

**Folketingets Europaudvalg**  
Christiansborg, den 4. oktober 2004  
Folketingets Repræsentant ved EU

Til  
udvalgets medlemmer og stedfortrædere

## **Europa-Parlamentet kræver at Danmark frigiver alle oplysninger om Thule-ulykken**

Til orientering omdeles en udtalelse fra Europa-Parlamentets juridiske tjeneste, som er blevet sendt til Europa-Parlamentets Udvalg for Andragender<sup>1</sup>. I udtalelsen fremgår det, at Danmark skal *"igangsætte en lægelig overvågning af berørte Thule-arbejdere samt frigive alle relevante oplysninger"* i forbindelse med, at et amerikansk atombevæbnet B-52 fly i 1968 styrtede ned i nærheden af Thule-basen.

Sagen blev behandlet af udvalget den 30. september, hvor det enstemmigt blev besluttet, at følge konklusionerne fra den juridiske tjeneste. Europa-Parlamentet vil nu sende denne vurdering til de danske myndigheder.

### **Hvad handler sagen om?**

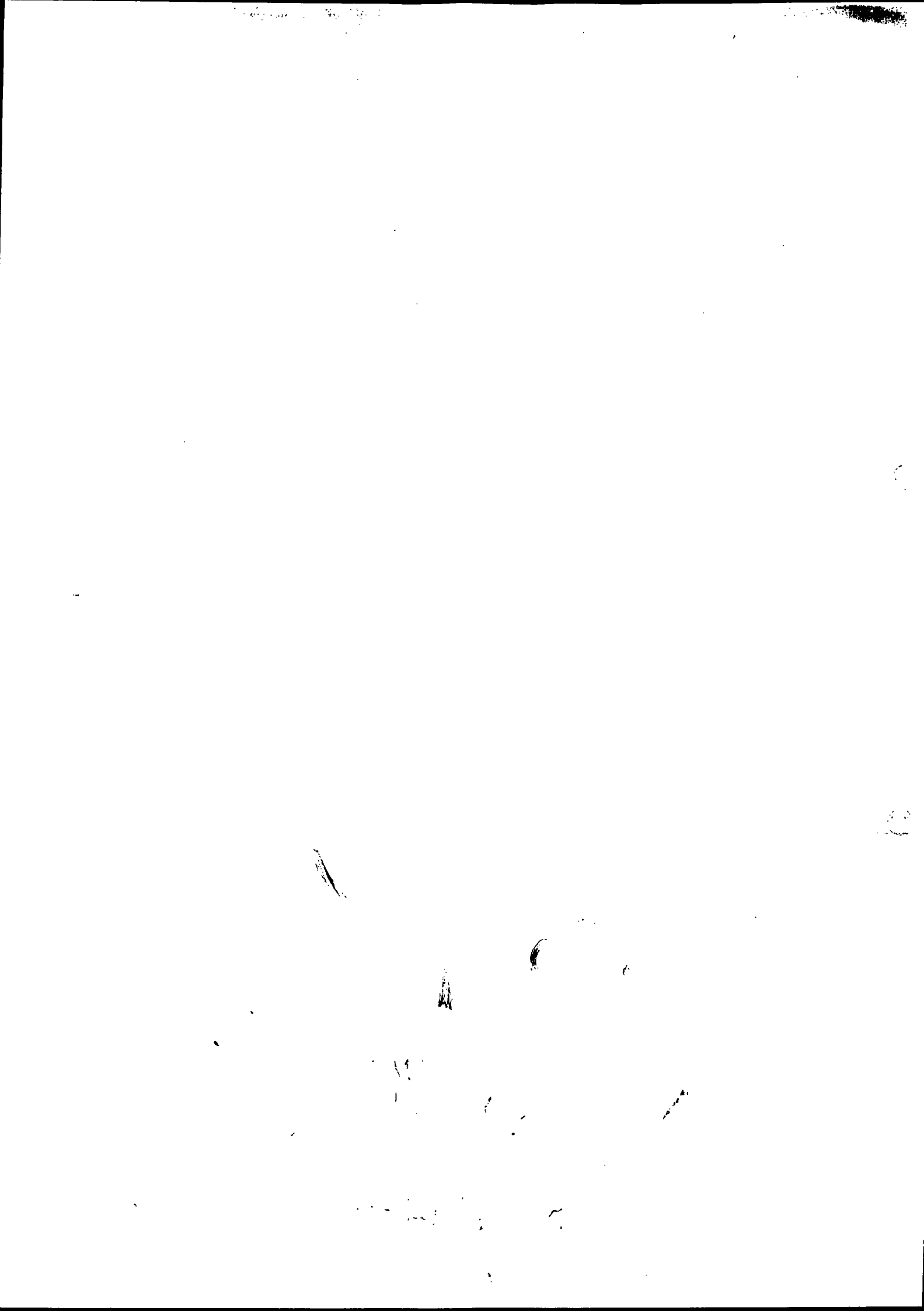
Sagen handler om en ulykke i 1968, hvor et amerikansk militærfly styrtede ned ved Thule i Grønland - med fire plutoniumholdige kernevåben om bord. Jeffrey Carswell, tidligere dansk (nu australsk) statsborger, har klaget til Europa-Parlamentets Udvalg for Andragender. Ifølge Carswells klage<sup>2</sup>, har konsekvenserne af ulykken for menneskene, såvel som for naturen, været hemmeligholdt af de danske myndigheder. Dette gør det umuligt for ham at få erstatning for de sygdomme, han pådrog sig i forbindelse med hans arbejde på basen fra 1966-1971.

