II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 November 1996

relating to a procedure in application of Article 83 of the Euratom Treaty

(XVII-05 — Jenson Tungsten Ltd, Hemel Hempstead)

(Only the English text is authentic)

(96/671/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 firm Jenson Tungsten Ltd of Hemel Hempstead (United Kingdom) the opportunity to express its point of view on the objections raised by the Commission,

Whereas as follows:

I. FACTS

This Decision concerns non-compliance with essential safeguards requirements by the firm Jenson Tungsten Ltd (Hemel Hempstead, United Kingdom) during the period May 1992 to October 1995.

Jenson Tungsten Ltd is an engineering firm operating from premises previously occupied by other firms who carried out machining operations on depleted uranium. As a result, when Jenson Tungsten Ltd began operating in 1992, it took possession of a residual stock of depleted uranium turnings or 'swarf', resulting from earlier operations. As the owner of this material, Jenson Tungsten Ltd accordingly became responsible for satisfying the safeguards obligations under Chapter VII of the Euratom Treaty. Jenson Tungsten Ltd now works in the field of manufacture and machining of tungsten alloys. There are no longer activities concerning nuclear material on the site and none are planned.

Through various correspondence, inspections and a hearing held in London in the offices of the Commission on 29 November 1995, the following facts were established:

— On 9 March 1992, Euratom carried out an inspection at the firm. The findings were sent to the operator in a letter in July 1992 and indicated:

  — that no accountancy system for nuclear material which satisfied the Commission Regulations was in place. The operator was requested to establish such a system. This was to include labelling of storage containers, accounting records ledger, source documentation,

  — that it was not possible to carry out a satisfactory inventory verification due to unsatisfactory and incomplete records of the material on stock,

  — that many of the submitted reports were found to have been incorrect, many were missing and many inconsistencies were revealed.

The operator was also reminded that, before shipping any nuclear material, it would have to be characterized and, when shipped, reported according to the Commission regulations. Following this audit, and based on information provided by the operator, a stock figure was agreed as at 31 July 1992. This figure was 9,073 tonnes depleted uranium and 7,5 kilograms natural uranium.

— On 12 May 1994, following a letter from the Euratom Safeguards Directorate (hereinafter 'Euratom') dated 23 March 1994 enquiring about the situation of depleted uranium swarf awaiting disposal, Jenson Tungsten Ltd confirmed that 6,407 tonnes depleted uranium swarf had been dispatched on 7 October 1993.

— On 19 September 1994, following various actions resulting from the inspection of 9 March 1992 and the shipment of 7 October 1993, Euratom requested Jenson Tungsten Ltd in writing to comment on the calculated residual inventory figures of 2,666 tonnes depleted uranium and 7,5 kilograms natural uranium.

— On 7 April 1995, Euratom received Jenson Tungsten Ltd's reply which stated:

  — that four containers holding depleted uranium swarf remained on the site,

  — that Jenson Tungsten Ltd was not in a position to confirm the precise weight of the remaining material and that their best estimate based on the weight of the containers already disposed of was 1,2 tonnes,

  — that Jenson Tungsten Ltd intended to forward all remaining material for weighing and disposal, but would not be able to do so until later in 1995 because of processing difficulties at the receiver's site,

  — that Jenson Tungsten Ltd would submit an inventory change report giving details of the precise amounts of material as soon as the material had been shipped and verified at the receiving installation.

— On 26 April 1995, Euratom carried out another inspection at Jenson Tungsten Ltd.

— On 16 May 1995, the first results of the inspection on 26 April were faxed to Jenson Tungsten Ltd. They were considered unsatisfactory because:

  — no documentation was provided to the inspectors concerning the holdings of nuclear materials which meant that no source documents, operating records or nuclear materials accounts were made available. Stock containers were not labelled,

  — a discrepancy became apparent. Since the stock figure of 9,073 tonnes depleted uranium and 7,5 kilograms natural uranium had been established, the only movement had been the shipment of 6,407 tonnes of depleted uranium. No activities, for example machining of uranium, had taken place. The best estimate of the residual stock being 1,2 tonnes of depleted uranium, there was a discrepancy of 1,466 tonnes depleted uranium and 7,5 kilograms natural uranium.

  The operator was reminded of the need to report shipments.

— On 2 June 1995, Euratom received a reply (undated). Jenson Tungsten Ltd gave details about the history which led to the unsatisfactory situation. In particular, the letter stated that at the previous inspection in March 1992 the operator had said that the Official Receiver of one of Jenson Tungsten Ltd's predecessors who had gone bankrupt had not made the records available. During the inspection, the amount of depleted uranium on site had been estimated. The letter also stated that the natural uranium had probably been put in with the remainder of the swarf and that the estimates were necessarily imprecise.

