ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
16 June 2000 *

In Joined Cases T-611/97 and T-619/97 to T-627/97,

Transfluvia NV, established at Menen (Belgium),

Wybo NV, established at Poperinge (Belgium),

Noël Boone SPRL, established at Herseaux (Belgium),

J. Grayet et G. Heidner SPRL, established at Welkenraedt (Belgium),

Straps SA, established at Chaudfontaine (Belgium),

Ziegler SA, established in Brussels (Belgium),

Maison Parent SCRL, established at Hertain (Belgium),

Magemon SA, established in Liège (Belgium),

Garsou-Angenot SPRL, established at Verviers (Belgium),

Somimpex SPRL, established at Mouscron (Belgium),

represented by P. Cavenaile and K. Tanghe, of the Liège Bar, with an address for service in Luxembourg at the Chambers of A. Schmitt, 62 Avenue Guillaume,

applicants,

* Languages of the case: French and Dutch.

Council of the European Union, represented by M.C. Giorgi and G. Houttuin, Legal Advisers, acting as Agents, with an address for service in Luxembourg at the office of A. Morbilli, Manager of the Legal Affairs Directorate of the European Investment Bank, 100 Boulevard Konrad Adenauer,

and

Commission of the European Communities, represented by H. van Lier, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendants,

APPLICATION for compensation for the damage allegedly suffered by the applicants as a result of the establishment, with effect from 1 January 1993, of the internal market in accordance with the Single European Act and of the consequent discontinuance of the activities which they had hitherto carried on as customs agents in the field of intra-Community trade,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Third Chamber),

composed of: K. Lenaerts, President, J. Azizi and M. Jaeger, Judges,

Registrar: H. Jung,

makes the following

Order

Facts giving rise to the action and legal context

1 Article 13 of the Single European Act ('the Single Act'), which was signed in Luxembourg on 17 February 1986 and in The Hague on 28 February 1986 and entered into force on 1 July 1987, supplemented the EEC Treaty by inserting an Article 8a, which, pursuant to paragraph 9 of Article G of the Treaty on European Union, became Article 7a of the EC Treaty (now, after amendment, Article 14 EC), which provides as follows:

'The Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992, in accordance with the provisions of this Article ...

The internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treaty.'

2 The completion of the internal market required the creation amongst the Member States of the EEC of an 'area without internal frontiers' and thus entailed the abolition of tax frontiers and customs controls within the Community on expiry of the period fixed by the abovementioned provision, that is to say by 1 January 1993.

3 The completion of the internal market was bound to have a serious effect on the continuation of certain economic activities directly connected with customs and tax controls at internal Community borders.

4 In that respect, it had a particular impact on customs agents who, for reward, carry out on behalf of other persons the customs formalities required for goods to be taken across borders. 'Agents en douane' carry out those formalities on behalf of and in the name of other persons. 'Commissionnaires en douane' carry out the same formalities on behalf of others but in their own name.

5 The applicants, which are companies incorporated under Belgian law, claim that, as a result of the completion of the common market with effect from 1 January 1993, they suffered the loss of their activity as customs agents connected with intra-Community trade.

Procedure

6 Those were the circumstances under which the applicants brought these actions for damages by applications lodged at the Court Registry on 24 December 1997.

7 By orders of the President of the Fifth Chamber of the Court of First Instance, dated 18 June and 29 June 1998 respectively, the proceedings in, first, Cases T-620/97 to T-627/97 and, second, Cases T-611/97 and T-619/97 were stayed until the Court of Justice gave its decision terminating the related proceedings initiated by the appeal against the judgment of the Court of First Instance of 29 January 1998 in Case T-113/96 *Dubois et Fils* v *Council and Commission* [1998] ECR II-125. That judgment had dismissed an action for damages under

Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) seeking compensation from the Community for the damage allegedly suffered by a French customs agent by reason of the establishment of the internal market with effect from 1 January 1993 in accordance with the Single Act, and by reason of the resulting discontinuance of the activity of customs agent in the field of intra-Community trade.

8 By order of 8 July 1999 in Case C-95/98 P *Dubois et Fils* v *Council and Commission* [1999] ECR I-4835, the Court of Justice dismissed the appeal as being partly manifestly inadmissible and partly manifestly unfounded.

9 In view of that order, the Court of First Instance requested the parties to submit their observations on the further course of the proceedings.

10 Pursuant to Article 50 of the Rules of Procedure, the Court decided, after hearing the parties, to join Cases T-611/97 and T-619/97 to T-627/97 for the purpose of the further course of the proceedings.

Forms of order sought by the parties

11 The applicants claim that the Court should:

— resume the proceedings notwithstanding the order in the case of *Dubois et Fils* v *Council and Commission*, referred to above;

— declare the Council and the Commission liable under the second paragraph of Article 215 of the Treaty for the damage caused by the discontinuance of their activity as customs agents in the field of intra-Community trade with effect from 1 January 1993;

— order the Council and the Commission to pay them the following respective provisional amounts by way of compensation for such damage;

Transfluvia NV:	BEF 46 655 281
Wybo NV:	BEF 10 377 559
Noël Boone SPRL:	BEF 129 149 000
J. Grayet et G. Heidner SPRL:	BEF 65 959 104
Straps SA:	BEF 6 000 000
Ziegler SA:	BEF 421 838 849
Maison Parent SCRL:	BEF 13 794 714
Magemon SA:	BEF 10 200 000
Garsou-Angenot SPRL:	BEF 19 325 693
Somimpex SPRL:	BEF 11 750 008,

subject to increase or reduction in the course of the proceedings, together with interest at the annual rate of 8% from 1 January 1993 until payment:

— order the Council and the Commission to pay the costs.

