# COMMISSION

## COMMISSION DECISION
## of 29 October 2003
## on measures in favour of non-profit harbours for recreational crafts, the Netherlands

*(notified under document number C(2003) 3890)*

**(Only the Dutch text is authentic)**

**(Text with EEA relevance)**

(2004/114/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Having called on interested parties to submit their comments pursuant to the provisions cited above [1] and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) By letter dated 1 March 2001, a complaint was filed with the Commission on the possible distortion of competition between marinas in the Netherlands. Dutch marinas are operated by both non-profit making organisations (usually sailing clubs) and private undertakings. According to the complainant several non-profit making marinas had received State aid to build or maintain their moorings. This enables these marinas, for instance, to offer a lower rental price of the moorings for tourists who are passing by with their recreational craft.

(2) At first the complaint was focused on a single project in Enkhuizen called Gependam-project, where, according to the complainant, the local sailing club had received substantial aid in the form of an excessively low purchase price for an aquatic area. The Commission asked the Dutch authorities questions by letter dated 11 April 2001 (D/51551) and the Dutch authorities replied by letter dated 24 May 2001.

(3) After being informed of this correspondence, the complainant sent additional information on this case and six other cases by various letters during the course of 2001. By letter dated 11 February 2002 (D/50569), the Commission asked the Dutch authorities for detailed information on all seven cases.

(4) At the request of the Dutch authorities, a bilateral meeting between the services of the Commission and the Dutch authorities took place on 3 May 2002. The Dutch authorities sent answers to the questions and additional information (reports) by letters dated 10 July 2002 and 2 August 2002.

(5) On the basis of the information received, the Commission drafted an overview of the seven cases, which was sent to the complainant by letter dated 8 August 2002. This overview distinguished three cases for which it could not be excluded whether State aid within the meaning of Article 87(1) was at stake, and four cases for which the Commission's preliminary opinion was that no State aid within the meaning of Article 87(1) was at stake. By letter dated 3 September 2002 the complainant agreed on this overview and provided additional information on the three remaining cases.

(6) By letter dated 5 February 2003, the Commission informed the Netherlands of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of these three remaining cases. By letter dated 22 April 2003, the Dutch authorities submitted their comments together with further information.

(7) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* on 22 March 2003 [2]. The Commission called on interested parties to submit their comments.

[1] OJ C 69, 22.3.2003, p. 4.

[2] OJ C 69, 22.3.2003, p. 4.

(8) The Commission received a reaction from the complainant by letter dated 16 April 2003, with no new information or relevant additional facts. The Commission did not receive any reaction from third parties on the opening of the formal investigation procedure.

## II. DETAILED DESCRIPTION OF THE ALLEGED AID MEASURES

(9) Three marinas, Enkhuizen, Nijkerk and Wieringermeer, were subject to further investigation by the Commission.

### A. Enkhuizen

(10) The Enkhuizen municipality decided, in 1998, to build a new harbour for large riverboats and tourist vessels. Because of the construction of this new harbour, the existing entrance of the sailing club KNZ&RV to the river was to be closed. In order to compensate for the closure of the entrance to the river the municipality took three measures:

(a) the municipality provided a new opening to the river for KNZ&RV at a nearby location;

(b) according to the municipality, the new opening forced passing boats to make a detour in order to reach the existing marina of KNZ&RV. According to an independent report (ordered by the municipality), the detour will lead to a 10 % decrease in the number of daily passing boats in the next 13 years. The total loss of revenue is calculated at EUR 80 700. To compensate for this loss, the municipality dredged part of the water close to the existing marina, in order to enable the club to create 105 moorings at its own expense at a later stage. The Dutch authorities have provided an independent report in which the costs of the dredging of the future marina was compared to the costs for compensation of the loss of revenue due to the detour for passing boats. The total cost of the dredging was EUR 96 655, which is approximately a similar sum of money as that of the loss of revenue due to the detour;

(c) finally, the sailing club KNZ&RV was offered the opportunity to purchase the dredged area of water (26 000 $m^2$) from the municipality at the same price per $m^2$ as the municipality had paid for the same area of water in 1998 to the national authorities. This price per $m^2$ was determined by an independent appraisal report dated 30 March 1998, in which the appraiser concluded that this area of water (including a large part of the lake) had no economic value. According to the Dutch authorities, in that case, Dutch appraisers commonly use a basic value per $m^2$, i.e. EUR 0,45 per $m^2$. The total area of water acquired by the sailing club was 26 000 $m^2$, the total purchase price was thus EUR 11 700 (26 000 × 0,45).