— On 2 June 1995, Euratom's requests following the results of the inspection on 26 April 1995 were communicated in detail to Jenson Tungsten Ltd:

  — the basic technical characteristics dated 18 May 1992 were to be revised,

  — a nuclear material accountancy system fulfilling the requirements of Commission Regulation (Euratom) No 3227/76 was to be established. This request had already been made in writing as a result of the inspection on 9 March 1992 but the inspectors concluded after the inspection on 26 April 1995 that such a system still did not exist,

  — this system should include the requirement, before shipment, to characterize any nuclear material including swarf by batch designation, material description, category, weight of element and obligation. All shipments of nuclear material must be reported according to the stipulations in Regulation (Euratom) No 3227/76. This had not been the case, in particular for the shipment of 6,407 tonnes depleted uranium swarf;

  — it should be explained why the following requirements had not been observed:

    — operating records to permit accounting,

    — accounting and records system,

    — records to be retained for a period of at least five years,

    — reports of all inventory changes,

  — the discrepancy as indicated by fax of 16 May 1995 should be explained,

— labels should be attached to each of the remaining drums containing depleted uranium with each label indicating the unique identification number of the drum, the category and form of the nuclear material and the estimated or, if available the measured weight of the nuclear material. All nuclear material within and outside the premises should be identified and declared,

— the nuclear inventory should be re-assessed and the results of the physical inventory taking should be reported by 31 July 1995,

— the sample taken by the inspectors on 26 April 1995 should be kept safe in its sealed container until further notice.

— On 22 June 1995, Jenson Tungsten Ltd stated in its reply:

— that the form for the basic technical characteristics had been filled in as completely as possible,

— that a records system had been set up to take into account the depleted uranium swarf on site,

— that a batch number had been allocated to each of the four boxes whose contents had been characterized as depleted uranium swarf. The estimated weight had been used,

— that no records of any sort had been handed over to Jenson Tungsten Ltd when they had agreed to re-pack the depleted uranium,

— that the assessment of 9,073 tonnes on 31 July 1992 had been an estimate and had not yet been confirmed, and the 7,5 kilograms of natural uranium had probably been mixed in with depleted uranium as it had not been identified as being different,

— that the drums would be labelled,

— that four containers with an estimated weight of between 1,2 and 1,4 tonnes remained on site. There was no possibility to weigh the containers on site,

— that the request to keep Euratom's sample safe until further notice was noted.

— On 13 October 1995, Euratom carried out a further inspection. The aim of the inspection was to follow up the previous inspection of 26 April 1995 in the light of subsequent correspondence.

— On 16 November 1995, Euratom communicated the inspection results which were considered unsatisfactory because:

— in addition to the identification number, labels identifying the nature and weight of the contents still had to be attached to each container,

— despite requests to be kept informed and a letter formally advising of omission in reporting receipt, an inventory change report for the transfer of material on 7 October 1993 could only be obtained during the inspection on 13 October 1995. Euratom stated that such delays were unacceptable and requested that any future declarations related to remaining stocks or movements of nuclear material be made according to Commission Regulation (Euratom) No 3227/76,

— source documents to justify the stock records could still not be made available,

— the explanation provided regarding the apparent discrepancy of 1,466 tonnes depleted and 7,5 kilograms natural uranium was unsatisfactory.

— On 29 November 1995, a hearing with the representatives of Jenson Tungsten Ltd and the British authorities was held in London with the objective of clarifying the position of Jenson Tungsten Ltd with respect to the Euratom Treaty (Chapter VII), Commission of the European Atomic Energy Community Regulation No 8 and Regulation (Euratom) No 3227/76. Among other issues the hearing led to the conclusion:

— that Jenson Tungsten Ltd had failed to keep adequate records for depleted and natural uranium stored on site,

— that source documents and operating records to justify inventory changes had not been provided,

— that a materials accountancy system did not exist for an unacceptably long time,

— that the shipment of 6,407 tonnes of depleted uranium on 7 October 1993 had been declared only on request and after an unacceptably long delay,

— that appropriate labelling of the remaining swarf on site was still required,

— that there was an outstanding discrepancy of 1,466 tonnes depleted uranium and 7,5 kilograms natural uranium.

The facts set out above are not contested by the operator.

II. LEGAL ASSESSMENT

A. Legal provisions

By virtue of the nuclear material under its responsibility on its premises, Jenson Tungsten Ltd is an undertaking falling within the terms of Article 196 (b) of the Euratom Treaty. It is therefore subject to the provisions of Chapter VII, Title Two, of the Euratom Treaty, 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], and to Commission of the European Atomic Energy Community Regulation No 8 defining the nature and the extent of the requirements referred to in Article 79 of the Euratom Treaty [3], in so far as the last Regulation applies to Jenson Tungsten Ltd in accordance with Article 40 of Regulation (Euratom) No 3227/76.

In accordance with Article 77 of the Euratom 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 under an agreement concluded with a third State or an international organization are complied with.

In accordance with Article 197 of the Euratom Treaty, Title Five, 'source materials' include uranium containing the mixture of isotopes occurring in nature and uranium whose content in uranium-235 is less than the normal.

In accordance with the first paragraph of Article 79, Title Two, Chapter VII of the Euratom Treaty, the Commission requires that operating records be kept and produced in order to permit accounting for ores, source materials and special fissile materials used or produced.