I klagen bliver det påpeget, at Danmark ikke overholder artikel 52 og 53 i Rådets direktiv 96/29/Euratom af 13. maj 1996, hvori det hedder, at *"bestrålede personer efterfølgende overvåges, og at der udarbejdes og iværksættes en in-*

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<sup>1</sup> Enhver borger i EU, samt enhver fysisk eller juridisk person med bopæl eller hjemsted i en medlemsstat, er berettiget til på egen hånd, eller i samvirke med andre borgere eller personer, at indgive andragender til Parlamentet. Dette dog kun, hvis der er tale om forhold, der henhører under områder, som EU beskæftiger sig med, og som vedrører den pågældende direkte. Europa-Parlamentets Udvalg for Andragender kan vedtage at udarbejde en betænkning om, eller på anden måde tage stilling til, de andragender, som udvalget har erklæret i overensstemmelse med betingelserne for behandling.

<sup>2</sup> Andragende 720/2002.



*terventionspulje i tilfælde af tidligere bestråling*". Da ulykken skete før Danmark i 1973 blev medlem af EU, har Danmark hidtil nægtet at give Thulearbejderne aktindsigt. Dette også med henvisning til at EU-regler ikke længere er gældende i Grønland<sup>3</sup>.

Ifølge udtalelsen fra Europa-Parlamentets juridiske tjeneste har det ingen betydning at Euratom-traktaten<sup>4</sup> ikke længere er gældende i Grønland, og principielt er Danmark, af følgende grunde, bundet af direktivets bestemmelser:

- Da ulykken skete, var Grønland en fuldt ud integreret del af Danmark – og dette forblev Grønland de første 12 år efter Danmarks tiltrædelse af EF.
- På nuværende tidspunkt er det tænkeligt, at de danske myndigheder kan handle på et område af Danmark, hvor EU traktaterne fortsat gør sig gældende, for at sikre helbredet af de personer, der lider af konsekvenserne af ulykken i 1968.

Hvis Danmark ikke efterkommer Europa-Parlamentets udtalelse, kan sagen blive indbragt for EF-domstolen.

Med venlig hilsen

Mongin Forrest

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<sup>3</sup> Efter en folkeafstemning meldte Grønland sig ud af EF. Siden 1. januar 1985 har Grønland ikke været en del af EF/EU.

<sup>4</sup> Euratom-traktaten udgør, sammen med EF- og EU-traktaten, EU's nuværende traktatgrundlag.

## EUROPEAN PARLIAMENT



LEGAL SERVICE

SJ-0244/04  
HK/DM/md  
[D(2004)19412]

LUXEMBOURG

29 -04- 2004

## LEGAL OPINION

This document is a confidential legal opinion which shall not be made public, in accordance with Article 4 (2) of Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

**Re: Petition No. 720/2002 of Mr Carswell**

**Application of Council Directive 96/29/EURATOM of 13 May 1996 to a radiological emergency which occurred in Greenland in 1968.**

