

JUDGMENT OF THE COURT (Fifth Chamber)

29 April 2004 ^{*}

In Case C-159/01,

Kingdom of the Netherlands, represented by J. van Bakel, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by D. Triantafyllou and H. van Vliet, acting as Agents, with an address for service in Luxembourg,

defendant,

^{*} Language of the case: Dutch.

APPLICATION for the partial annulment of Commission Decision 2001/371/EC of 21 December 2000 on the exemption from mineral levies under the manure law which the Netherlands intends to grant (OJ 2001 L 130, p. 42),

THE COURT (Fifth Chamber),

composed of: P. Jann, acting for the President of the Fifth Chamber, A. Rosas and S. von Bahr (Rapporteur), Judges,

Advocate General: P. Léger,

Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 29 January 2003, at which the Kingdom of the Netherlands was represented by C. Wissels, acting as Agent, and the Commission was represented by M. van Vliet,

after hearing the Opinion of the Advocate General at the sitting on 12 June 2003,

gives the following

Judgment

1 By application received at the Court Registry on 11 April 2001, the Kingdom of the Netherlands brought an action under Article 230 EC for the partial annulment of Commission Decision 2001/371/EC on the exemption from mineral levies under the manure law which the Netherlands intends to grant (OJ 2001 L 130, p. 42; ‘the contested decision’).

Relevant provisions

Community legislation

2 Article 87(1) EC provides:

‘Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.’

- 3 Commission Notice 98/C 384/03 on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 C 384, p. 3; ‘the Notice on state aid in the area of direct taxation’) states in paragraph 2 that it proposes to provide clarification on the question whether a tax measure can be qualified as aid under Article 87(1) EC.
- 4 According to paragraph 16 of the Notice on State aid in the area of direct taxation, ‘[t]he main criterion in applying Article [87](1)[EC] to a tax measure is therefore that the measure provides in favour of certain undertakings in the Member State an exception to the application of the tax system. The common system applicable should thus first be determined. It must then be examined whether the exception to the system or differentiations within that system are justified “by the nature or general scheme” of the tax system, that is to say, whether they derive directly from the basic or guiding principles of the tax system in the Member State concerned. If this is not the case, then State aid is involved.’
- 5 Paragraph 23 of that Notice states that ‘[t]he differential nature of some measures does not necessarily mean that they must be considered to be State aid. This is the case with measures whose economic rationale makes them necessary to the functioning and effectiveness of the tax system ... However, it is up to the Member State to provide such justification.’
- 6 Under item 5.5.1 of the guidelines entitled ‘Community Guidelines for State aid in the agriculture sector’ of 1 February 2000 (OJ 2000 C 28, p. 2), as corrected on 12 August 2000 (OJ 2000 C 232, p. 17; ‘the Guidelines’), the Commission states that it:

‘...does not [normally] approve operating aid which relieves firms, including agricultural producers, of costs resulting from the pollution or nuisance they cause. The Commission will only make exceptions to this principle in well-justified circumstances.’

7 Annex III to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1; ‘the Nitrates Directive’), which specifies the measures to be included in certain action programmes, provides:

‘...

2. These measures will ensure that, for each farm or livestock unit, the amount of livestock manure applied to the land each year, including by the animals themselves, shall not exceed a specified amount per hectare.

The specified amount per hectare shall be the amount of manure containing 170 kg N. However:

(a) for the first four year action programme Member States may allow an amount of manure containing up to 210 kg N;

- (b) during and after the first four-year action programme, Member States may fix different amounts from those referred to above. These amounts must be fixed so as not to prejudice the achievement of the objectives specified in Article 1 and must be justified on the basis of objective criteria ...

...

If a Member State allows a different amount under subparagraph (b), it shall inform the Commission which will examine the justification in accordance with the procedure laid down in Article 9.

...’

