

alternatively, hold that the European Community has become liable to her by the adoption, even if lawful, and then application of Article 5 of the Community Customs Code, having caused her to suffer an abnormal and special loss;

order the Council and the Commission jointly and severally to pay to her damages of EUR 60 510 or, alternatively, of EUR 47 829 together with interest in both cases at the legal rate from the date on which the present action was brought;

order the Council and the Commission jointly and severally to pay the costs.

Pleas in law and main arguments

The applicant states that, following the commencement by the Commission of a Treaty infringement procedure against the French State, France has, in order to bring French law into line with Article 5 of Regulation No 2913/92⁽¹⁾, repealed the monopoly held by ship's agents, of whom the applicant is one, to deal with the customs authorities. According to the applicant, the withdrawal of that monopoly follows directly from the application of Article 5 of Regulation No 2913/92 and is therefore directly attributable to the European Community.

The applicant's main submission is that the adoption of Article 5 of Regulation No 2913/92 constitutes an unlawful act for which the Community is liable.

Firstly, the applicant claims that that article fails to have regard to the derogatory provisions of Article 45 of the EC Treaty to the extent that the profession of ship's agent, by application of customs legislation, is involved in the exercise of public authority.

The applicant then alleges a breach of the principles of legal certainty and the protection of legitimate expectations. The applicant claims, on one hand, that Article 5 of Regulation No 2913/92 refers to the concept of 'representation at customs' which is different from that of 'dealing with the customs authorities', the latter being essentially carried out by ship's agents. An interpretation by analogy of that article would, according to the applicant, be contrary to the principle of legal certainty. On the other hand, the applicant alleges a violation of her legitimate expectations, arising from the absence of any transitional measure and from the fact that French ship's agents were the only ones in the Community to be constantly excluded from the earlier liberalisation measures.

Furthermore, the applicant alleges a breach, constituted by the absence of transitional measures, of the principles of equality

and proportionality. Finally, the applicant alleges a breach of the right to respect of property in that the abolition of the monopoly renders the office of ship's agent non-transferable and entirely worthless.

The applicant claims, in the alternative, that the Community is liable on a no-fault basis given the abnormal and special nature of the loss suffered. According to the applicant, the harm is abnormal in that the loss of the economic value of the office and of the profit margin exceeds normal economic risks and is special in that ship's agents constitute a clearly distinct category of traders.

⁽¹⁾ Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

Action brought on 24 June 2004 by Adriatica di Navigazione S.p.A. against the Commission of the European Communities

(Case T-265/04)

(2004/C 239/57)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance on 24 June 2004 by Adriatica di Navigazione S.p.A., represented by Gian Michele Roberti, Alessandra Franchi and Guido Bellitti.

The applicant claims that the Court of First Instance should:

annul the contested decision in so far as it considers the subsidies in respect of public-service obligations made to Adriatica to be aid for the purposes of Article 87 of the Treaty and classifies those measures as new aid;

or annul Article 1(2) of the contested decision;

or, as a subsidiary claim, annul Article 1(3) of the contested decision in so far as it requires Italy to recover the aid together with interest;

order the Commission to pay the costs.

Pleas in law and main arguments

By this application the company Adriatica di Navigazione S.p.A. challenges, pursuant to the fourth paragraph of Article 230 of the EC Treaty, the decision of the European Commission of 16 March C(2004) 470 concerning State aid granted by Italy to the shipping companies Adriatica, Caremar, Siremar, Saremar and Toremar. In particular, the applicant asks the Court of First Instance to annul the decision under challenge inasmuch as it considers the subsidies in respect of public-service obligations made to Adriatica to be aid for the purposes of Article 87 of the Treaty, and classifies those measures as new aid.

In support of its action, the applicant puts forward three grounds of challenge.

By the first, the applicant alleges that the Commission made a twofold error of assessment. First, in its view, the Commission's decision is vitiated because the Commission wrongly classified the subsidies granted by the Italian State to the shipping companies of the Gruppo Tirrenia to offset the costs of their public-service obligations (P-S.Os) as aid for the purposes of Article 87 EC. As a result of this mistaken classification the decision under challenge infringes (a) the sphere of discretion possessed by the authorities of the Member States in connection with the identifying and funding of P-S.Os, and (b) Article 4(3) of Regulation 3577/92⁽¹⁾. In the second place, Adriatica maintains that in any case the Commission fell into an error of assessment in classifying those subsidies as new aid. In this regard, the applicant points out first of all that the Commission failed to take into consideration that the relevant legislation and the public-service Conventions of the regional companies of the Gruppo Tirrenia had been notified to the Commission and had been authorised by the latter either expressly or by implication.

By its second plea, the applicant challenges the errors of assessment that it claims the Commission made in its contested decision in finding that the scheme of subsidies for Adriatica between 1992 and 1994 was incompatible [with the common market] because Adriatica was responsible for anti-competitive conduct prohibited by Article 81 EC. On this point, the applicant notes that that assessment is incorrect since the Commission ought first of all to have ascertained whether there was any causal connection between the particular case which constitutes contravention of competition and the case of the aid measures, and to have recognised that there was, in the circumstances, no such causal connection. In addition, the applicant stresses that, for the purposes of ascertaining whether there existed such a connection, the mere coincidence of the subject-matter of the contravention of competition and the abovementioned subsidies was quite irrelevant. Here, the applicant also alleges breach of the obligation to give reasons laid down in Article 253 EC.

Finally, the applicant's third plea in law claims that the decision under challenge is unlawful inasmuch as it orders that the aid given to Adriatica for the period from January 1992 to July 1994 should be recovered, contrary to the general principles of the protection of legitimate expectations and of the proportionality of administrative action.

⁽¹⁾ Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).

Removal from the Register of Case T-14/00⁽¹⁾

(2004/C 239/58)

(Language of the case: Dutch)

By order of 4 May 2004 the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-14/00, C.A.V. Ulestraten-Schimmert-Hulsberg and Others, supported by the Kingdom of the Netherlands v Commission of the European Communities.

⁽¹⁾ OJ C 135, 13.5.2000.

Removal from the Register of Case T-236/99⁽¹⁾

(2004/C 239/59)

(Language of the case: Dutch)

By order of 4 May 2004, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-236/99, Direcks Service Station Bocholtz B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

⁽¹⁾ OJ C 47, 19.2.2000.