JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
1 October 1998 *

In Case T-155/97,

Natural van Dam AG, a company incorporated under Swiss law, established in Basle, Switzerland,

Danser Container Line BV, a company incorporated under Dutch law, established at Sliedrecht, Netherlands,

represented by Marius J. van Dam, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of Fernand Entringer, 34A Rue Philippe II,

applicants,

v

Commission of the European Communities, represented initially by Berend-Jan Drijber, and subsequently by Laura Pignataro and Maurits Lugard, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Dutch.

APPLICATION for annulment of Commission Decision SG(97) D/1862 of 7 March 1997 refusing to grant the applicants, in respect of three vessels which they planned to build, the exemption applied for under Article 8(3)(c) of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25),

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

composed of: P. Lindh, President, K. Lenaerts and J. D. Cooke, Judges,

Registrar: A. Mair, Administrator,

having regard to the written procedure and further to the hearing on 14 May 1998,

gives the following

Judgment

Facts

1 The aim of Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ 1989 L 116, p. 25; 'the Regulation') is to reduce the carrying overcapacity manifest in all sectors of the inland waterway transport market. To that end, provision is made for a scrapping scheme

coordinated at Community level, together with supporting measures. Under the 'old for new' rule, the owner of a new vessel must, if it is to be brought into service, scrap a tonnage of carrying capacity equivalent to the new vessel without receiving a scrapping premium. Where the owner scraps no vessel, he must pay a special contribution into the Fund covering his new vessel, established for that purpose (Article 8(1) of the Regulation).

2 Article 8(3)(c) of the Regulation makes provision for 'specialised vessels' to be exempted from that general scheme.

3 On 7 December 1990, after consulting the Member States and organisations representing the inland waterway sector, the Commission drew up a note laying down general criteria for the appraisal of applications for the exemption of specialised vessels from the Regulation ('the explanatory note').

4 That note states that an exemption may be granted only if the three following conditions are concurrently satisfied:

— the vessel must be specially designed to carry a specified category of goods and it must be unsuitable on technical grounds (without undergoing structural conversion) for the carriage of other goods;

— carriage of the goods in question must be possible or permissible only on vessels which are specially fitted;

— the owner of the specialised vessel must give a written undertaking that no other goods will be carried by his vessel so long as the 'old for new' rule applies and he must declare that he is prepared to pay the special 'old for new'

contribution if, for whatever reason, he wishes to use his vessel to carry other goods while the above rule is in force.

5 Natural van Dam AG and Danser Container Line BV ('the applicants'), which operate a container line on the Rhine, planned to have three specialised vessels built for the carriage of containerised dangerous substances, under either the Swiss flag or that of a Member State.

6 On 5 July 1996 they applied to the Commission for exemption under Article 8(3)(c) of the Regulation.

7 In support of their application, they emphasised the advantages, both for the inland waterway transport market and for general transport policy — under which it is sought to alleviate road-transport congestion — of developing the waterway transport of dangerous substances by specialised vessels which are not subject to bulking restrictions. They maintained that payment of the contribution provided for by the Regulation would render their project no longer economically or commercially viable and would consequently bring about a result quite opposite to that anticipated by the general transport policy.

8 The applicants also listed the technical specifications, designed to meet safety requirements, of the vessels in question, drawing attention to the financial commitment which these entail. In their view, the significance of the investment justifies exemption from payment of the 'old for new' contribution.

9 Lastly, the applicants submitted that these specialised vessels would remain in service for the carriage of other containerised cargo, which is normally transported by conventional vessels.

10 On 25 October 1996 the Member States and the organisations representing inland waterway navigation were consulted in accordance with the procedure provided for in Article 8(3)(c) of the Regulation.

11 Following those consultations, the Commission informed the applicants by letter of 7 March 1997 (SG(97) D/1862; 'the contested decision') of its refusal to grant the exemption sought.

12 Referring to the conditions set out in its explanatory note, the Commission pointed out, first, that the three vessels in question were technically suited for the carriage of goods other than dangerous substances and, second, that such substances could be transported by conventional vessels meeting the technical specifications laid down in the regulation on the carriage of dangerous substances on the Rhine ('the ADNR').