National legislation

- ⁸ The fertiliser use system is a system of taxation on minerals named ‘Mineralenaangiftesysteem’ (mineral levies system; ‘the MINAS system’). The rights and duties which apply by virtue of the MINAS system are governed by Articles 14 to 54 of the Wet van 27 november 1986 houdende regelen inzake het verhandelen van meststoffen en de afvoer van mestoverschotten (Law of 27 November 1986 regulating trade in fertilisers and the removal of surplus fertiliser) (Stbl. 1986, p. 590), as amended by the Law of 16 September 1999 (Stbl. 1999, p. 406; hereinafter ‘the Meststoffenwet’).

- 9 The MINAS system is a system regulating use of fertilisers through the application of 'loss norms'. The system aims to reduce the losses of nitrogen and phosphates by agricultural producers through infiltration into the environment. To attain that objective it requires farmers not to cause emissions of nitrogen and phosphates which are harmful to the environment.
- 10 The MINAS system is based on the idea of a balanced use of nitrogen and phosphates by farmers. The input of nitrogen and phosphates before production must be no greater than the removal of nitrogen and phosphates after production, plus a tolerated loss. The 'tolerated loss' is fixed by the nitrogen and phosphates loss norms laid down in the Meststoffenwet, which were established with the aim of protecting the environment. All farmers are required to pay a levy, under Chapter IV of that law, when the input of nitrogen and phosphates before production on a farm is greater than the removal of those minerals by an amount which exceeds the loss norms laid down by that law.
- 11 The Netherlands authorities set up an exemption procedure pursuant to the Regeling van 12 januari 1999 van de Minister van Landbouw, Natuurbeheer en Visserij (Regulation of 12 January 1999 of the Ministry of Agriculture, Nature Management and Fisheries) (Stbl. 1999, No 9; 'the exemption regulation').
- 12 Under Article 2 of the exemption regulation, small extensive livestock farms, 'hobby undertakings', enjoy a total exemption.

- 13 Under Articles 3 to 9 of the exemption regulation, horticultural undertakings which grow crops in glasshouses or on substrate are exempt from the levy up to a maximum of taxable fertiliser of 460 kg of phosphates and 800 kg of nitrogen per hectare of the growing medium or land actually used by the undertaking for those types of cultivation in the calendar year.
- 14 Under Article 11(b) of the exemption regulation, garden centres which also carry out cultivation in glasshouses or on substrate enjoy the same partial exemption as regards phosphates as that laid down in Article 3 of the regulation for horticultural undertakings referred to in the preceding paragraph.
- 15 Article 13 of the exemption regulation provides that those exemptions apply with retroactive effect from 1 January 1998, which is the date on which the system of levies introduced by Chapter IV of the Meststoffenwet came into force.

Facts

- 16 By letter of 7 October 1999, registered on 13 October 1999, the Kingdom of the Netherlands notified to the Commission certain tax exemptions on minerals introduced by the Meststoffenwet. By letter of 10 January 2000 it also sent further information.

- 17 First, hobby undertakings are exempted from the mineral levies. Secondly, horticultural undertakings growing crops in glasshouses or on substrate enjoy a partial exemption from those levies. Thirdly, an exemption is laid down for garden centres.
- 18 The Netherlands authorities maintained that the exemptions from the levies in question were justified 'by the nature or general scheme of the system' within the meaning of the Notice on State aid in the area of direct taxation, and that they did not therefore constitute State aid within the meaning of Article 87(1) EC.
- 19 With regard to horticultural undertakings and garden centres performing horticultural activities, the Netherlands authorities maintained that the exempted input norms of 460 kg of phosphates and 800 kg of nitrogen for the undertakings concerned were calculated on the basis of research data from the Research Station for Floriculture and Vegetables under glass on the uptake of phosphates and nitrogen by crops grown in glasshouses. Those data showed that the uptake of crops grown in glasshouses amounts on average to 460 kg phosphates and 800 kg nitrogen per hectare per year. The uptake was thus considerably higher than for outdoor crops. This was explained by the fact that production for crops cultivated under glass was eight times as high as for outdoor crops. This is the reason that those norms are higher than the norms for agricultural undertakings and higher than the norms contained in the Nitrates Directive.
- 20 By letter of 20 March 2000, the Commission notified the Kingdom of the Netherlands of its decision to initiate the procedure laid down in Article 88(2) EC in respect of the proposed exemptions.

