

- in any event, that regulation should not be applied as against the applicant;
- in any event, Decision 2006/1008/EC of 21 December 2006 (OJ 2006 L 379, p. 123) should be annulled;
- the Council should be ordered to pay the costs.

### Pleas in law and main arguments

The pleas and main arguments raised by the applicant are the same as in Case T-75/07 *Hamdi v Council*, apart from the last plea, which is not raised by the applicant in the present case.

### Action brought on 14 March 2007 — KG Holding (in liquidation) v Commission

(Case T-81/07)

(2007/C 117/37)

Language of the case: Dutch

### Parties

*Applicant:* Jan Rudolf Maas, acting in his capacity as receiver in the liquidation proceedings relating to K.G. Holding N.V. (Rotterdam, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul the Commission's decision of 19 July 2006 in Case C 30/2005;
- order the Commission to pay the costs of the proceedings.

### Pleas in law and main arguments

The applicant is challenging Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Netherlands for KG Holding NV (<sup>1</sup>).

The aid measure mentioned related to restructuring aid which the Netherlands wished to grant to KG Holding NV by converting a previously approved rescue loan and the interest due thereon into equity capital. In the contested decision, the Commission declares the aid measure, in the form of restructuring aid, to be incompatible with the common market.

The Commission also ruled that the Netherlands had to recover from KG Holding NV and its subsidiary Kliq BV that portion of the aid which KG Holding NV had transferred to Kliq BV as a rescue loan and which had been converted into equity capital, and that the Netherlands were required to register with the receiver their claim against KG Holding NV and/or Kliq Reïntegratie as a creditor in the liquidation proceedings.

In support of his application, the applicant submits, first, that the Commission committed errors of appraisal, as a result of which the contested decision is inadequately reasoned and at variance with Article 87(1) EC. The applicant claims in particular that the Commission erred in deciding that the Netherlands had to register with the receiver their claim in the amount of EUR 35.75 million against KG Holding and Kliq Reïntegratie as a creditor in the liquidation proceedings. It is, the applicant contends, unclear whether the Commission concluded in the contested decision, in regard to KG Holding, that there was unlawful aid in the amount of EUR 35.75 million that had to be claimed back by the Netherlands or whether what was in issue was rescue aid which the Commission approved in the contested decision on the basis of point 23(d) of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (<sup>2</sup>). Further, it is alleged that the Commission, in its decision of 16 December 2003 (<sup>3</sup>), had agreed that this amount was to be used to finance the redundancies of staff members and the redemption of the redundant contracts of Kliq Reïntegratie, and that Kliq Reïntegratie was thereafter to be placed in liquidation.

The applicant submits, second, that the Commission erred in its claim regarding the full payment of KG Holding's shares in Kliq BV through set-off of the obligation to make full payment against KG Holding's claim against Kliq BV under the loan agreement. That, it is claimed, did not form any part of the decision of 5 August 2005 (<sup>4</sup>) which initiated the proceedings. The Commission, it is alleged, misused its powers and acted in a manner contrary to the rights of the defence and the principle of *audi alteram partem*.

Third, it is alleged that the Commission wrongly failed to establish that the alleged aid might be liable to have an adverse effect on competition and trade between Member States; at any rate, the Commission's findings in this regard are not adequately reasoned.

Fourth, the Commission is alleged to have erroneously determined that the alleged aid of EUR 9.25 million must be recovered by the Netherlands from KG Holding and Kliq BV. It is submitted that the Commission also erred in finding that the alleged aid of EUR 35.75 million had to be recovered from KG Holding and/or Kliq Reïntegratie by registering those claims in the liquidation proceedings. By reason of the liquidation of KG Holding, Kliq Reïntegratie and Kliq BV, recovery of the amounts of alleged aid will, it is argued, be permanently impossible and has in any event become pointless in the sense that recovery through registration in the liquidation of those companies is unnecessary and, indeed, has become entirely superfluous for the purpose of putting an end to the distortion of competition.

Fifth, it is argued that the Commission erred in its statements and findings in law with regard to a current-account credit facility of EUR 17 million already provided by the Netherlands to KG Holding when the latter was established and in accordance with the rules on State aid and which did not form part of the measure under examination in the contested decision.

In conclusion, the applicant alleges that the Commission erred in its decision that the Netherlands had to take all necessary measures to recover an amount of EUR 9.25 million from KG Holding, including interest from the date on which the individual portions of that amount had been made available to the recipients up to the date on which the money was actually repaid. That requirement, it is argued, is at variance with national bankruptcy law.

