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0101 / 2004 / GG

ZINCK Caroline

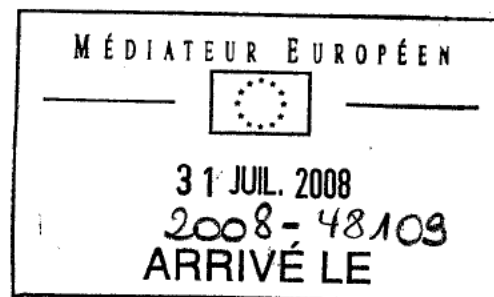
From: [REDACTED]
Sent: 31 July 2008 11:59
To: Euro-Ombudsman
Subject: EO complaint by Ms [REDACTED] - ref.: 101/2004/GG - further reply

Importance: High

Attachments: Document.pdf



Document.pdf (200 KB)



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31 JUL. 2008

Dear Mr Diamandouros,

Subject: Complaint by Mrs [REDACTED] - request for further information - ref. 101/2004/GG

Thank you for your letter of 16 May 2008 to President BARROSO about this case.

I am pleased to transmit to you the enclosed comments of the Commission on the above-mentioned inquiry.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,



Enclosure

Mr Nikiforos DIAMANDOUROS
European Ombudsman
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Comments of the Commission on a request for complementary information from the European Ombudsman**- Complaint by Ms [REDACTED] Ref.: 101/2004/GG**

In a letter dated 16 May 2008 the European Ombudsman asked for additional clarifications regarding the contents of documentary evidence submitted to him by the complainant or gathered in the course of his examinations of documents or files referred to in the complaint.

Question no 1:

The Ombudsman asks the Commission to comment on the following: The second part of the notification on the acquisition, generation, production and dispatch of radioactive materials for July 1997 (hereafter "the notification") sent to the German supervisory authorities, "contains a record for a shipment to the [REDACTED] described as 'Einkristall abger UO₂' with an activity of 15 910 Bq. No ITU reference is indicated." This, according to the Ombudsman, "seems to constitute evidence proving that a shipment of radioactive material to the [REDACTED] such as the one suggested by the complainant was carried out".

Commission's answer to question no 1:

The document in question has been examined both by the supervisory authorities and by the team carrying out the administrative verification, and their conclusions have previously been provided to the Ombudsman. The Commission therefore upholds the position that the alleged illegal transport of the radioactive material from the ITU to the [REDACTED] in July 1997 did not take place.

It should be recalled that the complainant's allegation concerning the above mentioned transport was subject to a thorough investigation carried out by the German supervisory authority and subsequently to an administrative verification carried out by the Commission, as well as a review of all documentation by the Ombudsman's services. The notification referred to by the Ombudsman was examined in the course of the administrative verification.

- o The authority concluded that there was no evidence of an infringement of the Military Weapons Control Act (...),
- o as a likely explanation, "it is assumed that Mrs. [REDACTED] has confused two different operations".

In course of the administrative verification, the documentation containing records of incoming nuclear transports listed in the first part of the notification was also examined. This clearly showed that the transport referred to as VRM 125/97 containing the sample of 1 g of UO₂ depleted with total activity 16 kBq arrived from the [REDACTED] to the ITU on 22 July 1997. This event was duly recorded in the first section (i.e. section 'receipt') of the notification; it agrees with the record kept by the sector responsible for "nuclear accountancy" (which concerns all materials containing uranium, thorium or plutonium), as is evidenced by the record control number. Having further consulted the other relevant records and documentation, the verification team concluded that the sample was still in the ITU (point 4.3.3 of the report "Findings: incoming nuclear transport").

The Commission recalls that it was the complainant herself who drafted the report of 10 October 1997 for July 1997 and who added the entry of the alleged outgoing transport of the

single crystal of UO_2 . The absence of a record control number agrees with the records of the "nuclear accountancy" sector where no such record exists. The absence of such a record control number indicates that the material in question was indeed NOT released from the controlled area.

Question no. 2:

The Ombudsman asks the Commission to comment on the following: "The complainant has repeatedly argued that if the relevant shipment to [REDACTED] concerned non-radioactive material, a measurement ought to have been carried out when the material was released (...). However, no document on such a measurement seems to be available."

Commission's answer to the question no 2:

The Commission confirms that a shipment of non-radioactive material was made by [REDACTED] from ITU to [REDACTED] on 25 July 1997. According to the export certificate issued by the carrier (DHL) the shipment concerned a "crystal of special material for basic research".

Nuclear material (containing uranium, thorium or plutonium) must be booked out of the ITU in a traceable fashion and follow accepted nuclear accounting rules. According to the ITU nuclear accounting records there was no uranium transport from ITU to [REDACTED] in July 1997. There was only an incoming transport of uranium from [REDACTED] to ITU.

The German ionizing radiations regulations (neither the one in force in 1997 nor the regulations currently in force) do not require documentation of the contamination control results or its archiving, but only that a measurement be carried out. However, it is ITU's common practice to record the results of the contamination control of matter, items, tools, devices, etc. that are brought out from the controlled area. The archive of contamination control results concerning July 1997 did not contain a document which corresponds to the item "crystal of special material".

The Commission would like to bring Ombudsman's attention to a comment the complainant makes in her message of 15 May 2008 to Mr Gerhard Grill (the text of this message was provided as an attachments to the Ombudsman's request of 16 May 2008 for further information). In the message, the complainant makes a point that the shipment of UO_2 that arrived at the ITU on 22 July 1997 with the transport no VRM 125/97 (which was duly reported to the Supervisory authority) is irrelevant because it predates the alleged illegal radioactive export sent as a normal cargo shipment (listed as the allegation no 3 in the letter of the complainant of 16 September 2002). It should be recalled that the complainant originally (while still in ITU) stated that the alleged illegal transport of radioactive material sent from the ITU to the [REDACTED] on 25 July 1997 was *return consignment of the sample of depleted UO_2 ca. 1 g. (that) arrived with the VRM 125/97*". As stipulated in section 4.3.2. ("Findings: outgoing non-nuclear transport") of the above mentioned report of the administrative verification (emphasis added):

"The export certificate issued by the carrier for purchase tax purposes [REDACTED] Ausfuhrbescheinigung für Umsatzsteuerzwecke, 25 July 1997, fWP31a) describes the object transported as a "Crystal of special material for basic research".

The copy kept at the ITU's records contains handwritten notes by the complainant (names deleted):

“Suspicion: Return consignment of the sample of depleted UO₂ ca. 1 g. arrived with the VRM 125/97. On 30th July I have asked Official X whether this concerned radioactive material, and he has denied it. On 25th August 1997, phone call with Official Y; it is the UO₂ [sample].”

However, in her allegation 3 of the complaint of 16 September 2002, the complainant refers to the material in question as a "Uran/Neptuniumverbindung ?" (question mark from the complainant's original text). In the final sentence of the e-mail of 15 May 2008 to Mr. Grill, the complainant admits that she judges "some aspects" differently from the time when she drew up the relevant documents.

It therefore seems that the complainant may have indeed confused different shipments.