12 The Council contends that the Court should:

— rule that there is no justification for continuing the proceedings following the order in the case of *Dubois et Fils* v *Council and Commission*, referred to above;

— rule that the case should not proceed to judgment;

— order the applicants to pay the costs.

13 The Commission contends that the Court should rule that there is no justification for continuing the proceedings following the order in the case of *Dubois et Fils* v *Council and Commission*, referred to above.

Law

14 Under Article 111 of the Rules of Procedure, where an action is manifestly inadmissible or manifestly lacking any foundation in law, the Court may, by reasoned order, without taking further steps in the proceedings, give a decision on the action. In the present case, the Court considers that it has sufficient information from the documents in the file to give a decision without taking further steps in the proceedings.

15 To begin with, it must be observed that, according to settled case-law (see, in particular, the judgment in Case C-146/91 *KYDEP* v *Council and Commission* [1994] ECR I-4199, paragraph 19), the Community's non-contractual liability under the second paragraph of Article 215 of the Treaty is dependent on the coincidence of a series of conditions as regards the unlawfulness of the acts alleged against the Community institutions, the fact of damage and the existence of a causal link between the conduct of the institution and the damage complained of. If one of those conditions is not satisfied, the application must be dismissed in its entirety without its being necessary to examine the other preconditions for such liability (see the judgments in *KYDEP* v *Council and Commission*, cited above, paragraph 81, and in Case C-104/97 P *Atlanta* v *Council and Commission* ECR I-6983, paragraph 65).

16 The applicants state that the damage for which they seek compensation consists in the discontinuance, with effect from 1 January 1993, of their activities as customs agents in the field of intra-Community trade. They claim that the damage arises, first, from the defendants' adoption of measures of secondary law which had the effect of making the economic activity of customs agents redundant and, second, from the absence of adequate compensation and support measures.

17 In this connection, it must be observed that the alleged damage, that is to say the termination of the applicants' activity as customs agents within the Community, is the result of the abolition of customs and tax frontiers between Member States, the direct and determining cause of which is neither the adoption of measures of secondary legislation nor the absence of adequate compensation and support measures, but Article 13 of the Single Act, which inserted in the EEC Treaty an Article 8a, which later became Article 7a, which provides in particular that 'the internal market shall comprise an area without internal frontiers'. The Single Act was adopted by the Member States. It is not, therefore, attributable to the defendants and consequently cannot give rise to non-contractual liability on the part of the Community (see the order in *Dubois et Fils* v *Council and Commission*, cited above, paragraphs 18 to 20).

18 With regard to the alleged absence of adequate compensation and support measures, it must be added, as a secondary point, that omissions by the Community institutions can give rise to liability on the part of the Community only when the institutions have infringed a legal obligation to act under a provision of Community law (see the judgment in *KYDEP* v *Council and Commission*, cited above, paragraph 58). The question arises, therefore, of the legal basis upon which the Community is said to have had an obligation to adopt the measures referred to by the applicants, and to what extent it should have done so. First, there is no obligation to do so under the Single Act itself or under any other procedure of Community law. Nor, second, is there any need, in the present case, to consider whether there is any general principle of law by virtue of which the Community would be obliged to compensate a person who has been subject to a measure expropriating his property or restricting his freedom to enjoy his right to property and breach of which would entitle him to bring an action on the basis of the second paragraph of Article 215 of the Treaty. Such an obligation to grant compensation would be conceivable only in relation to acts emanating from the Community institutions themselves, since the Community cannot be obliged to make good damage caused by acts which cannot be imputed to it. As explained above, however, the demise of the profession of intra-Community customs agent cannot be attributed to the Community. Consequently, the conditions for liability on the part of the Community are not satisfied. However, the possibility cannot be excluded that an obligation to provide compensation might arise under the domestic law of the Member State on whose territory the intra-Community customs agent carried out his activities (see the judgment in *Dubois et Fils* v *Council and Commission*, cited above, paragraph 57).

19 In their observations following the order in the case of *Dubois et Fils* v *Council and Commission*, cited above, the applicants asked that the proceedings be resumed so that they could put forward a plea in law concerning breach of the principle of proportionality.

20 The Court finds, however, that this plea in law did not appear in the applications indicating proceedings. As Article 48(2) of the Rules of Procedure provides that no new plea in law may be introduced in the course of proceedings unless it is based on matters of law or of fact which come to light in the course of the procedure and as the plea in question is not based on a matter which meets this criterion, the plea must be dismissed as manifestly inadmissible. In any case, the plea is irrelevant because the damage in question, that is to say the discontinuance of the activity of customs agent in the field of intra-Community trade, is not, as found above, attributable to the defendants and therefore they cannot be required to pay compensation.

21 Consequently the applications must be dismissed as manifestly unfounded in law.

Costs

22 Under Article 87(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.

23 Since the applicants are unsuccessful, they must be ordered to bear their own costs and pay those of the Council, as applied for by the latter. The Commission shall bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **Cases T-611/97 and T-619/97 to T-627/97 are joined for the purposes of the further course of the proceedings.**

2. **The applications are dismissed as manifestly unfounded in law.**

3. **The applicants shall bear their own costs and pay those of the Council.**

4. **The Commission shall bear its own costs.**

Luxembourg, 16 June 2000.

H. Jung

Registrar

K. Lenaerts

President