(<sup>1</sup>) OJ 2006 L 366, p. 40.

(<sup>2</sup>) OJ 1999 C 288, p. 2.

(<sup>3</sup>) Aid measure N 510/2003 — Rescue aid for Kliq Holding NV (OJ 2004 C 33, p. 8).

(<sup>4</sup>) State aid No C 30/2005 (ex N 78/2004) — Restructuring aid to KG Holding N.V. — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (OJ 2005 C 280, p. 2).

### Action brought on 14 March 2007 — Kliq (in liquidation) v Commission

(Case T-82/07)

(2007/C 117/38)

*Language of the case: Dutch*

#### Parties

*Applicants:* Jan Rudolf Maas and Cornelis Van den Bergh, acting in their capacity as receivers in the liquidation proceedings relating to Kliq B.V., a private company with limited liability (Apeldoorn, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

*Defendant:* Commission of the European Communities

#### Form of order sought

— annul the Commission's decision of 19 July 2006 in Case C 30/2005;

— order the Commission to pay the costs of the proceedings.

#### Pleas in law and main arguments

The applicants are challenging Commission Decision 2006/939/EC of 19 July 2006 on the aid measure notified by the Netherlands for KG Holding NV (<sup>1</sup>).

That aid measure related to restructuring aid which the Netherlands wished to grant to KG Holding NV by converting a previously approved rescue loan and the interest payable thereon into equity capital. In the contested decision, the Commission declares the aid measure, in the form of restructuring aid, to be incompatible with the common market.

The Commission also rules that the Netherlands must recover from KG Holding NV and its subsidiary Kliq BV that portion of the aid which KG Holding NV had transferred to Kliq BV as a

rescue loan and which had been converted into equity capital, and that the Netherlands are required to register with the receivers their claim against KG Holding NV and/or Kliq Reïntegratie as a creditor in the liquidation proceedings.

In support of their application, the applicants submit, first, that the Commission erred in its claim regarding the full payment of KG Holding's shares in Kliq BV through set-off of the obligation to make full payment against KG Holding's claim against Kliq BV under the loan agreement. That, it is claimed, did not form any part of the decision of 5 August 2005 (<sup>2</sup>) which initiated the proceedings. The Commission, it is alleged, misused its powers and acted in a manner contrary to the rights of the defence and the applicants' right to be heard. Second, the Commission, it is alleged, was wrong to find that Kliq B.V. was to be regarded as a recipient of State aid in the amount of EUR 9.25 million. In its appraisal, the Commission wrongly failed to take account of the fact that the 'conversion of the rescue loan into equity capital', as referred to in points (43) to (46) of the contested decision, cannot in any wise whatsoever be attributed to the Member State of the Netherlands and therefore cannot be classified as State aid within the terms of Article 87(1) EC. In this connection, it is argued, the Commission committed errors in its appraisal of the facts. In the view of the applicants, the contested decision is therefore legally and/or factually incorrect, or at any rate incomprehensible and/or incorrect or inadequately reasoned and at variance with Article 87 EC and/or Article 253 EC.

Third, it is alleged that the Commission wrongly failed to establish that the alleged aid might be liable to have an adverse effect on competition and trade between Member States; at any rate, the Commission's findings on this point are not adequately reasoned.

Fourth, the Commission is alleged to have erred in its determination that the alleged aid in the amount of EUR 9.25 million must be recovered by the Netherlands from KG Holding and Kliq BV. By reason of the liquidation of KG Holding, Kliq Reïntegratie and Kliq BV, recovery of amounts of alleged aid will, it is argued, be definitively impossible and has in any event become pointless in the sense that recovery through registration in the liquidation proceedings relating to those companies is unnecessary and, indeed, entirely superfluous for the purpose of putting an end to the distortion of competition.

Fifth, it is submitted that the Commission erred in its decision that the amount to be recovered from KG Holding and Kliq BV also includes interest from the date on which the individual portions of that amount were made available to the recipients up to the date on which the money is actually repaid. That requirement, it is argued, is at variance with national bankruptcy law.

(<sup>1</sup>) OJ 2006 L 366, p. 40.

(<sup>2</sup>) State aid No C 30/2005 (ex N 78/2004) — Restructuring aid to KG Holding N.V. — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (OJ 2005 C 280, p. 2).