(11) According to the complainant, when an area of water in this locality is destined to become a 'marina', the average purchase price of this type of aquatic area is approximately EUR 15 per $m^2$. As the area of water was deliberately sold to the sailing club in order to create future moorings, the owner of the water (the municipality) was aware of its future destination, hence the municipality should have been aware of its economic value. According to the complainant this area of water has a value of EUR 390 000 (26 000 × 15).

### B. Nijkerk

(12) The Nijkerk municipality was the owner of a local marina, which was built in 1966. The marina was privatised in 2000 and sold to the tenant, the local sailing club De Zuidwal. In 1998 the marina was independently appraised at EUR 417 477. This was the appraisal price for an unpolluted marina, with maintenance in good order and, when rented out, the marina without a tenant was appraised at EUR 521 847.

(13) In practice however, the marina was polluted and suffered from a considerable lack of maintenance. In the purchase agreement between the municipality and the club dated 27 March 2000, the sailing club agreed on taking on board all costs for purification of the water and outstanding maintenance of the harbour facilities. The municipality estimated the costs for outstanding maintenance in 2000 at EUR 272 268 and that of purification at EUR 145 201. These estimations were carried out by employees of the municipality, based on their practical experience. The municipality deducted these costs from the appraised value of the marina, resulting in a purchase price of EUR 0,45 (one guilder) for the whole marina.

(14) After the Commission had asked questions on this matter (by letter dated 11 February 2002), the Dutch authorities gave instructions for a new independent appraisal report on the costs for outstanding maintenance and purification. In the report dated 22 July 2002, the costs for outstanding maintenance were appraised at EUR 200 000 and those of purification were appraised at EUR 600 000.

C. **Wieringermeer**

(15) The Wieringermeer municipality sold an area of water and land in 2000 to the company Jachtwerf Jongert. By letter dated 10 July 2002 the Dutch authorities gave the following overview of the appraised value of the land and water concerned and actual purchase price:

| | |
|---|---|
| Appraised value land: | EUR 5 719 854 (84 028 $m^2$ at EUR 64,07/$m^2$) |
| Appraised value water: | + EUR 105 211 (69 031 $m^2$ at 1,51/$m^2$) |
| Total appraised value: | EUR 5 825 065 |
| Total purchase price: | EUR 7 636 147 |
| Difference purchase price/appraisal: | EUR 1 811 082 |

III. **GROUNDS FOR INITIATING THE PROCEDURE**

(16) The Commission considers marina activities as a regular economic activity in the tourism sector. In Commission decision of 7 January 2000 (N 582/99 — Italy, 'Marina di Stabia SpA' ([1])), the Commission concluded that in the circumstances of that case, the public aid to that marina strengthens its position compared with other marinas competing in other Member States.

(17) The alleged financial support to marinas at hand is funded by State resources. Thus, two out of four criteria for State aid are already met, i.e. State resources and selectivity.

(18) As regards the notion of advantage, the Commission stated as follows in its decision to initiate the procedure.

A. **Enkhuizen**

(19) The Commission argued that the construction of the new opening is a matter of compensation of infrastructure by the municipality because of the closure of the previous entrance. This measure does not constitute State aid within the meaning of Article 87(1) of the EC Treaty. Also, the Commission considered the dredging as a compensating measure for the calculated loss of revenue, which was caused by the closure of the previous entrance, carried out by the local authorities. Therefore, neither does this measure constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(20) Nevertheless, in its decision to initiate the procedure the Commission expressed doubts on the State aid element in the sale of this area of water by the municipality to the sailing club. On the basis of the information provided by the Dutch authorities and the complainant, the Commission was not able to exclude a possible State aid element, considering the price paid (EUR 11 700) and the alleged value of the area (EUR 390 000). The difference between these prices is EUR 378 300, which is above the threshold laid down in Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid ([2]). The benefit for the sailing club KNZ&RV was therefore estimated at EUR 378 300.

B. **Nijkerk**

(21) As regards the outstanding maintenance, the Commission agreed with the independent appraisal report and the discount of EUR 200 000 on the appraised value of the marina of 1998.

