

Joined Cases 296 and 318/82

Kingdom of the Netherlands
and Leeuwarder Papierwarenfabriek BV
v
Commission of the European Communities

'Aid for the paperboard-processing industry'

Summary

1. *Measures adopted by the institutions — Statement of reasons — Duty — Extent*
(EEC Treaty, Arts 190 and 214)
2. *Aid granted by the Member States — Commission decision that aid is incompatible with the Common Market — Duty to provide a statement of reasons — Necessary information*
(EEC Treaty, Arts 92, 93 and 190)
3. *Measures adopted by the institutions — Individual decision — Publication — Preservation of professional secrecy — Facts covered by professional secrecy excluded from publication*
(EEC Treaty, Arts 191 and 214)

1. The statement of reasons for a decision adversely affecting an undertaking must be such as to allow the Court to review its legality and to provide the undertaking concerned with the information necessary to enable it to ascertain whether or not the decision is well-founded. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the need for information of the undertakings to whom the measure is addressed or of other parties to whom it

is of direct and individual concern within the meaning of the second paragraph of Article 173 of the Treaty. Those requirements cannot be deprived of their essential content by a wide interpretation of the duty laid down in Article 214 of the Treaty to preserve professional secrecy.

2. Even if in certain cases the very circumstances in which aid is granted are sufficient to show that the aid is capable of affecting trade between Member States and of distorting or threatening to distort competition, the Commission

must at least set out those circumstances in the statement of reasons for its decision. A decision which does not contain information concerning the situation of the relevant market, the place of the undertaking receiving the aid in that market, the pattern of trade between Member States in the products in question and the undertaking's exports does not satisfy the requirement of a statement of reasons.

The Commission is also obliged, where it intends to allow a Member State some latitude in deciding what measures are to

be taken to bring to an end a breach of Community law consisting of the grant of aid contrary to the rules of the Treaty, to include in its decision the information necessary to indicate what measures might be considered appropriate.

3. In order to comply with the duty laid down in Article 214 of the Treaty to preserve professional secrecy, the Commission may exclude from publication of an individual decision in the Official Journal those facts which it considers to be covered by the obligation of professional secrecy.

OPINION OF ADVOCATE GENERAL
SIR GORDON SLYNN
delivered on 16 January 1985

My Lords,

In these joined proceedings the Kingdom of the Netherlands and Leeuwarder Papierwarenfabriek BV ('LPF') challenge the legality of a Decision of the Commission dated 22 July 1982 that the Government of the Netherlands granted aid to LPF which was incompatible with Article 92 of the EEC Treaty. The Commission as defendant is supported by a number of LPF's competitors.

Prior to the events which are in dispute, Leeuwarder Papierwarenfabriek ('Leeuwarder') was a company founded in 1907

which manufactured packaging materials in Friesland. It is described in the Decision as 'a paperboard processing firm'. In 1968, it became the wholly-owned subsidiary of Papierfabrieken Van Gelder Zonen NV ('Van Gelder'). During the early 1970s Van Gelder was in financial difficulties which in turn affected Leeuwarder. After a reorganization in 1977 there was some improvement during 1979 and 1980 in the financial position of Leeuwarder but Van Gelder was itself again in financial difficulties. Agreement was reached with Noordelijke Ontwikkelingsmaatschappij ('NOM'), the regional development body responsible for Friesland, that a new company ('LPF') would be formed in which Van Gelder and NOM would each own 50% of the share