### I. Introduction

1. By letter dated 22 March 2004, which was received by the Legal Service on the following day, Mr Nino GEMELLI, Chairman of the Committee on Petitions, acknowledged receipt of the legal opinion (SJ-0433/03) dated 13 February 2004 concerning the application of Council Directive 96/29/EURATOM of 13 May 1996 to the effects of a radiological emergency which occurred in Greenland in 1968 and which was the subject of Petition No. 720/2002 by Mr CARSWELL.
2. In particular, Mr GEMELLI notes that this legal opinion states that the EAEC Treaty has "*no territorial application to Greenland after 1 January 1985 ...*" and that "*... the Kingdom of Denmark remains bound by the provisions of the EAEC Treaty ...*". However, it appears that the Petitions Committee is in some doubt as to what this means in practice, in view of the last paragraph of the conclusions of the legal opinion which states that "*... relevant provisions of the Directive could be applied to the after-effects of the 1968 crash ...*" [emphasis added by Mr GEMELLI].
3. Furthermore, Mr GEMELLI recalls that the petitioner demands, among other things, that the Danish authorities continue the radiological monitoring and the medical surveillance of exposed persons and give access to the records and all relevant information. In this context, he requests some further advice on the following two questions :
  - i) Are the Danish authorities obliged to comply with these demands on the basis of the Directive given the fact that the EAEC Treaty has "*no territorial application to Greenland*" ?
  - ii) Does the Directive apply to a nuclear accident in Greenland in the same way as to a nuclear accident in Denmark (in a geographical sense) ?

DUREN

## II Analysis

4. Before turning to the specific demands of Mr Carswell, it is useful first to consider the question of how, as a matter of principle, the Kingdom of Denmark could still be responsible for applying the Directive to the Thule crash in 1968, given that the EAEC Treaty no longer applies to Greenland.

*How can the Kingdom of Denmark still be responsible for applying the Directive to the Thule crash in 1968, given that the EAEC Treaty no longer applies to Greenland ?*

5. The petition of Mr Carswell raises questions about both the temporal effects and the territorial effects of Council Directive 96/29/EURATOM (the Directive) :
6. As concerns the temporal effects of the Directive, the question is : Can the Directive apply to a situation which occurred in 1968, that is to say before the Directive entered into force and even before Denmark's accession to the EAEC Treaty ?
7. In this respect, the previous legal opinion (SJ-0433/03) explained that new rules of Community law apply immediately to the future effects of a situation which arose before the new rules entered into force. As a result, it was concluded that the Directive could, as a matter of principle, apply to the after-effects of the 1968 crash.
8. As concerns the territorial effects of the Directive, the question is : Can the Directive apply to a situation which occurred in Greenland, even though the EAEC Treaty does not apply to Greenland after 1 January 1985 ?
9. Point 17 of the previous legal opinion noted that the EAEC Treaty has no application to Greenland after 1 January 1985, as a result of the entry into force of the Treaty amending, with regard to Greenland, the Treaties establishing the European Communities. However, point 18 of this opinion also pointed out that, despite the amendment of the EAEC Treaty with regard to Greenland, the Kingdom of Denmark, as a Member State, remains bound by the provisions of the EAEC Treaty.
10. In this regard, it is important to underline the fact that the question of the territorial effects of the Directive is closely intertwined with the question of its temporal effects. Indeed, the territorial scope of the EAEC Treaty has changed over time :
  - (i) From 1973 to 1984, the EAEC Treaty did apply to Greenland. In other words, Greenland was covered by the Treaty's rules from the date of Denmark's accession (1973) to the date of entry into force of the Treaty amending, with regard to Greenland, the European Communities (1985).
  - (ii) From 1985 to present, the EAEC Treaty no longer applies to Greenland.
11. In order to assess the application of the Directive in these circumstances, it is necessary to take the relevant events in chronological order.
12. First of all, it should be recalled that the radiological emergency occurred in 1968. At this point in time, Greenland was indistinguishable (for present purposes) from the rest of the Kingdom of Denmark. Accordingly, the crash occurred at a place which was clearly within the territorial jurisdiction of the Kingdom of Denmark.
13. The accession of the Kingdom of Denmark to the EAEC Treaty in 1973 created certain new legal obligations for this country, as a Member State. In particular, the provisions of Chapter 3, entitled "*Health and safety*", of Title II of the Treaty required the Kingdom of Denmark to

take steps to protect the health of workers and of the general public in line with the then applicable safety standards which had already been set out in the various Directives adopted by that date.<sup>1</sup>