Pursuant to Article 2 of Regulation No 8, producers and users of ores, source materials and special fissile materials shall keep materials accounting records enabling them to forward statements as provided for in that Regulation to the Commission and to produce evidence in support thereof.

Pursuant to Article 5 of Regulation No 8, producers and users of source materials or of special fissile materials shall, by the 15th of each month at the latest, communicate to the Commission in respect of each of their installations a monthly return in the form set out in Statement No III annexed to the Regulation, of materials in hand during the preceding month, together with a summary of the dispatches and receipts of materials during that month showing in respect of each: date, quantity, composition, form and supplier or consignee.

In accordance with Articles 81 and 82 of the Treaty, inspectors inspect ores, source materials and special fissile materials and verify the records referred to in Article 79.

[1] OJ No L 363, 31. 12. 1976, p. 1.
[2] OJ No L 191, 31. 7. 1993, p. 75.
[3] OJ No 34, 29. 5. 1959, p. 651/59.

B. **The infringements established**

Following the examination of the facts by the Euratom Safeguards Directorate, the following infringements by Jenson Tungsten Ltd have been established:

1. Breach of the provisions contained in Article 79 of the Euratom Treaty and in Article 2 of Regulation No 8, concerning the keeping of operating records in order to permit accounting for ores, source material and special fissile materials.

2. Incompatibility of the accounting system with the requirements derived from Articles 81 and 82 of the Treaty in that it made it impossible to verify the materials and the accounting.

3. Breach of the provisions contained in Article 5 of Regulation No 8 concerning the communication to the Commission of dispatches and receipts, particularly as regards the shipment of a substantial part of its nuclear inventory in 1993.

It is also noted that a discrepancy of 1,466 tonnes depleted uranium and 7,5 kilograms natural uranium has not been satisfactorily explained or justified.

C. **The sanction to be applied**

Pursuant to 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.

Moreover, the facts established made it impossible for the Commission 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, while being aware that the Euratom Treaty obligations are designed to ensure that all nuclear materials, including source materials, are properly accounted for, recorded and reported, the amount and type of nuclear material involved are taken into consideration. In this case the material concerned had a low strategic value.

From a subjective point of view, it appears that Jenson Tungsten Ltd has failed to keep appropriate records and reports for the nuclear material kept on site and that a materials accounting system did not exist for a long time despite requests and various reminders. This would normally lead to the imposition of a sanction according to Article 83 (1) (c).

Taking into consideration that Jenson Tungsten Ltd is not carrying out any activity involving nuclear material and that it is holding its predecessor's depleted uranium swarf awaiting disposal, Jenson Tungsten Ltd should establish and keep records of the depleted uranium swarf remaining on site and affix appropriate labels to each of the drums containing the material. Those labels must indicate, in addition to the unique identification number, the contents and estimated weight of the contents. Furthermore Jenson Tungsten Ltd should declare any future movements of nuclear material, in particular the shipment of the remaining depleted uranium swarf for disposal according to the Commission regulations in force. A system of source documentation for future movements must be established.

In appreciating both the objective and the subjective factors set out above, the infringements committed by Jenson Tungsten Ltd are such that a sanction is warranted.

Given the circumstances, in particular that the installation is not carrying out activities involving nuclear material or nuclear equipment and that the remaining depleted uranium swarf will be disposed of as soon as commercial arrangements can be concluded, and given the fact that there are no special benefits to Jenson Tungsten Ltd such as financial or technical assistance, the appropriate sanction to impose in that laid down in Article 83 (1) (a) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. Jenson Tungsten Ltd has infringed Articles 77, 79, 81 and 82 of the Euratom Treaty and Article 2 of Regulation No 8 because, for an unacceptably long time, a nuclear materials accounting system did not exist, and in particular, operating records and source documents for depleted and natural uranium including labelling of nuclear material held on stock were not made available, thereby preventing the full verification of the accounting system.

2. Jenson Tungsten Ltd has infringed Article 5 of Regulation No 8 for its failure to declare in time a dispatch of a substantial part of its nuclear inventory.

Article 2

1. The Commission issues a warning to Jenson Tungsten Ltd.

2. The warning is imposed with the understanding that the shortcomings with respect to source documentation, labelling and nuclear materials accounting system be rectified.

3. Based on the report referred to in Article 3 and its own verifications the Commission will assess Jenson Tungsten Ltd's compliance with the requirement set out in paragraph 2.

Article 3

Jenson Tungsten Ltd shall provide the Commission with a report describing the measures taken to rectify the failures listed in Article 1 within three months of the date of this Decision.

Article 4

1. This Decision is addressed to the firm Jenson Tungsten Ltd, 11 Maxted Road, Hemel Hempstead, UK-Herts HP2 7DX.

2. This Decision shall be communicated to the United Kingdom.

Done at Brussels, 13 November 1996.

For the Commission

Christos PAPOUTSIS

Member of the Commission