(22) As regards the costs for purification, the Dutch authorities divided these costs to clean up the nearby river (Arkervaart) and the marina. According to the Dutch authorities the marina is connected to the river and this river has many different sources of pollution which have no relationship with the marina. Hence, the Dutch authorities decided that the sailing club is not liable for any of the pollution, not even that of the marina. Moreover, as the purification turned out to be very expensive, in the course of 2002 the municipality decided to take 25 % of these costs on its account. Thus, the sailing club will pay EUR 450 000 of the purification costs. Therefore, according to the Dutch authorities the sailing club has even lost on the purchase agreement (i.e. 200 000 + 450 000 — 417 477 = EUR 232 522).

(23) As regards the purification costs, the Commission, in its decision to initiate the procedure, expressed doubts as to whether the purchase deal was carried out under the correct application of the 'polluter pays' principle. In principle the sailing club De Zuidwal was responsible (and liable) for the pollution of its marina. Following this principle, the marina should have been sold for (417 477 — 200 000 =) EUR 217 477. In its decision to initiate the procedure, the Commission calculated the estimated benefit for the sailing club De Zuidwal therefore at EUR 217 477.

C. **Wieringermeer**

(24) In its preliminary assessment the Commission concluded that the price of the land seemed to be in order, as there were various references to similar prices of land in the appraisal report. The appraised value of the water (69 731 $m^2$ in total) at EUR 1,51/$m^2$ seemed, however, below market prices. There are no references or further explanations about this appraised value in the appraisal report.

([1]) OJ C 40, 12.2.2000, p. 2.

([2]) OJ L 10, 13.1.2001, p. 30.

(25) Nevertheless, in order for there to be a problem of overcompensation, the value of the area of water should exceed [1] EUR 29,21/m². This threshold is rather high, thus overcompensation is not expected based on the present figures. The Commission therefore informed the complainant by letter dated 8 August 2002 that there is no evidence found of illegal State aid.

(26) By letter dated 3 September 2002, the complainant informed the Commission that the municipality artificially created the land in the lake, which is a very expensive technique. The costs of reclaiming the land were EUR 9 892 409. As the land was reclaimed less than three years before it was sold, the behaviour of the municipality does not seem to be in line with point II(2)(d) of the Commission Communication on State aid elements in sales of land and buildings by public authorities [2].

(27) As regards the effects on trade between Member States (fourth criteria for State aid within the meaning of Art 87(1) of the EC Treaty), the Commission admitted that the activities of the marinas at hand could be rather marginal.

(28) Nevertheless, in its decision to initiate the procedure the Commission could not rule out the exclusion of effects on trade per se, be this only due to the mobility, by nature, of the pleasure craft.

(29) Therefore, the Commission was required to initiate the formal investigation procedure as its initial examination did not enable it to resolve all the difficulties raised by the question as to whether the measure under consideration constitutes State aid within the meaning of Article 87(1) of the EC Treaty. In this context, the Commission asked for specific information on each of the marinas and globally for the Dutch marine sector, whose share of annual turnover is generated by permanent or temporary mooring of boats from Member States other than the Netherlands.

(30) Furthermore, as regards the compatibility of this aid, the Commission argued that no derogation provided by the EC Treaty seemed applicable. The derogations of Article 87(2) and (3)(b) or (d) of the EC Treaty are manifestly irrelevant. The Dutch authorities did not argue, and the Commission did not find that the aid could have a regional development purpose according to Article 87(3)(c) of the EC Treaty [3]. The aid does not seem to promote any horizontal Community objective according to Article 87(3)(c) of the EC Treaty such as research and development, employment, training, environment, small and medium sized enterprises or rescue and restructuring within the meaning of the relevant guidelines and frameworks. Finally, the Commission does not find appropriate to favour the development of the marina sector within the meaning of Article 87(3)(c) of the EC Treaty.

## IV. COMMENTS FROM INTERESTED PARTIES

(31) The Commission received a letter dated 16 April 2003 from the complainant with no new information or relevant additional facts as regards the three marinas at stake. The Commission did not receive any reaction from third parties.

## V. COMMENTS FROM THE NETHERLANDS

(32) The Dutch authorities reacted by letter dated 22 April 2003. The Dutch authorities take a twofold approach in their answer to the opening of the procedure.