13 The Commission concluded that the effect of bringing the vessels in question into service would be to increase the capacity of the fleet to which the structural improvement measures apply. Those vessels could not therefore be regarded as 'specialised' within the meaning of Article 8(3)(c) of the Regulation.

Procedure and forms of order sought

14 By application lodged at the Registry of the Court of First Instance on 7 May 1997, the applicants brought an action for annulment of the contested decision.

15 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Fourth Chamber) decided to open the oral procedure without ordering a preparatory inquiry. However, pursuant to Article 64 of the Rules of Procedure, the applicants were asked to provide the Court with a copy of the ADNR. They complied with that request.

16 The parties presented oral argument and replied to questions from the Court at the hearing on 14 May 1998.

17 The applicants claim that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

18 The defendant contends that the Court should:

— dismiss the action;

— order the applicants to pay the costs.

Substance

19 In support of their action, the applicants put forward numerous arguments, which may be grouped under two pleas in law: (i) infringement of Regulation No 1101/89 and (ii) breach of the obligation to state reasons.

The first plea in law: infringement of Regulation No 1101/89

Arguments of the parties

20 The applicants maintain that their vessels are specialised within the meaning of Article 8(3)(c) of the Regulation and therefore qualify for exemption from the 'old for new' rule.

21 In support of that submission, the applicants put forward four arguments.

22 First, according to the applicants, the Commission has failed in the contested decision to take a correct approach in its examination of the objective pursued by the Regulation which, far from seeking to curb the diversion of cargo from the roads to the inland waterways, seeks to develop that alternative. In support of that assertion, the applicants rely on the second recital in the preamble to the Regulation, which states that the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway. The applicants argue that the three vessels would have contributed to the creation of a transport sector covering specific dangerous substances which, being new, would not have suffered from the overcapacity which the Regulation aims to reduce. They conclude that, on the

basis of a purposive construction of Article 8(3)(c) of the Regulation, their vessels should have qualified for exemption.

23 Secondly, the applicants dispute the Commission's argument that their vessels' capability of carrying other cargo precludes them from being classified as specialised vessels. According to the applicants, that capability would lead to the development of a new branch of the river transport market — the transport of containerised dangerous substances — which would not suffer from structural overcapacity and would enable inland waterway transport to capture a new share of the general transport market.

24 Thirdly, the applicants challenge the Commission's assertion that the three vessels would contribute to increasing the capacity of the fleet. On that point, they reiterate their arguments concerning the Regulation's objective, pointing out that the three vessels would have formed the basis for a new logistical concept, from which a specific market in container transport would arise. A new market of that nature would ensure the future of waterway transport, providing a substitute for the road transport currently used. The applicants add that, contrary to the Commission's contentions, their vessels would therefore have provided new competitive capacity which would not increase the capacity of their fleets in other sectors.

25 Fourthly, the applicants maintain that their vessels' technical characteristics and the fact that they complied with the ADNR (Annex B1, point 10111 et seq., and point 10400 et seq. to the ADNR) clearly revealed their specialised nature. It is clear from the ADNR that, in the present case, the materials at issue are not dangerous substances in general, but specific dangerous substances which require for their transport vessels custom-built to particular technical specifications.

26 Thus the applicants' vessels belong to a special category under the ADNR. The applicants dispute the Commission's assertion that the special character of vessels is not an implied condition for applying or complying with the ADNR, and maintain that in order to make the contemplated carriage of specific dangerous substances on inland waters commercially viable, special techniques are used in the construction of the vessels in question which are not applied to conventional vessels. Furthermore, the specialised nature of the three vessels concerned is characterised both by those special construction techniques and by the fact that the bulking prohibitions laid down in the ADNR do not apply to them.

