

That, like the storage of data giving information about membership of the union, infringes the provisions of Regulation (EC) No 45/2001<sup>(1)</sup>.

<sup>(1)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

**Action brought on 24 October 2002 by Kotug International BV, Sleepdienst Adriaan Kooren BV and K&K International BV against the Commission of the European Communities**

**(Case T-326/02)**

(2002/C 323/64)

*(Language of the case: Dutch)*

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 October 2002 by Kotug International BV, Sleepdienst Adriaan Kooren BV and K&K International BV, established in Rotterdam, represented by T.R. Ottervanger, with an address for service in Luxembourg.

The applicants claim that the Court of First Instance should:

1. Primarily, annul Commission Decision C(2002) 2158 of 19 June 2002 concerning State aid by the Netherlands in favour of the activities of Netherlands tugboats in sea harbours and on inland waterways of the Community;
2. In the alternative, annul Articles 2 and 3 of the Commission's contested decision in which the Commission requires the Netherlands Government to adopt all necessary measures in order to recover aid from the recipients — with the exception of aid paid before 12 September 1990;
3. Order the Commission to pay the costs.

*Pleas and main arguments*

The applicants benefit from fiscal arrangements and the tonnage charge introduced by the Netherlands in favour of, inter alia, vessels intended for towing and assistance at sea. In the contested decision the Commission considers that these matters constitute new State aid for tugboat activities principally carried on in and around the harbours of the Community and on inland waterways within the Community and not principally at sea. The Commission is at the same time seeking recovery by the Netherlands authority of that aid.

The applicants submit that the Commission is in breach of the EC Treaty and Regulation No 659/1999<sup>(1)</sup> by classifying the matters concerned as new State aid. According to the applicants the provision made in regard to those matters constitutes existing State aid authorised by the Commission.

Thus, there is no question of a change in the existing aid. According to the Commission, the interpretation of the Netherlands law has changed over the years. Under it tugboats were eligible for aid on the basis of technical criteria relating to the vessels rather than on the basis of the place where the activities are carried on. According to the applicants, that was however clear from the legislation notified by the Netherlands authorities under which a technical and qualitative criterion is applied rather than a geographical one. That interpretation of the provision made in regard to the grant of the aid have accordingly not changed.

The applicants further allege that the Commission did not follow the correct procedure. According to the applicants, the Commission, upon receipt of supplementary information, did not issue a recommendation for the adoption of appropriate measures. Nor did the Commission review the aid under Article 9 of Regulation No 659/1999. Nor, the applicants submit, are the requirements of that article satisfied since there is no question of incorrect information. Moreover, according to the applicants, the Commission failed to demonstrate that the provision made for the matters concerned is not covered by the aid measures approved by it previously.

Accordingly, the applicants submit that the contested decision infringes Article 87(3) of the EC Treaty. According to the applicants the Commission is acting incorrectly in declaring the matters concerned incompatible with the common market. The applicants allege that towing services provided by sea tugboats to sea-going vessels, irrespective of where those activities are carried on, come within the scope of the Community guidelines on State aid for maritime transport<sup>(2)</sup>.

According to the applicants, the contested decision further infringes the principle of protection of legitimate expectations and Article 14 of Regulation No 659/1999. According to the applicants, they were entitled to rely on the legality of the aid since it had been approved by the Commission. Recovery of aid received would run counter to the applicants' legitimate expectations.

By altering its approach to fiscal measures for maritime transport, the Commission, in adopting the contested decision, also infringed the principle of legal certainty. In the applicants' view, a change in the approach to aid measures cannot result in already approved aid being classified as new rather than existing aid.

The applicants are also claiming infringements of the principles of equal treatment and proportionality and of the requirement to provide a statement of reasons.

(1) Council Regulation (EC) No 659/1999 of 20 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

(2) Community guidelines on State aid for maritime transport (OJ 1997 C 205, p. 5).

**Action brought on 24 October 2002 by Muller Marine Holding BV, Muller Maritime Holding BV and Handel- en Scheepvaartmaatschappij Multraschip BV against the Commission of the European Communities**

**(Case T-327/02)**

(2002/C 323/65)

*(Language of the case: Dutch)*

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 October 2002 by Muller Marine Holding BV, Muller Maritime Holding BV and Handel- en Scheepvaartmaatschappij Multraschip BV established in Rotterdam, represented by T.R. Ottervanger, with an address for service in Luxembourg.

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2. In the alternative, annul Articles 2 and 3 of the Commission's contested decision in which the Commission requires the Netherlands Government to adopt all necessary measures in order to recover aid from the recipients — with the exception of aid paid before 12 September 1990;
3. Order the Commission to pay the costs.

*Pleas and main arguments*

The pleas relied on are the same as in Case T-326/02.

**Action brought on 24 October 2002 by Smit Harbour Towage Rotterdam BV against the Commission of the European Communities**

**(Case T-328/02)**

(2002/C 323/66)

*(Language of the case: Dutch)*

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 24 October 2002 by Smit Harbour Towage Rotterdam BV, established in Rotterdam, represented by T.R. Ottervanger, with an address for service in Luxembourg.

The applicants claim that the Court of First Instance should:

1. Primarily, annul Commission Decision C(2002) 2158 of 19 June 2002 concerning State aid by the Netherlands in favour of the activities of Netherlands tugboats in sea harbours and on inland waterways of the Community;
2. In the alternative, annul Articles 2 and 3 of the Commission's contested decision in which the Commission requires the Netherlands Government to adopt all necessary measures in order to recover aid from the recipients — with the exception of aid paid before 12 September 1990;
3. Order the Commission to pay the costs.