(33) First of all the Dutch authorities are of the opinion that no advantage is at hand, as the financial public support (if any) would be minimal and fall under the *de minimis* threshold. The Dutch authorities have provided additional information to support their view.

(34) Secondly, the Dutch authorities are of the opinion that even if the public support were to be higher than the *de minimis* threshold, there would still be no effect on trade, hence no State aid within the meaning of Article 87(1) of the EC Treaty. Hereto, the Dutch authorities have provided statistical information on the Dutch and European marina markets.

(35) As regards Enkhuizen, the Dutch authorities remain of the opinion that the alleged value of the aquatic area was EUR 0,45 per m², based on the independent appraisal report dated 30 March 1998 (in which the appraiser concluded that this aquatic area had no economic value, hence a standard price of one guilder per m²). The Dutch authorities did not contest the other economic indicators.

(36) Next the Dutch authorities have provided some additional statistical information on the Enkhuizen marina. These are all figures from 2002:

| | |
|---|---|
| Total number of moorings: | 235 |
| Annual turnover fixed moorings: | EUR 257 500 |
| Share of foreign users fixed moorings: | 10 % |
| Annual turnover daily moorings: | EUR 58 164 |
| Share of foreign users daily moorings: | 30 %. |

[1] EUR 7 636 147 – EUR 5 719 854 (appraised land) = EUR 1 916 293 + EUR 100 000 (*de minimis*) = EUR 2 016 293. EUR 2 016 293/69 031 m² = EUR 29,21/m².
[2] OJ C 209, 10.7.1997, p. 3.
[3] There is no area in the Netherlands covered by Article 87(3)(a).

(37) Furthermore, the Dutch authorities remain of the opinion that the sailing club is not liable for any of the pollution, not even that of the marina. The sludge found in the marina is of the same substance as the sludge found in the nearby River Arkervaart, hence there can be no proof of any pollution by the users of the marina.

(38) Also, the Dutch authorities are of the opinion that a marina sold to the existing tenant should be sold at the market price taking into account the rental of the property. The Dutch authorities are of the opinion to reason from the viewpoint of the municipality: there would not be any difference in selling the marina to the tenant or to a new owner who would also acquire the tenant. In both cases the municipality would get the same price, hence it would be unfair to ask the sailing club for a higher price.

(39) Next the Dutch authorities have provided additional statistical information on the Nijkerk marina. These are all figures from 2002:

| | |
|---|---|
| Annual turnover fixed moorings: | EUR 117 000 |
| Share of foreign users fixed moorings: | 0 % |
| Annual turnover daily moorings: | EUR 3 000 |
| Share of foreign users daily moorings: | 10 %. |

(40) Finally on Wieringermeer the Dutch authorities agreed that the construction costs to create the land artificially in the lake were EUR 9 892 409. However, the Dutch authorities indicated that these costs do not only include the costs of creating the future marina, but also the cost of financing public works, such as wetlands, sewerage, a junction road etc. The total costs of the public works are EUR 4 559 248. Hence, the net construction costs for the marina were EUR 5 333 161. The total purchase price was well above these construction costs, hence the Dutch authorities concluded that there is no advantage to the alleged beneficiary. The Dutch authorities did not provide statistical information on the marina at hand, since it has not yet been built.

## VI. **ASSESSMENT OF THE MEASURES**

(41) In order for a measure to be considered as State aid within the meaning of Article 87(1) of the EC Treaty, four criteria have to be simultaneously satisfied. It must favour undertakings (or productions); it must be selective; it must be funded through State resources; and it must affect trade between Member States. In the present case, the measures are clearly financed by local authorities through their budgets and concern three specific marinas. The criteria of State resources and selectivity are therefore clearly met.

(42) As regards the notion of advantage, the findings of the Commission are as follows.

### A. **Enkhuizen**

(43) The Commission remains of the opinion that it is not likely that the low value of the water area indicated by the Dutch authorities is appropriate. If locally the aquatic area is destined to become a marina, this area will have some market value and cannot be considered 'worthless'. According to the letter of the Dutch authorities dated 22 April 2003, the Dutch marina market is highly competitive and there is a great demand for moorings in this area of the Netherlands. Thus, the purchase price of the aquatic area remains disputable. The difference of opinion concerns EUR 378 300, which is the majority of the alleged State aid. The Commission cannot therefore exclude the granting of an advantage to the Enkhuizen marina through the measure.

