

- the third subparagraph of Article 17(2) of Commission Regulation (EC) No 659/97 of 16 April 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards intervention arrangements in the fruit and vegetables sector (OJ 1997 L 100 of 17.4.1997, p. 22);
- Article 8(2)(c) and (d), Article 8(4)(b) and Article 16(1) of Commission Regulation (EC) No 609/2001 of 28 March 2001 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards operational programmes, operational funds and Community financial assistance, and repealing Regulation (EC) No 411/97 (OJ 2001 L 90 of 30.3.2001, p. 4);
- Article 3 of Commission Regulation (EC) No 412/97 of 3 March 1997 laying down detailed rules for the application of Council Regulation (EC) No 2200/96 as regards the recognition of producer organisations (OJ 1997 L 62 of 4.3.1997, p. 16);
- Articles 6 and 9 of Commission Regulation (EEC) No 3887/92 of 23 December 1992 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes (OJ 1992 L 391 of 31.12.1992, p. 36).

Action brought on 12 July 2006 — Kingdom of the Netherlands v Commission

(Case T-182/06)

(2006/C 212/63)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: H.G. Sevenster and D.J.M. de Grave, acting as Agents)

Defendant: Commission of the European Communities

Form of order sought

- Annul Commission Decision 2006/372/EC of 3 May 2006 concerning draft national provisions notified by the Kingdom of the Netherlands under Article 95(5) of the EC Treaty laying down limits on the emissions of particulate matter by diesel-powered vehicles;
- Order the Commission to pay the costs.

Pleas in law and main arguments

The applicant informed the Commission, in accordance with Article 95(5) EC, of its intention to establish national rules for limiting emissions of particulate matter by diesel-powered vehicles, in derogation from the provisions of Directive 98/69/EC ⁽¹⁾. Under those notified rules, a limit value of 5 milligrams per kilometre for the emission of fine particulate matter was to be set with effect from 1 January 2007 for new diesel-powered passenger cars and diesel-powered commercial vehicles. The present limit value in Directive 98/69 is 25 milligrams per kilometre. In view of specific problems in the Netherlands concerning air quality, the Netherlands Government considers that it is necessary to introduce a more stringent rule. The Commission rejected the proposed national rule in the contested Decision 2006/372/EC ⁽²⁾.

In support of its application, the applicant first claims infringement by the Commission of the appraisal criteria of Article 95(5) EC by reason of its view that the Netherlands had not indicated that there was a specific problem in regard to air quality and, more particularly, with the obligations under Directive 99/30 ⁽³⁾.

Second, the applicant submits that there has been an infringement of the duty of care and the duty to state reasons under Article 253 EC by virtue of the Commission's failure to take into account, without detailed reasons, more recent and relevant data which the Netherlands Government provided in good time prior to the contested decision.

Third, the applicant submits that the Commission breached the EC Treaty by failing, in its appraisal of alternative measures pursuant to Article 95(6) EC, to proceed on the basis of the specifically pursued objective of the national provision in respect of which approval was sought.

The applicant accordingly contends that there has been a failure to comply with the obligation under Article 253 EC to state reasons in the appraisal of the conditions under Article 95(6) EC.

The applicant concludes by alleging a breach of Article 95(5) and (6) EC and the requirement under Article 253 EC to state reasons by virtue of the fact that the Commission treated the international context of the planned measure as being relevant in its appraisal of the request made by the Netherlands Government.

⁽¹⁾ Directive 98/69/EC of the European Parliament and of the Council of 13 October 1998 relating to measures to be taken against air pollution by emissions from motor vehicles and amending Council Directive 70/220/EEC (OJ 1998 L 350, p. 1).

⁽²⁾ Commission Decision 2006/372/EC of 3 May 2006 concerning draft national provisions notified by the Kingdom of the Netherlands under Article 95(5) of the EC Treaty laying down limits on the emissions of particulate matter by diesel-powered vehicles [notification made under no C(2000) 1791] (OJ 2006 L 142, p. 16).

⁽³⁾ Council Directive 1999/30/EC of 22 April 1999 relating to limit values for sulphur dioxide, nitrogen dioxide and oxides of nitrogen, particulate matter and lead in ambient air (OJ 1999 L 163, p. 41).