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Press and Information

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Judgment of the Court of First Instance in Case T-348/03

*Koninklijke Friesland Foods NV, formerly Friesland Coberco Dairy Foods Holding NV v
Commission of the European Communities*

COURT OF FIRST INSTANCE PARTLY ANNULS THE COMMISSION'S DECISION ON NETHERLANDS SCHEME OF STATE AID FOR INTERNATIONAL FINANCING ACTIVITIES

*The Commission infringed the principles of protection of legitimate expectations and of equal
treatment in relation to certain operators*

The Netherlands Law on Corporation Tax¹ provides for a special scheme in respect of the international financing activities of companies belonging to a group (GFA scheme). Companies whose eligibility for the scheme is approved by the Netherlands tax authority can obtain tax benefits to cover the possible risks associated with those financing activities.

In December 2000, Koninklijke Friesland Foods lodged a request with the Netherlands tax authority for that company to be able to benefit from the GFA scheme with effect from 1 January 2000.

On 11 July 2001, the Commission initiated a formal procedure² to investigate the compatibility of the GFA scheme with the common market. On 17 February 2003, the Commission declared that the GFA scheme is incompatible with the common market and decided that it should be gradually terminated by 31 December 2010 in such a way that the companies covered by the scheme as at the date on which the formal investigation procedure was initiated could still benefit from it until the end of the 10-year period granted to them by the Netherlands tax authority.

In August 2003, the Netherlands tax authority rejected the GFA request by Koninklijke Friesland Foods on the ground that it was excluded from the transitional provisions of the Commission's Decision declaring the GFA scheme to be incompatible with the common market.

¹ Law of 1969, as amended by the Law of 13 December 1996 to prevent the erosion of the tax base and to strengthen the fiscal infrastructure.

² Procedure laid down in Article 88(2) EC.

Koninklijke Friesland Foods brought an action before the Court of First Instance of the European Communities for annulment of the Commission's Decision concerning the GFA scheme on the basis that the transitional provisions of the Decision do not apply to operators who had lodged a request that had not yet been determined as at the date on which the investigation procedure was initiated. The company claims, in particular, that its exclusion from the transitional scheme is an infringement of the principle of protection of legitimate expectations and of the principle of equal treatment.

The Court dismisses, first of all, the Commission's pleas of inadmissibility, finding, first, that the applicant has a proven legal interest in bringing proceedings since, if the action were to succeed, the applicant could require its GFA request to be considered by the Netherlands authorities and, second, that the applicant is part of a closed class of operators whose GFA request was pending even before the scheme was closed to new applicants.

As to the merits, the Court goes on to refer to the contested decision in which it is accepted that a legitimate expectation on the part of the beneficiaries does exist as a result of the fact that the Commission had previously declared the Belgian coordination centres scheme, similar to the GFA scheme, to be compatible with the common market. The Court holds that, by that decision, the Commission raised an expectation that the GFA scheme was not prohibited aid.

The Court notes that even if it were the case that the initiation of the formal investigation procedure was capable of undermining the applicant's expectations, the applicant was entitled to expect that the contested decision would give it the time necessary to address that change in approach.

The Court considers that Koninklijke Friesland Foods was therefore justified in having a legitimate expectation that a reasonable transitional period would be granted to enable it to adjust to the consequences of the contested decision. Accordingly, the Court finds that, by failing to grant Koninklijke Friesland Foods such a transitional period, **the Commission has infringed the principle of protection of legitimate expectations.**

Finally, the Court holds that those companies which had lodged a request for application of the GFA scheme before 11 July 2001 but whose request had not yet been determined, and those which had already been admitted to the GFA scheme on that date, were treated differently in the contested decision. Each of those companies was entitled to a legitimate expectation that a reasonable transitional period would be granted. **The Commission has therefore also infringed the general principle of equal treatment.**

Accordingly, **the Court of First Instance annuls the contested decision insofar as it excludes from the transitional scheme which it lays down those operators who, as at the date on which the formal investigation procedure was initiated, had lodged a request with the Netherlands tax authority for application of the GFA scheme but whose request had not yet been determined.**

REMINDER: An appeal, limited to points of law only, may be brought before the Court of Justice of the European Communities against a decision of the Court of First Instance, within two months of its notification.

Unofficial document for media use, not binding on the Court of First Instance.

Languages available: EN FR NL

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=T-348/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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