### B. **Nijkerk**

(44) There are no clear appraisal reports on the pollution in the Nijkerk marina and it is not clear to what extent the sailing club is or could be held responsible for (part of) the pollution. It seems rather doubtful that the sailing club is not at all liable.

(45) The Commission does not agree with the Dutch authorities that the marina was sold to the tenant itself for a purchase price including a tenant. After all, due to the purchase, the De Zuidwal obtained full free use of the marina. The sailing club could have sold the harbour immediately and made a profit of EUR 95 370 (i.e. the difference between the two appraisal prices, with and without tenant).

(46) Therefore, the Commission remains in doubt as to the liability and the value of the purchase price of the marina. The difference of opinion concerns EUR 312 847, which is all of the alleged State aid. The Commission cannot therefore exclude the granting of an advantage to the Nijkerk marina through the measure.

C. **Wieringermeer**

(47) As regards the Wieringermeer marina, the Dutch authorities have provided sufficient additional information in order to conclude that no advantage is at stake. The construction costs of the marina cumulated with the price of the aquatic area are much smaller than the purchase price. In order for the aid to be greater than EUR 100 000, the value of the water should exceed EUR 34,81/m$^2$, which is clearly too high [1]. As no advantage is granted, the sale of this marina does not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(48) As regards the two remaining marinas (Enkhuizen and Nijkerk) the Commission has examined the effect on trade criterion. A reference case in this respect is the Commission decision concerning the Dorsten Swimming Pool [2]. In this case the Commission concluded that this amenity was used by the inhabitants of the town and the surrounding area. Moreover, the Commission distinguished a clear difference between this kind of support and aid to promote major theme parks targeted at the national or even international market and advertised far beyond the area where they are located. The Commission concluded that, by its very nature, aid in favour of facilities aimed at attracting international visitors is likely to affect trade between Member States. For the swimming pool in Dorsten the Commission took the view that there was practically no likelihood of intra-Community trade being affected. Therefore, the annual subsidy for the private operator of the pool in Dorsten did not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

(49) In the Netherlands there are about 203 000 moorings in about 1 200 marinas. The total number of pleasure boats in the Netherlands is estimated at 375 000. The total number of pleasure boats in the European Union is at least 5 million; there are more than 10 000 marinas in the EU, providing more than 1,5 million moorings (not all moorings are in marinas) [3]. Thus, most pleasure boats are not located at a mooring, but either beached on shore or at moorings on open water.

(50) The Nijkerk marina has 200 moorings, of which, on average only 0,25 % are used by foreign tourists, which is insignificant to the national mooring market. Therefore, the Commission concludes that the Nijkerk marina is used by the inhabitants of the town and the surrounding area and it is not aimed at attracting international visitors. The aid does not deter Nijkerk's inhabitants from using marinas outside the Netherlands. Even if this were the case, the effect on trade would be insignificant given the number of inhabitants in Nijkerk (less than 40 000). Finally, it should be noted that the annual turnover of the Nijkerk marina is EUR 120 000. Thus, the support to the Nijkerk marina (if any) does not have an effect on trade and is therefore not State aid within the meaning of Article 87(1) of the EC Treaty.

(51) In the Enkhuizen marina, on average 14 % of the moorings are used by international tourists [4]. Nevertheless, the 235 Enkhuizen moorings represent only 0,15 % of the Dutch mooring market and 0,016 % of the EU mooring market. Therefore, the impact of the Enkhuizen harbour on the marina market is very limited.

(52) Moreover, it is important to make a distinction between fixed moorings and daily moorings. It is likely that an effect on trade of the support (if any) would primarily be related to the fixed moorings (permanent location of a boat).

(a) It is mainly for fixed moorings that the user has a real choice between the Enkhuizen marina or a foreign one, as the (international) owner or long term tenant of the boat decides, before or at the start of the season, where to dock. In this context, it should be noted that the share of fixed moorings by international users is only 10 % at Enkhuizen. In addition, the average annual turnover per fixed mooring (less than EUR 1 000) is rather low compared with the costs of maintenance, transport, financing and depreciation of pleasure boats and the additional costs of a marine holiday.

