COMMISSION DECISION

of 21 December 1994

relating to a procedure pursuant to Article 83 of the Euratom Treaty (XVII-004 — Escuela Técnica Superior de Ingenieros Industriales de la Universidad Politécnica de Madrid)

(Only the Spanish text is authentic)

(*94/955/Euratom*)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 83 thereof,

Having given the Escuela Técnica Superior de Ingenieros Industriales de la Universidad Politécnica de Madrid (Spain) the opportunity to express its point of view on the objections raised by the Commission,

Whereas:

I. THE FACTS

This Decision concerns the non-declaration, from January 1986 until June 1994, of a nuclear installation located at the Escuela Técnica Superior de Ingenieros Industriales de la Universidad Politécnica de Madrid (Spain), hereinafter referred to as 'ETSII'.

ETSII is a school for university-grade engineers, and forms part of the Universidad Politécnica de Madrid. For the practical exercises of the students it carries out technical demonstrations.

Through a series of documents, on-site verifications and the hearing held in Brussels in the offices of the Commission on 18 August 1994, the following facts were established:

— ETSII used a nuclear installation for educational training purposes. Its equipment consisted of a subcritical assembly in the form of a stainless steel vessel with a water purification system. In this vessel a lattice was mounted into which a set of tubes could be positioned,

— the nuclear inventory consisted of 1 350 fuel rods containing in total 3 622 kg of metallic natural uranium with an aluminium cladding. There were also 270 tubes which could contain 5 fuel rods each and which were used for positioning the fuel in the reactor vessel,

— the stainless steel vessel was delivered in 1962 and the nuclear material in 1971 and 1972. From that date it was used for educational purposes until 1982. Both equipment and nuclear material remained stored at the ETSII premises until they were exported in July and August 1994,

— upon accession of Spain to the European Communities on 1 January 1986 the provisions of Title Two, Chapter VII, of the Treaty became applicable in Spain. However, no declaration of the installation was made by ETSII to the Commission under Article 78 (1),

— on 14 June 1994 the Spanish authorities informed the Commission of the existence of the installation and the nuclear material contained therein. At the same time the Commission was informed of ETSII's intention to close and dismantle the installation and to export the nuclear material and equipment,

— on 17 June 1994 the basic technical characteristics of the installation were declared to the Commission by ETSII,

— during the period between January 1986 and June 1994 the installation was known to the responsible national authorities who also issued the operating licence. However, the installation was not included in the initial declarations submitted by the responsible national authorities to the Commission upon the accession of Spain to the Communities.

The facts related to the non-declaration of the installation are not disputed by the operator.

II. LEGAL ASSESSMENT

A. The legal provisions

By virtue of the nature of the installation and the nuclear material inventory, ETSII is an undertaking falling within the terms of Article 196 (b) of the Treaty. It is therefore subject to the provisions of Title Two, Chapter VII, of the Treaty, and to Commission Regulation (Euratom) No 3227/76 of 19 October 1976 concerning the application of the provisions of Euratom safeguards [1], as last amended by Regulation (Euratom) No 2130/93 [2].

Under Article 77 of the Treaty, the Commission shall satisfy itself that, in the territories of the Member States:

(a) ores, source materials and special fissile materials are not diverted from their intended uses as declared by the users;

(b) the provisions relating to supply and any particular safeguarding obligations assumed by the Community

[1] OJ No L 363, 31. 12. 1976, p. 1.
[2] OJ No L 191, 31. 7. 1993, p. 75.

under an agreement concluded with a third State or an international organization are complied with.

To this end, in accordance with the first paragraph of Article 78 of the Treaty, anyone setting up or operating an installation for the production, separation or other use of source materials or special fissile material or for the processing of irradiated nuclear fuels is required to declare to the Commission the basic technical characteristics of the installations, to the extent that knowledge of these characteristics is necessary for the attainment of the objectives set out in Article 77.

To implement this provision, these basic technical characteristics shall, pursuant to Article 1 of Regulation (Euratom) No 3227/76 be declared to the Commission on the basis of the relevant questionnaire given in Annex 1 thereto.

B. The infringement established

Following an examination of the facts by the Commission, a breach of the provisions on communication of the basic technical characteristics laid down in Article 78 (1) of the Treaty and Article 1 of Regulation (Euratom) No 3227/76, has been established.

C. The sanction to be applied

Under the terms of Article 83 (1) of the Treaty, in the event of an infringement on the part of persons or undertakings of the obligations imposed on them, the Commission may impose sanctions on such persons or undertakings.

These sanctions are in order of severity:

(a) a warning;

(b) the withdrawal of special benefits such as financial or technical assistance;

(c) the placing of the undertaking for a period not exceeding four months under the administration of a person or board appointed by common accord of the Commission and the State having jurisdiction over the undertaking;

(d) total or partial withdrawal of source materials or special fissile materials.

Given that the determining criterion for application of this Article is the severity of the infringement committed, it is first necessary to carry out both an objective and a subjective analysis of the nature of the offences.

From an objective point of view, it appears that the provisions breached are essential elements of Community legislation in the field of safeguards, and that observance of them is essential if the aim set out in Article 77 of the Treaty is to be attained.

Moreover, the facts established made it impossible for the Community to carry out the task assigned to it in Article 2 (e) of the Treaty, namely to 'make certain, by appropriate supervision, that nuclear materials are not diverted to purposes other than those for which they are intended'. However, the Commission takes into consideration that the installation had not been operated after Spain's accession to the Communities, and that the nuclear material concerned was of relatively low importance.

Further, from a subjective point of view it appears that, behind the non-declaration, there was no intention to divert. In addition, there is evidence that ETSII made declarations to the responsible national authorities in order to comply with all legal requirements which were known to it. Finally, when ETSII became aware of the obligations incumbent on it under the Treaty, it immediately complied with them and cooperated fully.

In assessing both the objective and the subjective factors set out above the Commission considers that the infringement committed by ETSII is such that a sanction is warranted.

Given the circumstances, in particular the fact that the installation is no longer in possession of any nuclear material or nuclear equipment and that there are no special benefits to ETSII such as financial or technical assistance, the appropriate sanction to impose is that laid down in Article 83 (1) (a) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The Escuela Técnica Superior de Ingenieros Industriales de la Universidad Politécnica de Madrid has infringed the first paragraph of Article 78 of the Treaty and Article 1 of Commission Regulation (Euratom) No 3277/76 through its failure to communicate to the Commission the basic technical characteristics of the nuclear installation.

Article 2

The Commission issues a warning to ETSII.

Article 3

1. This Decision is addressed to the Universidad Politécnica de Madrid, Avenida de Ramiro de Maeztu, 7, Ciudad Universitaria, E-28040 Madrid.

2. This Decision shall be communicated to the Kingdom of Spain.

Done at Brussels, 21 December 1994.

For the Commission
Marcelino OREJA
Member of the Commission