- 21 As regards the exemption for horticulture, the Commission found that it was within 'the nature or general scheme of the system' to equate the land or growing medium inside the farm building with farm land and then apply the same input norms. A normal application of the input/output regime would thus assure equal treatment and would not constitute State aid. The Commission found that the amounts which could be introduced were much higher (460 kg phosphates and 800 kg nitrogen per hectare). There did not therefore seem to be an inherent reason for granting the proposed exemption to horticulture.
- 22 As regards the exemption for garden centres performing horticultural activities, the Commission maintained that, to the extent the same system applied to soil-bound and non-soil-bound horticulture, again there did not seem to be an inherent reason for granting the proposed exemption.
- 23 Finally, the Commission stated that it had doubts about the compatibility of the Meststoffenwet and the exemption provisions with the Nitrates Directive.
- 24 The Commission stated *inter alia* that the amount of nitrogen permitted for garden centres and horticulture was much higher than the amounts permitted by the Nitrates Directive (170 kg of nitrogen per hectare; derogation permitted on an exceptional basis for four years up to 210 kg). It maintained that in the absence of data on the loss of nitrates in the water and taking into account the fact that the permitted amount of nitrogen was far higher than that laid down in that directive, it had doubts about the environmental effects of the proposed exemptions.

- 25 Therefore, the Commission initiated the procedure laid down in Article 88(2) EC. It invited interested parties to submit their comments on the proposed aid measure.
- 26 By letter sent to the Commission on 17 May 2000, the Kingdom of the Netherlands submitted its comments in reaction to the initiation of the procedure. According to the Netherlands, in view of the content and aims of the measure, it could not be qualified as a tax measure, from which an exemption would constitute State aid within the meaning of Article 87 EC. The Netherlands authorities also stated that the objections of the Commission on the basis of the Nitrates Directive should not be dealt with via a State aid procedure.

The contested decision

- 27 In point 34 of the grounds of the contested decision, the Commission states that, in the absence of any further information, there is still doubt as regards the exemptions proposed by the Kingdom of the Netherlands.
- 28 The Commission states in point 36 of the grounds of that decision that, in the case at hand, support is granted by a Member State in favour of certain undertakings as they are relieved from certain levies.
- 29 In point 38 of the grounds of that decision, the Commission maintains that the Netherlands authorities have not brought forward any additional information with regard to garden centres and horticultural undertakings.

- 30 Therefore, in point 39 of the grounds of the contested decision, the Commission maintains the objections it raised against the proposed partial exemption for horticultural undertakings and garden centres performing horticultural activities. As regards the exemption for horticulture, it states that it is within ‘the nature or general scheme of the system’ to equate the land or growing medium inside the farm building with farm land and then apply the same input norms. In the case at hand, the authorised amounts are however much higher (460 kg phosphates and 800 kg nitrogen per hectare). Levies must only be paid once those higher quantities are exceeded. Therefore, there is no inherent reason for granting the proposed exemption to horticulture and the Netherlands authorities have not provided such justification.
- 31 The Commission is of the opinion in point 40 of the grounds of the contested decision that the exemptions meet all the conditions mentioned in paragraphs 9 to 12 of the Notice on State aid in the area of direct taxation, which applies by analogy. The measure in question confers on recipients an advantage which relieves them of charges that are normally borne by them; that advantage is granted by the State (loss of revenue); that measure may adversely affect competition and trade between Member States, which is the case if the beneficiary carries on economic activity involving trade between Member States, and, lastly, the measure in question is specific or selective.
- 32 In point 41 of the grounds of the decision, the Commission states that that kind of aid must be considered as operating aid. That aid, which simply relieves economic operators of their normal operating costs, confers only a short-term economic advantage for the recipient which ceases as soon as the payment of aid stops and is particularly liable to distort competition.
- 33 In point 42 of the grounds of the contested decision, referring to item 5.5.1 of the Guidelines, the Commission observes that operating aid is not normally allowed.

