

Operative part of the judgment

1. A worker such as Mr Fuß in the main proceedings who has completed, as a fire-fighter employed in an operational service in the public sector, a period of average weekly working time exceeding that provided for in Article 6(b) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, may rely on European Union law to establish the liability of the authorities of the Member State concerned in order to obtain reparation for the loss or damage sustained as a result of the infringement of that provision.

2. European Union law precludes national legislation, such as that at issue in the main proceedings,
 - which makes a public sector worker's right to reparation for loss or damage suffered as a result of the infringement by the authorities of the Member State concerned of a rule of European Union law — in the present case Article 6(b) of Directive 2003/88 — conditional on a concept of fault going beyond that of a sufficiently serious breach of European Union law, it being for the referring court to establish whether such a condition exists, and

 - which makes a public sector worker's right to reparation for the loss or damage suffered as a result of the infringement by the authorities of the Member State concerned of Article 6(b) of Directive 2003/88 conditional on a prior application having been made to his employer in order to secure compliance with that provision.

3. The reparation, for which the authorities of the Member States are responsible, of the loss or damage caused by them to individuals as a result of breaches of European Union law must be commensurate with the loss or damage sustained. In the absence of relevant European Union law provisions, it is for the national law of the Member State concerned to determine, while ensuring observance of the principles of equivalence and effectiveness, first, whether reparation for the loss or damage suffered by a worker such as Mr Fuß in the main proceedings, as a result of the breach of a rule of European Union law, should take the form of additional time off in lieu or financial compensation for the worker and, second, the rules concerning the method of calculation of that reparation. The reference periods provided for in Articles 16 to 19 of Directive 2003/88 are irrelevant in that regard.

4. The answers to the questions referred by the referring court are the same irrespective of whether the facts of the main proceedings fall under the provisions of Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, as amended by Directive 2000/34/EC of the European Parliament and of the Council of 22 June 2000, or those of Directive 2003/88.

Judgment of the Court (Fourth Chamber) of 2 December 2010 — Holland Malt BV v European Commission, Kingdom of the Netherlands

(Case C-464/09 P) ⁽¹⁾

(Appeal — State aid — Guidelines for aid in the agriculture sector — Point 4.2.5 — Malt market — No normal market outlets — Aid measure declared incompatible with the common market)

(2011/C 30/12)

Language of the case: English

Parties

Appellants: Holland Malt BV (represented by: O. Brouwer, A. Stoffer and P. Schepens, advocaten)

Other parties to the proceedings: European Commission (represented by: L. Flynn and A. Stobiecka-Kuik, Agents) Kingdom of the Netherlands (represented by: C. Wissels and Y. de Vries, Agents)

Re:

Appeal against the judgment of the Court of First Instance (Fourth Chamber) of 9 September 2009 in Case T-369/06 *Holland Malt BV v Commission — Holland Malt BV, supported by the Kingdom of the Netherlands v Commission* by which that Court dismissed an application for annulment of Commission Decision 2007/59/EC of 26 September 2006 declaring as incompatible with the common market the aid granted by the Netherlands in favour of Holland Malt BV for the creation of a malt production plant at Eemshaven (Groningen), in the form of investment aid of EUR 7 425 000, subject to the condition precedent of its approval by the Commission (State aid No C 14/2005 — ex N 149/2004) (OJ 2007 L 32, p. 76) — Application of the Guidelines for State aid in the agriculture sector

Operative part of the judgment

The Court:

1. Dismisses the appeal;

2. Orders Holland Malt BV to pay the costs.

⁽¹⁾ OJ C 24, 30.1.2010.

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