14. During the twelve years following Denmark's accession to the EAEC Treaty (1973 - 1984), Greenland was covered by the provisions of the EAEC Treaty in the same way as the rest of Danish territory. As a result, the Kingdom of Denmark, as a Member State, was fully responsible for applying the health and safety provisions of the EAEC for any radiological event which occurred in Greenland during the whole of that period.
15. It was not until 1 January 1985 that this situation changed as a result of the entry into force of the Treaty amending, with regard to Greenland, the European Communities. This led to an unprecedented legal situation, whereby a part of the territory of a Member State which had up to then been fully covered by the provisions of the EAEC Treaty was henceforth excluded from the scope of that Treaty.
16. This does not mean, however, that, at the stroke of midnight on 31 December 1984, the Kingdom of Denmark became exonerated from all existing legal obligations which related to events which occurred in Greenland before that date. In fact, Greenland was excluded from the scope of the EAEC Treaty only from 1 January 1985 onwards, but it was in no way excluded with retroactive effect, that is to say with effect before 1985.
17. This is confirmed by the preamble to the amending Treaty which notes that the Kingdom of Denmark submitted a proposal to the Council for the purpose of revising the Treaties establishing the European Communities so that they cease to apply to Greenland, thereby introducing new arrangements governing relations between the Communities and Greenland.
18. As explained in the previous legal opinion, relevant provisions of the Directive could be applied to the after-effects of the 1968 crash in so far as these effects last beyond the deadline set in the Directive for the introduction of implementing measures by the Member States, that is to say 13 May 2000.
19. Given that exposure to radiation can produce long-term effects on human health, it is clear that the 1968 crash could still produce after-effects on the health of workers or of the general public up to the present time.
20. Such after-effects on human health are obviously not confined to the territory of Greenland. Clearly, it is to be expected that people (such as the petitioner) who were present in Greenland in 1968 could move elsewhere at some later time. There is therefore no reason to believe that all those people who were affected by the 1968 crash at Thule remained in Greenland for the rest of their lives. Above all, it is likely that a significant number of such people moved at some later time to another part of the Kingdom of Denmark which is still covered by the provisions of the EAEC Treaty.
21. In this context, it is relevant to note that the provision of the Directive relating to medical surveillance and access to information do not necessarily oblige a Member State to adopt implementing measures in the very same place as the site where a radiological emergency occurred. In fact, the performance of these obligations could be ensured at another place within the territory of a Member State. For example, medical surveillance could just as well be carried out in Copenhagen rather than Thule, particularly where the people to be examined had already moved to that part of Denmark many years after the accident.

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<sup>1</sup> It was pointed out in footnote 8 of the previous legal opinion that the Community laid down basic standards for the first time in 1959 pursuant to article 218 of the EAEC Treaty. These standards were subsequently revised on five further occasions (in 1962, 1966, 1976, 1979 and 1984).

22. Consequently, the liability of the Kingdom of Denmark to deal with the after-effects of the 1968 crash is not limited to taking measures within the confines of Greenland, but can well include measures taken within the remainder of the territory of Denmark which is still covered by the EAEC Treaty.
23. The fact that the deadline set in the Directive for the introduction of implementing measures expired at a time (13 May 2000) when the EAEC Treaty no longer applies to Greenland, does not therefore alter the conclusion that the Kingdom of Denmark can be held responsible for dealing with the after-effects of an event which occurred in Greenland before 1985.
24. The key questions are the following : 1) At the time when it happened, did the accident take place within the bounds of the territorial jurisdiction of the Kingdom of Denmark ? and 2) at the present time, can the Danish authorities now take action, in the remainder of the territory of the Kingdom of Denmark to which the EAEC Treaty does still apply, to safeguard the health of persons who are still suffering from the after-effects of the 1968 crash ?
25. To take a hypothetical example, if a radiological emergency had happened at a site in the Jutland peninsula in 1968, then the answer to both of these questions would obviously be yes, and there would be little difficulty in concluding that the Directive could oblige the Kingdom of Denmark to provide medical surveillance and relevant information, where appropriate, to people in the Jutland peninsula whose health still suffers from the after-effects of that accident.
26. As concerns the Thule crash in 1968, the answer to both of these questions is also yes. In 1968, Greenland was an integral part of the territory of the Kingdom of Denmark and this position essentially remained unchanged for twelve years after Denmark's accession to the EAEC Treaty. Also, it is conceivable that the Danish authorities could, at present, usefully provide medical surveillance and relevant information to someone whose health still suffers from the long-term effects of this accident, particularly where that person is now present in another part of Denmark to which the EAEC Treaty still applies.
27. It is these facts which explain how the Kingdom of Denmark can, as a matter of principle, still be responsible, under relevant provisions of the Directive, for taking appropriate measures in respect of the after-effects on human health which result from a crash which occurred in Greenland in 1968, even though the EAEC Treaty no longer applies to Greenland.