Such aids can only be allowed if they are temporary and degressive, which is not the case here.

- 34 In point 43 of the grounds of the decision, the Commission finds that the examination under Articles 87 EC to 89 EC encompasses an investigation of compatibility with other Community legislation. According to the Commission, the outcome of a State aid procedure may never produce a result which is contrary to the specific provisions of the EC Treaty, in this case Article 174 EC, or to Community legislation adopted on the basis of those provisions. In any event, the Commission took the view that, irrespective of the compliance of the Netherlands legislation with the Nitrates Directive, the tax relief in question must be considered as a pure operating aid.
- 35 In view of those considerations, the Commission draws the conclusion in point 44 of the grounds of the contested decision that the proposed tax exemptions for hobby undertakings, for horticultural undertakings and for garden centres performing horticultural activities cannot be considered to be in the common interest, and therefore do not qualify for exemption under Article 87(3)(c) EC.
- 36 Articles 1 to 3 of the contested decision are worded as follows:

‘Article 1

The tax exemptions under the Minas system which the Netherlands intends to grant to small undertakings (hobby undertakings), horticultural undertakings and garden centres performing horticultural activities is incompatible with the common market. The aid scheme must therefore not be implemented.

Article 2

The Netherlands shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.’

The action before the Court

- 37 The Kingdom of the Netherlands asks the Court to annul the contested decision, to the extent that it relates to the exemptions for horticultural undertakings and garden centres growing crops in glasshouses or on substrate.
- 38 In support of its action, it claims that the Commission infringed Article 87 EC and Article 253 EC by declaring that that exemption constituted State aid incompatible with the common market. The Kingdom of the Netherlands claims in particular that the exemption for growing crops in glasshouses or on substrate does not constitute a prohibited State aid since it is justified by the nature and general scheme of the MINAS system.

- 39 The Commission asks the Court to dismiss the action and to order the Kingdom of the Netherlands to pay the costs.

The first plea: infringement of Article 87(1) EC

The first limb: the existence of relief from charges for undertakings growing crops in glasshouses or on substrate

- 40 The Netherlands Government claims that the partial exemption from mineral levies does not confer any advantage on undertakings growing crops in glasshouses or on substrate but is intended to take into account the nature of the MINAS system. It states that, in accordance with the nature of the system, the undertakings do not have to pay levies for the quantities of nitrogen and phosphates which are taken up by cultivated crops, since those quantities are removed from the undertaking when the crops are removed from it. According to the Netherlands Government, the uptake of nitrogen and phosphates by crops grown in glasshouses or on substrate is eight times higher than that by crops grown in the open. It claims that that stems from, first, the fact that growing crops in glasshouses or on substrate is much more intensive than farming in the open, and secondly, the fact that growing crops in glasshouses or on substrate is not dependent on the seasons. Accordingly, it is justified to allow horticultural undertakings growing crops in glasshouses or on substrate to release into the soil, without having to pay levies, annual quantities of 460 kg of phosphates and 800 kg of nitrogen per hectare, quantities much higher than those authorised for farming in the open. The Netherlands Government claims that it put forward those arguments throughout the administrative proceedings. However, the Commission never clearly expressed its specific grounds for complaint in relation to the exemption for growing crops in glasshouses or on substrate.

