COMMISSION DECISION

of 31 October 2000

concerning the support given by the Netherlands to NS Cargo for a shuttle link between Rotterdam and Prague

(notified under document number C(2000) 3270)

(Only the Dutch text is authentic)

(Text with EEA relevance)

(2001/103/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 88(2)(1) thereof,

Having regard to the Agreement concerning the European Economic Area, and in particular Article 62(1)(a) thereof,

Whereas, in accordance with said Articles, those concerned have been called upon to comment [1],

Whereas:

(1) In its letter of 28 April 1995 the Netherlands informed the Commission of a single payment of investment support to NS Cargo for combined transport equipment amounting to NLG 500 000 that were to be used for a shuttle link involving combined transport between Rotterdam and Prague. That notification received the registration N 484/95.

(2) In its decision of 20 September 1995 [2], the Commission decided to raise no objection to the action of which it had been notified and which it considered to comply with Article 3(1)(e) of Council Regulation (EEC) No 1107/70 [3]. The support was paid to NS Cargo on 8 November 1995. In their letter of 13 May 1996 the Hamburg-based terminal operated HHLA, and others, appealed to the Court of First Instance against the Commission's decision (Case T 69/96). That Court has so far not delivered any final ruling on this matter.

(3) As part of preparations for its defence in this case before the Court of First Instance, the Dutch Government provided the Commission with information which raised doubts concerning the type of support. The new information, indeed, seemed to indicate that the support to NS Cargo was intended not for investment purposes, but in order to cover the operating costs of the shuttle link. As a rule operating support is not permitted under Community law. On 21 April 1999 the Commission then decided to initiate the procedure provided for by Article 88(2) of the EC Treaty (Case C 30/99). The Dutch Government was informed of that decision by letter SG(99)/D 3169 of 4 May 1999, which requested the Netherlands to comment within one month of the letter's being posted.

(4) In its letter of 29 June 1999 the Dutch Government stated that it would ask the recipient of the support provided, NS Cargo, to repay the amount involved and ask the Commission to terminate the procedure.

(5) The Commission's letter of 4 May 1999 was published in the *Official Journal of the European Communities*, for comment, on 24 July 1999 [4]. Two terminal operators, a port authority, a chamber of commerce and a national government had reacted within the deadline mentioned in the announcement.

(6) The Commission's Directorate-General for Transport passed on its comments to the Dutch Government in its letter of 6 September 1999. It was also stated in the Commission's letter that terminating the procedure could only be contemplated if the Dutch Government furnished proof that the amount involved in the support had, in fact, been reimbursed.

(7) In its letter of 20 July 2000 the Dutch Government confirmed that NS Cargo had repaid that amount on 22 May 2000, and also furnished proof that the subsidy, including the interest due, together totalling NLG 636 536,50 had been transferred to the account of the Dutch Ministry of Transport, Public Works and Water Management,

[1] OJ C 213, 24.7.1999, p. 23.
[2] OJ C 391, 28.12.1996, p. 15.
[3] OJ L 130, 15.6.1970, p. 1.
[4] See footnote 1.

HAS DECIDED AS FOLLOWS:

Article 1

The Commission shall terminate the procedure introduced on 21 April 1999 since there is no longer any reason to continue this.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 31 October 2000.

For the Commission
Loyola DE PALACIO
Vice-President