

Joined Cases T-149/94 and T-181/94

Kernkraftwerke Lippe-Ems GmbH v Commission of the European Communities

(Euratom Treaty — Action for annulment and action for damages — Conclusion of a contract for the supply of uranium — Simplified procedure — Powers of the Agency — Time-limit for conclusion of the contract — Legal obstacle to conclusion — Diversification policy — Origin of the uranium — Market-related prices)

Judgment of the Court of First Instance (First Chamber, Extended Composition), 25 February 1997 II - 165

Summary of the Judgment

1. *EAEC — Supply system — Balancing of supply and demand — Simplified procedure — Submission of a supply contract with no indication of the geographical origin of the materials — Obligation of the Agency to reach a decision within the time-limit — None (EAEC Treaty, Art. 60; Rules of the EAEC Supply Agency determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials, Art. 5 bis)*

2. *Acts of the institutions — Statement of reasons — Obligation — Scope — EAEC Treaty (EC Treaty, Art. 190; EAEC Treaty, Art. 162)*
3. *Actions for annulment — Pleas in law — Misuse of powers — Concept*
4. *EAEC — Supply system — Balancing of supply and demand — Simplified procedure — Exclusive right to conclude supply contracts — Duty to ascertain whether there are legal or material obstacles — Agency's discretion — Scope of review by the Court — Particular case (EAEC Treaty, Arts 52 to 76; Rules of the EAEC Supply Agency determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials, Art. 5 bis; EEC/EAEC-USSR Agreement of 27 February 1990, Art. 14)*
5. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link (EAEC Treaty, Arts 151 and 188, second para.)*

1. Under Article 5 *bis* of the Rules of the Euratom Supply Agency determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials, which provides, in the framework of a 'simplified procedure', that all supply contracts are to be submitted to the Agency for signature and that the Agency then has 10 working days within which to act either by concluding or by refusing to conclude the contract, the geographical origin of the materials to be supplied is one of the principal elements which have to be communicated, since it is essential for the Agency to know it in order to ensure reliability of supply which is the aim pursued.

materials to be supplied, even though that has been agreed by the parties at least implicitly, is not entitled to rely on the said time-limit. In such a case, however, the Agency is entitled, before the time-limit expires, to request the parties to provide the missing documentation by communicating to it the origin of the materials, and then to take a decision within a reasonable time. Such a course of action is not in breach of Article 5 *bis* (f) of the Rules or of the principles of proportionality and legal certainty.

2. In the context of the EC Treaty, and more particularly Article 190 thereof, the reasons stated for a measure must disclose clearly and unequivocally the reasoning of the Community authority which adopted it, so as to make the persons concerned aware of the reasons for the measure and thus enable them to defend their

Consequently, a uranium user who has submitted a supply contract without indicating the geographical origin of the

rights, and so as to enable the Community judicature to exercise its supervisory jurisdiction; the extent of the obligation to state reasons must be assessed in the light of its context. Since Article 162 of the EAEC Treaty, on the obligation to state reasons, is substantially the same as Article 190 of the EC Treaty, it must be interpreted by analogy with that provision.

3. The concept of misuse of powers has a precisely defined scope in Community law and refers to cases where an administrative authority exercises its powers for a purpose other than that for which they were conferred on it. A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.

4. It is apparent from the structure of the EAEC Treaty and the supply system set up by Chapter 6 thereof that the Euratom Supply Agency has the task of guaranteeing reliability of supplies of nuclear materials, in accordance with the principle of equal access to resources, and that for that purpose it has the exclusive right to conclude contracts for the supply of those products from inside or outside the Community. In particular, the simplified procedure introduced by Article 5 *bis* of the Rules of the Agency determining the manner in which demand is to be balanced against the supply of ores, source materials and special fissile materials does not deprive the Agency of its exclusive

rights, so that even within that framework it has the right to object to a contract which might prejudice the achievement of the objectives of the Treaty.

While the Agency must, in general, observe the principle of balancing supply and demand in the exercise of its exclusive right to conclude supply contracts, it must also, under the first paragraph of Article 61 of the Treaty, ascertain in each case whether there are any legal or material obstacles to meeting the order. In this respect, where decisions concerning economic and commercial policy and nuclear policy are involved, the Agency has a broad discretion when exercising its powers, so that review by the Court of First Instance must in any event be confined to identifying any manifest error of assessment or misuse of powers.

In view of that legal context, the Agency may lawfully bar imports of nuclear materials from the Commonwealth of Independent States in so far as, first, imports of unlimited quantities would jeopardize geographical diversification of external sources of supply, second, the materials are not imported at market-related prices, in breach of Article 14 of the Trade Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics, or, third, the imports give one user a

privileged position in relation to competitors. The setting by the Agency of a permissible threshold of dependence by reference to the state of the market is a legitimate means of guaranteeing equal access to resources, referred to in Article 52(1) of the Treaty.

5. For the Community to incur non-contractual liability a set of conditions must be fulfilled, relating to the unlawfulness of the conduct alleged against the Community institutions, actual damage and the existence of a causal link between the conduct and the alleged damage.