of foodstuffs and feedingstuffs
Regulation (EURATOM) No 944/89 (OJ L101 13.04.89)	Regulation concerning maximum levels of contamination of minor foodstuffs
Regulation (EURATOM) No 2219/89 (OJ L211 22.07.89)	Regulation concerning the export of food and feedstuffs
Regulation (EURATOM) No 770/90 (OJ L83 30.03.90)	Regulation concerning maximum levels of contamination of feedingstuffs
Legal base	Article 30 EURATOM Treaty
<i>Imports of agricultural products</i>	
Regulation (EEC) No 737/1990 (OJ L82 22.03.90)	Agricultural imports from third countries after Chernobyl
Regulation (EC) No 616/2000 (OJ L75 24.03.00)	Amendment to Regulation (EC) No 737/90
Regulation (EC) No 1518/1993 (OJ L150 22.06.93)	Products excluded from Regulation (EC) No 737/90
Regulation (EC) No 1609/2000 (OJ L185 25.07.00)	Products excluded from Regulation (EC) No 737/90
Regulation (EC) No 686/1995 (OJ L71 31.03.95)	Extending Regulation (EC) No 737/90
Regulation (EC) No 1661/1999 (OJ L197 29.07.99)	Rules for application of Regulation (EC) No 737/90
Regulation (EC) No 1621/2001 (OJ L215 09.08.01)	Amendment to Regulation (EC) No 1661/99
Regulation (EC) No 1608/2002 (OJ L243 11.09.02)	Amendment to Regulation (EC) No 1661/99
Regulation (EC) No 1635/2006 (OJ L306 07.11.2006)	Agricultural imports from third countries after Chernobyl
Legal base	Article 207 TFEU (originally Article 133 TEC)

Purpose of Regulation (EURATOM) No 3954/87

The Regulation establishes a system for determining maximum permitted levels of radioactive contamination of food and feedingstuffs that may be placed on the market following a nuclear emergency or any other radiological emergency. The procedure is invoked where there is considered to be a breach of the 'intervention' levels contained in the Annex to the Regulation.

Summary of Regulation (EURATOM) No 3954/87

Where the Commission receives information indicating that the maximum permissible levels set out in the Annex (see Table 1) are likely to have been breached as a result of an emergency, it is to adopt a Regulation. In effect, this would give legal force to the maximum permitted levels and prohibit the marketing of contaminated food and feedingstuffs in the short term.

Table 1. Maximum permitted levels for foodstuffs and feedingstuffs (Bq/kg or Bq/l) as laid down in Regulation (EURATOM) No 3954/87 and subsequent Regulations (EURATOM) No 2218/89 and (EURATOM) No 770/90

	Baby foods	Dairy produce	Other foodstuffs except minor foodstuffs	Liquid foodstuffs	Feeding stuffs
Isotopes of strontium, notably Sr-90	75	125	750	125	
Isotopes of iodine, notably I-131	150	500	2,000	500	
Alpha-emitting isotopes of plutonium and transplutonium elements notably Pu-239, Am-241	1	20	80	20	
All other nuclides of half-life greater than 10 days, notably Cs-134, Cs-137	400	1,000	1,250	1,000	1,250 to 5,000 (depending on type of animal)

Within one month of adopting a Regulation, and following consultation with the Article 31 Group of Experts, the Commission is to submit a proposal to the Council. In drawing up such a proposal, the Commission is to take account of the Basic Safety Standards Directive [90/641/EURATOM](#) and in particular the principle that all exposures are to be kept as low as reasonably achievable.

Acting by qualified majority voting, the Council is then to take a Decision regarding the proposal as soon as possible and within three months at the latest. If this is not achieved, the

maximum permissible levels set out in the Commission's Regulation will continue to apply until a Decision is made, or until the Commission withdraws its proposal.

Food or feedingstuffs exceeding the levels laid down in a Regulation are not to be placed on the market. Member States are to furnish the Commission with information on the application of Regulation (EURATOM) No 3954/87, including information on cases where there has been a failure to comply with maximum permitted levels adopted thereunder.