27 The Commission contends that none of those arguments is relevant since they all run counter to the objective set by the Regulation which is to reduce structural overcapacity in the inland waterway transport sector. The vessels in question do not meet any of the three concurrent conditions for exemption laid down in the explanatory note. The Commission points in particular to the fact that the vessels were to be used for the transport of several types of goods. Lastly, according to the Commission, it cannot follow from the fact that vessels comply with the ADNR that they are specialised vessels within the meaning of Article 8(3)(c) of the Regulation, since the ADNR applies across the board to all vessels used for the transport of dangerous substances.

Findings of the Court

28 Article 1 of Regulation No 1101/89 provides:

'1. Inland waterway vessels used to carry goods between two or more points by inland waterway in the Member States shall be subject to measures for structural improvements in inland waterway transport under the conditions laid down in this Regulation.

2. The measures referred to in paragraph 1 shall comprise:

— the reduction of structural overcapacity by means of scrapping schemes coordinated at Community level,

— supporting measures to avoid aggravation of existing overcapacity or the emergence of further overcapacity'.

29 That provision must be construed in the light of the second and sixth recitals in the preamble to the Regulation, according to which:

'[w]hereas forecasts show no sign of sufficient increase in demand in this sector to absorb this overcapacity in the next few years; whereas in fact the share of the total transport market taken by inland waterway transport is continuing to decline as a result of progressive changes in the basic industries supplied mainly by inland waterway;

[...]

[w]hereas overcapacity generally affects every sector of the inland waterway transport market; whereas the measures to be adopted must, therefore, be generally applicable and cover all cargo vessels and pusher craft; [...]'.

30 Article 8(3)(c) of the Regulation provides:

'The Commission may, after consulting the Member States and the organisations representing inland waterway transport at Community level, exempt specialised vessels from the scope of paragraph 1'.

31 Since Article 8(3)(c) provides for a derogation from the rules generally applicable, it must be narrowly construed, having regard to the aim of the Regulation.

32 The applicants maintain that they qualify for exemption because the Regulation does not preclude the bringing into service of new vessels operating in a new branch of the inland waterway transport market, namely the carriage of containerised dangerous substances. That mode of transport constitutes a new form of supply which does not aggravate the existing overcapacity in the inland waterway market.

33 However, the applicants have confirmed throughout the proceedings that the vessels in question were intended for the carriage not only of dangerous substances, but also of other goods (see paragraph 9 above). At the hearing, the applicants even explained that they intended to transport other goods because the transport of containerised dangerous substances alone is not economically viable.

34 It is therefore clear from the explanations given by the applicants that their vessels would have contributed to the increase in carrying capacity of the fleets used for the transport of other goods, a sector which already suffers from overcapacity. Consequently, the bringing of those vessels into service would have run counter to the objectives of the Regulation.

35 In that connection, it is irrelevant that the vessels in question operate in a separate branch of the inland waterways transport market, namely the container transport market. For the new vessels to qualify for exemption under Article 8(3)(c) of the Regulation, having regard to the scheme and purpose of that piece of legislation, they must not contribute to the increase in carrying capacity for goods which may be transported by other vessels already operating on the inland waterways market. The Court must therefore consider that market as a whole in order to determine

whether the bringing into service of a new vessel aggravates existing overcapacity in the sector.

36 The applicants' argument that their vessels would have helped to alleviate congestion of road transport and to increase the competitive potential of the inland waterways does nothing to invalidate the conclusion that the bringing of the applicants' vessels into service would have run counter to the Regulation's objective. It is clear from the applicants' explanations during the written procedure and, in particular, from their statement that their vessels would have been able to transport other goods covered by the inland waterways market (see paragraphs 33 and 34 above), that their plan to bring those vessels into service was not for the sole purpose of alleviating congestion of road transport. In those circumstances, decongestion of road transport, although a legitimate objective in itself, could not justify an operation which would have the effect of aggravating existing overcapacity.

37 Lastly, as regards the applicants' arguments to the effect that the fact that the vessels in question comply with the requirements of the ADNR means that they are specialised vessels, it should be noted that the safety rules and technical conditions laid down by the ADNR are binding to a greater or lesser extent, depending on the nature and physical properties of the substances carried, on all vessels to be used for the transport of dangerous substances. For the purposes of the ADNR, the expression 'dangerous substances' covers all objects and materials the lawful transport of which is subject to certain conditions.