*Are the Danish authorities obliged to comply with the demands of Mr Carswell ?*

28. The petitioner alleges that the Danish authorities have failed to fulfil certain obligations imposed on them by the Directive, in particular concerning medical surveillance and access to information.
29. In this regard, it is useful to recall that article 161 of the EAEC Treaty<sup>2</sup> provides as follows :  

*"A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods"*.
30. The Danish authorities therefore have a certain margin of discretion as to the means of implementing the provisions of the Directive. In this respect, Article 55 of the Directive provides that Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 13 May 2000. Although, the file

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<sup>2</sup> This provision is identical to Article 249 EC.

received by the Legal Service contains no specific information on the current state of Danish law, it is assumed that the Kingdom of Denmark had indeed brought into force certain measures to comply with the Directive before the deadline of 13 May 2000.

31. It should be noted that the wording of the Directive itself requires the Member States to balance various factors in order to make an assessment as to whether it is appropriate to take concrete action in the circumstances of any particular case.<sup>3</sup>
32. The particular circumstances of each individual case must therefore be taken into account when assessing whether or not a Member State has fulfilled the obligations imposed on it by the Directive.
33. However, the precise position of the Danish authorities on the application of the Directive to Mr Carswell's individual case is at present unclear, as there is no official statement from them in the file received by the Legal Service.<sup>4</sup>
34. In this context, it is important to underline the fact that Article 141 of the EAEC Treaty<sup>5</sup> confers on the Commission the power to take action against a Member State where the Commission considers that the State concerned has failed to fulfil an obligation under the Treaty. The Commission must first deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion within the period laid down by the Commission, the latter may bring the matter before the Court of Justice.
35. However, according to the reply of the Commission which is set out in the "Notice to Members" of the Committee on Petitions dated 21 August 2003<sup>6</sup>, the Commission has asserted that the Directive cannot be applied to the consequences of an accident that took place in 1968, at a time when Denmark was not even a Member State. In particular, the Commission has stated that, in its view, the provisions of Article 53 of the Directive do not apply to the health consequences for the workers and the public at the time when the accident occurred.
36. To the extent that the Commission categorically denies that the Directive could apply, whatever the circumstances, to the after-effects of the Thule crash in 1968, then it has clearly failed to properly take into account the case-law on the temporal effects of Community law (see in this respect the discussion in the previous legal opinion, SJ-433/03).
37. Furthermore, and as explained above, the fact that the EAEC Treaty has no territorial application to Greenland after 1 January 1985 does not alter the conclusion that relevant provisions of the Directive could be applied to the after-effects on human health of the 1968 crash.
38. In view of the above, it is necessary to examine whether certain provisions of the Directive require the Kingdom of Denmark to take concrete action in the specific circumstances of the case referred to in Mr Carswell's petition.

<sup>3</sup> See for example article 48(2) of the Directive which states that the implementation and extent of any intervention shall be undertaken only if the reduction in detriment due to radiation is sufficient to justify the harm and costs, including social costs, of the intervention. See also article 53(c) of the Directive which requires that "appropriate" intervention is implemented, "taking account of the real characteristics of the situation".

<sup>4</sup> At the very beginning of the petitioner's response, dated 26.10.03, to the comments of the Commission, it is stated that the Committee on Petitions had called on Denmark, through its ambassador, to respond to the allegations made in the petition. However, it is also stated that Denmark "has remained silent" on the allegations contained in the petition.

<sup>5</sup> This article is identical to Article 226 EC.

