ORDER OF THE COURT OF FIRST INSTANCE (Third Chamber)
13 December 2002 *

In Case T-81/01,

Marc Oscar Henri Verdoodt and **Ingrid Edmondus Malvina Rademakers-Verdoodt**, residing in Schoten (Belgium), represented by M. van Dam, lawyer,

applicants,

v

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

defendant,

APPLICATION for annulment of Commission Decision SG (2001) D/286098 of 9 February 2001 whereby the Commission rejected the applicants' request that the vessel *Arizona* be exempted from the scope of Council Regulation (EC)

* Language of the case: Dutch.

No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ 1999 L 90, p. 1),

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

1 By application lodged at the Court Registry on 6 April 2001, Mr Verdoodt and Mrs Rademakers-Verdoodt sought annulment of Commission Decision SG (2001) D/286098 of 9 February 2001 whereby the Commission rejected the applicants' request that the vessel *Arizona* be exempted from the scope of Council Regulation (EC) No 718/1999 of 29 March 1999 on a Community-fleet capacity policy to promote inland waterway transport (OJ 1999 L 90, p. 1), hereinafter 'the contested decision'.

2 By decision of 18 July 2002, the Commission withdrew the contested decision and granted the exemption sought on the basis of Article 4(6) of Regulation No 718/1999.

3 On 30 July 2002, the Commission made an application for an order that there was no need to adjudicate on the case. On 5 September 2002, the applicants submitted their observations in that regard indicating, that their action had become devoid of purpose.

4 In view of the foregoing, the Court of First Instance holds that the action has become devoid of purpose and that there is no need to adjudicate thereon.

Costs

5 In its application for an order that there is no need to adjudicate, the defendant requested the Court to take into account, in the order for costs, that the adoption of the decision of 18 July 2002 was based on a new fact, discovered in the course of the judicial proceedings, namely that the vessel *Arizona* was not used for the transport of ordinary gypsum, but for the transport of calcined gypsum and could therefore be regarded as a specialised vessel within the meaning of Article 4(6) of Regulation No 718/1999. That fact had not been mentioned in the request for exemption which led initially to the contested decision.

6 The applicants dispute the defendant's argument and draw attention to the fact that, in Annex 2 to the initial request for exemption, they had already provided a technical specification of the gypsum in question (in particular, as regards the

density of the gypsum which would differ according to whether it was ordinary gypsum or calcined gypsum). The applicants submit that, while it is true that they always used, in their request for exemption, the term 'gypsum' and not the term 'calcined gypsum', it is none the less the case that the technical specification annexed to the request for exemption showed clearly and with all necessary detail what sort of gypsum was involved. Consequently, they submit that the defendant should be ordered to pay the costs.

7 Under Article 87(6) of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the Court of First Instance.

8 Following a written question from the Court, the defendant confirmed that the technical specification provided by the applicants and annexed to their request for exemption matched that of calcined gypsum and not that of ordinary gypsum. Consequently, in view of the defendant's obligation in a case such as this to consider carefully all the relevant evidence therein prior to adopting a decision with regard thereto, the Commission should have been in a position to understand, on the basis of that technical specification provided by the applicants, that the vessel *Arizona* was used for the transport of calcined gypsum.

9 Therefore, contrary to the defendant's submission, its decision of 18 July 2002 was not based on a new fact.

10 In those circumstances, it is right that the defendant should pay all the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Third Chamber)

hereby orders:

1. **There is no need to adjudicate on the action.**

2. **The Commission must pay the costs.**

Luxembourg, 13 December 2002.

H. Jung
Registrar

K. Lenaerts
President