- 41 The Commission disputes that assertion. It claims that it asked the Kingdom of the Netherlands from the outset to justify the fact that the norms were much more flexible for horticultural undertakings than for traditional farmers. It reiterated its doubts about that justification in its decision to initiate the procedure. In the latter decision, it also asked the Kingdom of the Netherlands to communicate to it all information which could be relevant to the evaluation of that exemption. However, the Kingdom of the Netherlands did not show that the exemption granted to the horticulturists was actually justified by the higher levels of absorption of nitrogen and phosphates by the crops produced in horticultural undertakings. According to the Commission, the annual quantities of 460 kg of phosphates and 800 kg of nitrogen are based on an agreement between the Netherlands authorities and the farmers, the result of which is not necessarily norms established on a purely scientific basis.
- 42 It must be stated in that regard that the concept of aid has indeed been interpreted by the Court as not covering measures which differentiate between undertakings in relation to charges where that differentiation is the result of the nature and general scheme of the system of levies in question (see, to that effect, Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 33, Joined Cases C-72/91 and C-73/91 *Sloman Neptun* [1993] ECR I-887, paragraph 21, Case C-390/98 *Banks* [2001] ECR I-6117, paragraph 33, and Case C-351/98 *Spain v Commission* [2002] ECR I-8031, paragraph 43).
- 43 It is for the Member State which has introduced such a differentiation between undertakings in relation to charges to show that it is actually justified by the nature and general scheme of the system in question.
- 44 It should be noted in this case, as the Advocate General stated in points 68 and 69 of his Opinion, that while it seems plausible that, over a comparable area of cultivation, crops grown in glasshouses or on substrate allow a greater uptake of phosphates and nitrogen by plants in the course of a year than crops grown in the

open, it does not follow from the arguments raised by the Netherlands Government that the uptake is eight times higher than that for crops grown in the open and that it corresponds to average annual quantities of 460 kg of phosphates and 800 kg of nitrogen.

45 According to the documents in the case-file the Commission indicated to the Netherlands Government throughout the administrative proceedings that it was not convinced by the justification for the contested exemption, referred to in the preceding paragraph, based on the much higher uptake of nitrogen and phosphates by plants grown in glasshouses or on substrate.

46 Accordingly, in order to show that the contested exemption was justified by the nature and general scheme of the system in question, the Netherlands authorities should have adduced scientific proof in that regard. They did not however adduce any proof to that effect.

47 It must therefore be stated that the Commission was entitled to conclude in points 39 and 40 of the grounds of the contested decision that the exemption at issue was not justified by the nature and general scheme of the MINAS system but conferred on the recipient an advantage which relieved it of charges that it normally had to bear.

48 It follows that the first limb of the first plea must be dismissed.

The second limb: the existence of an aid granted by the State or through State resources

- 49 The Netherlands Government claims that the Commission misconstrues the nature of the MINAS system in the contested decision. The system of exemptions for growing crops in glasshouses or on substrate is not, by reason of its nature, relief granted by the State or through State resources. That system is not intended to generate tax revenue for the State, but to regulate the conduct of farmers and, more specifically, to make them take measures to reduce their use of manure and the burden on the environment to an acceptable level. The MINAS system should be considered to be a tool for natural heritage conservation comparable to administrative and criminal fines. The Netherlands Government maintains that, to the extent that by virtue of the exemption the State gives up revenue deriving from levies, those levies do not concern actual pollution of the soil.
- 50 First of all, the Court has already stated in paragraph 47 of this judgment that the Commission was entitled to conclude that the exemption for growing crops in glasshouses or on substrate constituted relief from charges for farmers growing crops in that manner.
- 51 Next it must be pointed out that the argument of the Netherlands Government that the MINAS system is not intended to generate tax revenue does not suffice to exclude the exemption at issue outright from classification as aid within the meaning of Article 87 EC. Article 87(1) EC does not distinguish between measures of State intervention by reference to their causes or their aims but defines them in relation to their effects (Case C-56/93 *Belgium v Commission* [1996] ECR I-723, paragraph 79, Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20 and Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 25).

52 In this case, the Netherlands Government does not dispute that the exemption at
issue leads to a loss of resources which ought to be paid into the State budget. It
merely contends that that exemption does not allow the recipient to pollute the
soil to a greater extent than a traditional farmer who is fully liable to the mineral
levy.

53 However, under the first limb of this first plea, the Court has rejected the
argument that the exemption for growing crops in glasshouses or on substrate
does not lead to greater soil pollution than by traditional farming because the
uptake of phosphates and nitrogen by crops grown in glasshouses or on substrate
is greater than that of crops grown in the open.