<sup>6</sup> PE 531.818



39. In this respect, the previous legal opinion (SJ-0433/03) noted that Article 38 of the Directive requires the Kingdom of Denmark to "*initiate surveillance and intervention measures wherever necessary*" and that this obligation could relate to the future effects of the 1968 accident. More specifically, Article 31(3) foresees the possibility of continuing medical surveillance after cessation of work, if "*necessary to safeguard the health of the person concerned*". Also, Article 34 of the Directive imposes a requirement that medical records be retained for at least 30 years after termination of work and Article 38(2) obliges Member States to require that workers have access at their request to the results of their individual monitoring, including the results of measurements which may have been used in estimating them, or of the assessments of their doses made as a result of workplace measurements.
40. Furthermore, Article 53 of the Directive requires that where the Kingdom of Denmark has identified a situation leading to "*lasting exposure resulting from the after-effects of a radiological emergency or a past practice*" it shall "*if necessary and to the extent of the exposure risk involved*" ensure that, amongst other things, "*arrangements for the monitoring of exposure are made*" and that "*any appropriate intervention is implemented, taking account of the real characteristics of the situation*".
41. It can be deduced from the above that the Directive obliges the Kingdom of Denmark to take "*appropriate*" action where this is "*necessary to safeguard the health of the person concerned*".
42. Given that Article 30 of the EAEC Treaty attaches paramount importance to the protection of the health of workers and of the general public (a fact which is recognised in the preamble of the Directive) it would now be appropriate, in the view of the Legal Service, for the Kingdom of Denmark to initiate medical surveillance and release relevant information which it holds, pursuant to Articles 31, 34, 38 and 53 of the Directive, in cases where it can be shown that such action is necessary to safeguard the health of persons who are still suffering from the after-effects of the 1968 crash.
43. Obviously, the Kingdom of Denmark cannot be obliged to make arrangements for medical surveillance where the health of the person concerned would not in fact benefit in any way. However, it is alleged in the petition that not only Mr Carswell's health, but also the health of other Danish former workers at the Thule base,<sup>7</sup> could still benefit from further medical monitoring to be provided by the Danish authorities. If this claim can be substantiated by medical evidence (the file received by the Legal Service does not contain specific information on this matter), then it could indeed be concluded that the Directive does now require the Danish authorities to initiate medical surveillance of the persons in question.
44. Similarly, the Kingdom of Denmark cannot be obliged to release information which it does not actually possess, so the extent of the obligation to give access to information will very much depend on the precise nature of the information which was previously gathered at the Thule crash site and the continued existence of records on this matter. In this respect, the petition claims that the Danish authorities did in fact gather relevant information around the time of the 1968 crash and that records of this still exist, but these claims would first have to be verified as it appears that official confirmation of this position has not been forthcoming from the Danish authorities. To the extent that relevant information is indeed currently held

<sup>7</sup> It should be noted that Mr Carswell has in fact presented the petition, not only on his own behalf, but also on behalf of the "Association of irradiated Thule workers" (*Foreningen for Straalerampte Thulearbejdere*), based in Copenhagen, which he joined in 1988 and of which he is currently Vice-President, International. In this respect, the petition alleges that many other former Danish co-workers at the Thule base continue to suffer from chronic health disorders. Indeed, it was the prevalence of such disorders which led to the formation in 1986 of this Association.

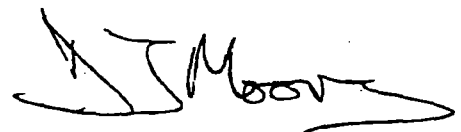
by the Danish authorities and to the extent that such information could effectively be used to safeguard the health of persons still suffering from the after-effects of the 1968 crash, then it could also be concluded that the Directive does now require such information to be released to the persons concerned.

### Conclusions

In the light of all of the above considerations, the Legal Service has reached the following conclusions :

1. The fact that the EAEC Treaty has no territorial application to Greenland after 1 January 1985 does not alter the conclusion that the Kingdom of Denmark can, as a matter of principle, still be obliged under the Directive to take action in respect of the after-effects on human health which result from the 1968 Thule crash. This position is explained by the following facts :
  - i) At the time when the crash happened in 1968, Greenland was an integral part of the territory of the Kingdom of Denmark and this position essentially remained unchanged for twelve years after Denmark's accession to the EAEC Treaty.
  - ii) At the present time, it is conceivable that the Danish authorities could now take action, in the remainder of the territory of the Kingdom of Denmark to which the EAEC Treaty does still apply, to safeguard the health of persons who are still suffering from the after-effects of the 1968 crash.
2. The Kingdom of Denmark is obliged to initiate medical surveillance and release relevant information, pursuant to Articles 31, 34, 38 and 53 of the Directive, to the extent that there exists material evidence to show that such action is in fact necessary to safeguard the health of Mr Carswell or the health of other former workers at Thule who are still suffering from the after-effects of the 1968 crash.

  
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