Development of the Regulation

Article 30 of the EURATOM Treaty calls for basic safety standards to be set within the Community to protect against the dangers arising from ionizing radiation. Basic standards are defined as including 'maximum permissible levels of exposure and contamination'.

The accident at the Chernobyl nuclear power station in the Ukrainian Republic of the USSR on 26 April 1986 led to considerable quantities of radioactive materials being released into the environment, contaminating food and feedingstuffs in several EC countries. Little EC legislation concerning public safety in the case of nuclear accidents existed at the time. The Basic Safety Standards Directive 90/641/EURATOM concerned only maximum annual exposure limits for individuals; it did not cover doses contained in food. Nuclear power plants were excluded from the Major Accident Hazards Directive [96/82/EC](#) and Commission proposals on transfrontier pollution with regard to nuclear energy were never adopted by the Council. The Chernobyl incident therefore highlighted the need for a system which allowed the Community to set maximum permitted levels of radioactive contamination of goods in order to protect the population in the event of a future emergency.

Despite shortcomings in EC legislation, elements of a post-Chernobyl emergency regime were adopted soon after the accident in order to restrict imports of agricultural products from third countries. Some restrictions on imports remained until 31 March 2000 and are set out in Regulation (EEC) No 737/90, as amended by Regulation (EC) No 1518/93, Regulation (EC) No 686/95 and Regulation (EC) No 1635/2006. A Commission Recommendation 86/156/EEC was also adopted on the coordination of national measures on agricultural products after Chernobyl.

On 13 June 1986 the Commission presented an outline communication announcing a series of additional measures ([COM\(86\)327](#)). This included work already underway to draw up a proposal aimed at setting maximum levels for the radioactive contamination of goods, and a proposal for a compulsory Community reporting system in case of incidents in nuclear installations. The latter went on to be adopted as Council Decision [87/600/EURATOM](#). Its provisions cover 'cases of radiological emergency following the detection of abnormal levels of radioactivity which are likely to be detrimental to public health'.

In June 1987, the Commission adopted its proposal for maximum permitted levels in food and feedingstuffs. The proposed maximum levels were criticized by the European Environmental Bureau which called for 'values that are at least a factor of 100 lower than those proposed by the Commission'. Although these demands were not met, some changes were agreed before the Regulation was finally adopted and included more stringent standards to be applied to baby foods.

Implementation of the Regulation

To date, powers under Regulation (EURATOM) No 3954/87 have not been invoked, with the result that there has been no requirement for reporting. However, several Member States did introduce unilateral post-Chernobyl controls in respect of domestic production.

Enforcement and court cases

One case relating to Regulation (EURATOM) No 3954/87 has resulted in a judgement in the ECJ.

[C-70/88](#). This case was an action brought by the European Parliament against the European Council for the annulment of Regulation (EURATOM) No 3954/87. The Parliament put forward three pleas, the first of which alleged that the legal basis for the Regulation at issue had been wrongly chosen, whilst the second and third pleas claimed respectively that the legal form of the measure in question was inappropriate and that in that measure implementing powers were not delegated to the Commission. The Court ruled against the Parliament, giving the following reasons:

- The purpose of the Regulation is to establish uniform safety standards to protect the 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.
- The fact that it also provides for the prohibition of placing on the market foodstuffs and feedingstuffs with a 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 harmonizing the conditions for the free movement of goods within the Community by avoiding the adoption of unilateral measures by the various Member States.

Further Developments

In April 2010 the Commission introduced its proposal COM(2010)184 for a recast of the Regulation with the European Parliament adopting its position at first reading in February 2011. The recast was originally introduced under Article 31 of the Euratom Treaty but this was changed to Article 168(4)(b) of the TFEU to enable European Parliament approval.

Related legislation

The following legislation is related to the Regulation:

- Directive [96/29/EURATOM](#) on basic safety standards for protection against ionizing radiation.