38 Consequently, notwithstanding the fact that the construction of the vessels in question would have satisfied certain strict requirements laid down in the ADNR, they were not specialised vessels within the meaning of Article 8(3)(c) of the Regulation.

39 Their compliance with the requirements laid down by the ADNR is therefore irrelevant to the outcome of the present dispute.

40 Furthermore, it is clear from the explanations supplied by the applicants that compliance with the strict technical requirements laid down by the ADNR would have enabled the vessels in question to escape the bulking prohibitions. Those vessels would therefore have been authorised to carry several types of goods at the same time, so that they would have been liable to aggravate the existing overcapacity in the river transport sector.

41 It follows that the Commission quite legitimately took the view that the vessels in question did not qualify for exemption, in view particularly of the applicants' intention to use them to transport goods other than those for which they had been specially designed.

42 It follows from all the above considerations that the first plea in law must be rejected.

The second plea in law: breach of the obligation to state reasons

Arguments of the parties

43 The applicants criticise the Commission's examination of the vessels' technical characteristics on the ground that it is not exhaustive. In taking the view that the bringing of the three vessels into service would contribute to the increase in the fleet's carrying capacity, the Commission did not take into account the benefits to inland waterway transport of capturing a new market hitherto held by road transport.

44 Furthermore, the Commission did not mention the views of the Member States or the organisations concerned. Furthermore, according to the applicants, the facts on which the Member States and the said organisations based their appraisal were inaccurate. Contrary to the Commission's assertion, the dangerous substances concerned cannot be transported by conventional vessels which are not specially fitted.

45 The Commission disputes those arguments. In particular, it maintains that the refusal to grant the applicants an exemption is justified solely on the ground that the three vessels would have been technically suited to the transport of other goods, a point expressly made in the contested decision.

46 Furthermore, the opinions of the Member States and the organisations concerned — which in any case are not binding — amply support the contested decision.

Findings of the Court

47 The purpose of the obligation to state reasons for a decision affecting a person is to enable the Community judicature to exercise its power of review as to the legality of the decision and to enable the person concerned to ascertain the matters justifying the measure adopted, so that he can defend his rights and verify whether the decision is well founded (see, in particular, Case 8/83 *Bertoli* v *Commission* [1984] ECR 1649, paragraph 12; Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraph 42; and Case T-7/92 *Asia Motor France and Others* v *Commission* [1993] ECR II-669, paragraph 30).

48 Thus the Commission is not under a duty, when stating reasons for its decisions, to take a position on every argument relied upon by the parties concerned in support of their case. It is sufficient to set out the essential facts and legal considerations underpinning the decision.

49 In the contested decision the Commission referred to the vessels' principal characteristics and to their technical capability of transporting other goods, facts which in the Commission's view justify the decision in the light of the explanatory note.

50 The Commission therefore gave sufficient reasons in law for its refusal to classify the vessels in question as specialised vessels within the meaning of Article 8(3)(c) of the Regulation.

51 Furthermore, the applicants cannot reproach the Commission for not indicating the views of the Member States or the organisations concerned. It is clear from Article 8(3)(c) of the Regulation and from the thirteenth recital in the preamble thereto that the role of the Member States and the organisations representing inland waterways transport is consultative. Consequently, the Commission is not required to adopt the position taken by them. Since their point of view carries the weight of an opinion, the fact that the Commission takes a different approach cannot cast doubt on the validity of its decision. That being so, the Commission was not required to give the applicants details of the point of view expressed by the Member States or the organisations concerned.

52 It follows that the contested decision is not vitiated by any inadequacy in the statement of reasons.

53 The second plea in law must therefore be rejected.

54 It follows from all the above considerations that the application must be dismissed in its entirety.

Costs

55 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. Since the applicants have been unsuccessful, they must be ordered to pay the costs, as applied for by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

1. Dismisses the application;

2. Orders the applicants to pay the costs.

Lindh Lenaerts Cooke

Delivered in open court in Luxembourg on 1 October 1998.

H. Jung P. Lindh

Registrar President