(b) The effect on trade of any support to daily moorings is by nature very limited. An (international) boat owner or tenant uses the marina which corresponds to the place where he is at a certain date and time and which appears to be appropriate given the size and depth of the boat's hull. His choice is often very limited. In the present case, the turnover generated by the Enkhuizen marina for all daily moorings only represents 18 % of it's total turnover, of which only 30 % originates from international tourists.

(53) Finally, it should be noted that the annual turnover of the marina in Enkhuizen is EUR 316 000.

[1] EUR 7 636 147 – EUR 5 333 161 (construction costs) = EUR 2 302 986 + EUR 100 000 (*de minimis*) = EUR 2 402 986; EUR 2 402 986/69 031 m$^2$ = EUR 34,81/m$^2$.

[2] Commission decision of 21.12.2000, N 258/2000 — Germany (Leisure Pool Dorsten), OJ C 171, 16.6.2001, p. 16.

[3] These figures are from ICOMIA (International Council of Marine Industry Organisations, see also http://www.icomia.com) and the report 'La Nautica in cifre' of UCINA (Unione Nazionale Cantieri e Industrie Nautiche ed Affini, see also http://www.ucina.it). As there are no clear statistics available, these are rough estimates.

[4] Weighted average between fixed and daily moorings.

(54) It follows from the above that the support to the Enkhuizen marina (if any) does not have an effect on trade and is therefore not State aid within the meaning of Article 87(1) of the EC Treaty.

(55) Therefore, the Commission can conclude that, even if some distortion of (local) competition is not excluded, the support (if any) has no effect on trade within the meaning of Article 87(1) of the EC Treaty. In particular, in these cases, also due to the geographical location of the marinas, their relatively small size, and the relatively small amounts of public support involved (in comparison with the number of moorings offered in the marinas), it can not reasonably be expected that this support will lead ship owners from other Member States to use the marinas concerned for mooring (be it fixed or daily) rather than a marina in another Member State.

(56) This does not contradict the current case-law of the EU Courts on the effect on trade. In Tubemeuse ([1]) the Court of Justice held that '(…) the relatively small size of the undertaking which receives (the aid) does not as such exclude the possibility that intra-Community trade might be affected'. This does not mean that the insignificant size of a company taken together with other features of the case cannot lead to the conclusion that State aid granted to this company does not affect intra-Community trade.

(57) Similarly, in Vlaamse Gewest ([2]), the Court of First Instance states that 'the prohibition in Article 92(1) of the Treaty applies to any aid which distorts or threatens to distort competition, irrespective of the amount insofar ([3]) as it affects trade between Member States'.

(58) Finally, the findings of the Commission are not in contradiction with its own practice as regards marinas. In this respect, it should be emphasised that the aforementioned Commission decision of 7 January 2001 relates to a marina which was of much greater size than Nijkerk and Enkhuizen and which had been the subject of a notification under the multisectoral framework on regional aid for large investment projects ([4]).

(59) The Commission is of the opinion that it is sufficiently proven that trade is not affected in the present case. In addition, the Dutch marinas sector seems to currently encounter some problems due to some over-capacity, but that is not the case at all at EU level, where the market is growing.

## VII. **CONCLUSION**

(60) The Commission can conclude for the specific Dutch marinas at hand that no State aid within the meaning of Article 87(1) of the EC Treaty is at stake. For one marina (Wieringermeer) no advantage is at stake. For the others (Enkhuizen and Nijkerk), the measure does not affect trade between Member States,

HAS ADOPTED THIS DECISION:

*Article 1*

The measures in favour of non-profit making harbours for recreational crafts in Enkhuizen, Nijkerk and Wieringermeer do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

*Article 2*

This Decision is addressed to the Netherlands.

Done at Brussels, 29 October 2003.

*For the Commission*

Mario MONTI

*Member of the Commission*

([1]) See Judgment of the Court of 21 March 1990 in Case C-142/97 *Belgium v Commission* [1990] ECR I-959. See also Judgment of 14 September 1994 in Joined Cases C-278/92 to C-280/92 *Spain v Commission* [1994] ECR I-4103.

([2]) Judgment of the Court of First Instance of 30 April 1998 in Case T-214/95 *Het Vlaamse Gewest* v Commission, points 46, 49 and 50

([3]) Emphasis added.

([4]) OJ C 107, 7.4.1998, p. 7.