54 It follows that the second limb of the first plea must be dismissed.

The third limb: the effect on trade between Member States

55 The Netherlands Government claims that trade would be affected and
competition distorted only if undertakings growing crops in such a way in the
Netherlands were granted the right to release more manure into the soil than other
farmers. That is not the case here since the exemption at issue covers the quantity
of minerals in the manure introduced which then leaves the undertaking by
removal of the crops and does not therefore pollute the soil.

- 56 First it should be stated, as the Advocate General points out at point 88 of his Opinion, that the argument of the Netherlands Government is based on the premiss that the contested exemption is justified by the nature and the general scheme of the MINAS system in that it corresponds to the quantities of minerals taken up by the plants grown which are removed from the undertaking without polluting the soil. However, the Court has already dismissed that argument in its assessment of the first limb of this plea.
- 57 The Netherlands Government does not seek to challenge on other grounds the validity of the Commission's finding, set out at points 40 and 41 of the grounds of the contested decision, that the exemption at issue could have an adverse effect on trade in horticultural products, in which there is considerable international trade, and that the exemption at issue, which reduces the normal operating costs of the recipient, may distort competition.
- 58 The third limb of this plea must therefore be dismissed.

The second plea: the compatibility of the exemption at issue with the Nitrates Directive

- 59 The Netherlands Government claims that the Commission based the contested decision on an infringement of the Nitrates Directive. However, the Commission cannot base a decision on State aid on an infringement of that directive.

60 It should be stated in that regard that the Commission relied on the existence of a State aid incompatible with the common market under Article 87(1) EC. In its assessment, the Commission found, in points 41 and 42 of the grounds of the contested decision, that the exemption at issue must be regarded as operating aid intended to reduce the normal costs of the operators in question, which does not fulfil the conditions necessary to qualify for a derogation under Article 87(3) EC or under the Guidelines.

61 Although subsequently, in point 43 of the grounds of the contested decision, the Commission cites case-law holding that the outcome of a State aid procedure may never produce a result which is contrary to the specific provisions of the Treaty (Case C-225/91 *Matra v Commission* [1993] ECR I-3203, paragraph 41), it concludes that, irrespective of the compliance of the national legislation with the Nitrates Directive, the tax relief must be regarded as pure operating aid.

62 Accordingly, the Commission did not base the contested decision on an infringement of the Nitrates Directive.

63 Therefore the second plea must be dismissed as unfounded.

The third plea: infringement of the obligation to state reasons

64 The Netherlands Government complains that the Commission did not give reasons why it considers that the annual exemptions of 460 kg of phosphates and 800 kg of nitrogen per hectare for growing crops in glasshouses or on substrate are too high.

- 65 It must be observed in that regard that the obligation to state reasons constitutes an essential procedural requirement which must be distinguished from the question of the merits of those reasons, which concern the substantive legality of the contested measure. The Court has consistently held that the statement of reasons required by Article 253 EC must be adapted to the nature of the measure in question and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to make the persons concerned aware of the reasons for the measure and the Court to exercise its supervisory jurisdiction (see, *inter alia*, Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 809, paragraph 19, Case C-350/88 *Delacre and Others v Commission* [1990] ECR I-395, paragraph 15, Case C-56/93 *Belgium v Commission* [1996] ECR I-723, paragraph 86 and Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).
- 66 In this case, the Commission states, *inter alia* in points 34, 38 and 39 of the grounds of the contested decision, that in the absence of any further information or additional arguments from the Netherlands authorities it is within 'the nature or general scheme of the system' to equate the land or growing medium inside the farm building with farm land and then apply the same input norms.
- 67 That statement of reasons is adapted to the nature of the measure in question and discloses in a clear and unequivocal fashion the reasoning of the Commission in such a way as to make the Kingdom of the Netherlands aware of the reasons for the measure and the Court to exercise its supervisory jurisdiction.
- 68 In those circumstances, the third plea must also be dismissed.

69 Since none of the pleas put forward by the Netherlands Government is well founded, this action must be dismissed.

Costs

70 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Kingdom of the Netherlands has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Dismisses the application;
2. Orders the Kingdom of the Netherlands to pay the costs.

Jann

Rosas

von Bahr

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass

V. Skouris

Registrar

President