JUDGMENT OF THE COURT (Second Chamber)

11 November 2004 *

In Joined Cases C-186/02 P and C-188/02 P,

TWO APPEALS under Article 49 of the EC Statute of the Court of Justice, lodged on 15 and 16 May 2002,

Ramondín SA, established in Logroño (Spain),

and

Ramondín Cápsulas SA, established in Laguardia (Spain),

represented by J. Lazcano-Iturburu Ayestaran, abogado,

appellants in Case C-186/02 P,

* Language of the case: Spanish.

Territorio Histórico de Álava — Diputación Foral de Álava, represented by A. Creus Carreras, B. Uriarte Valiente and M. Bravo-Ferrer Delgado, abogados,

appellant in Case C-188/02 P,

the other parties to the proceedings being:

Commission of the European Communities, represented by F. Santaolalla Gadea and J.L. Buendía Sierra, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

supported by

Comunidad Autónoma de La Rioja, represented by J.M. Criado Gámez, abogado,

intervener in the appeals,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, C. Gulmann (Rapporteur) and N. Colneric, Judges,

Advocate General: J. Kokott,
Registrar: M. Múgica Azarmendi, Principal Administrator,

having regard to the written procedure, and, in Case C-188/02 P, further to the hearing on 11 March 2004,

after hearing the Opinion of the Advocate General at the sitting on 6 May 2004,

gives the following

Judgment

1 By their appeals, Ramondín SA, Ramondín Cápsulas SA and the Territorio Histórico de Álava — Diputación Foral de Álava ('the Territorio Histórico de Álava') seek to have set aside the judgment of the Court of First Instance of the European Communities of 6 March 2002 in Joined Cases T-92/00 and T-103/00 *Diputación Foral de Álava and Others* v *Commission* [2002] ECR II-1385; 'the judgment under appeal'), whereby the Court of First Instance dismissed their applications for annulment of Commission Decision 2000/795/EC of 22 December 1999 on the State aid implemented by Spain for Ramondín SA and Ramondín Cápsulas SA (OJ 2000 L 318, p. 36).

Legal framework

2 According to the Commission's proposed Spanish map of regions qualifying for aid (OJ 1996 C 25, p. 3), the ceiling applicable to the Spanish Basque Country ('the Basque Country') is 25% net grant equivalent (nge).

3 The tax arrangements in force in the Basque Country are governed by the Economic Agreement established by Spanish Law 12/1981 of 13 May 1981, as last amended by Law 38/1997 of 4 August 1997.

4 Under the Economic Agreement, the Diputación Foral de Álava (Álava Provincial Council) may, under certain conditions, organise the tax system within its territory.

5 On that basis, it took various tax aid measures, including, in particular, a tax credit of 45% of the amount of the investment ('the tax credit of 45%') and a reduction in the basis of assessment to corporation tax.

The tax credit of 45%

6 The Sixth Additional Provision of Norma Foral (Regional Regulation) 22/1994 of 20 December 1994 implementing the 1995 budget of the Territorio Histórico de

Álava (*Boletín Oficial del Territorio Histórico de Álava* No 5 of 13 January 1995), provides:

'Investments in new fixed assets made between 1 January 1995 and 31 December 1995, which exceed ESP 2 500 million, in accordance with the Diputación Foral de Álava agreement, will receive a tax credit of 45% of the cost of investment determined by the Diputación Foral de Álava, to be applied to the definitive amount of tax payable.

Any tax credit not used up because it exceeds the amount of tax liability may be applied in the nine years following the year during which the Diputación Foral de Álava agreement was concluded.

The Diputación Foral de Álava agreement will lay down the time-limits, and any restrictions applicable in each case.

The advantages granted under this provision will be incompatible with any other tax advantage in respect of the same investments.

The Diputación Foral de Álava will also determine the length of the investment process, which may include investments made during the preparation of the project which is at the root of the investments.'

7 The validity of that provision was extended for the years 1996 and 1997, then the tax credit of 45% was maintained, in an amended form, for the years 1998 and 1999, by subsequent Normas Forales.

Reduction of the basis of assessment to corporation tax

8 Article 26 of Norma Foral 24/1996 of 5 July 1996 (*Boletín Oficial del Territorio Histórico de Álava* No 90 of 9 August 1996), provides:

'1. Companies starting their business activity shall be entitled to a reduction of 99%, 75%, 50% and 25% respectively in the positive basis of assessment deriving from their economic activity, before this is offset by any negative bases of assessment arising in previous periods, for the four consecutive tax periods running from the first period in which, within four years of starting their business activity, they generate a positive basis of assessment.

...

2. To qualify for this reduction, businesses shall fulfil the following conditions:

(a) They shall start their business activity with a minimum paid-up capital of ESP 20 million;

...

(d) The new activity shall not have been carried on previously, either directly or indirectly, under different ownership;

(e) The new business activity shall be performed on premises or in an establishment where no other activity is carried on by any natural or legal person;

(f) They shall during the first two years of their activity invest at least ESP 80 million in tangible fixed assets, all of which assets shall be assigned to the activity and shall not be hired out or transferred for use by third parties. For the purposes of this requirement, goods acquired by leasing shall also be deemed to be investments in tangible fixed assets, provided that the business undertakes to exercise the purchase option;

(g) They shall create at least 10 jobs within six months of starting their business activity and shall maintain the annual average workforce at that level from that point and until the year in which their entitlement to the reduction in the basis of assessment expires;

...

(i) They shall have a business plan covering a period of at least five years.

...

4. The minimum amount of investment referred to in subparagraph (f) and the minimum number of jobs created referred to in subparagraph (g) of paragraph 2 above shall be incompatible with any other tax concession established for the same investment or job creation.

5. The reduction provided for in this Article shall be requested by means of an application lodged with the tax administration, which, after checking that the initial requirements are satisfied, shall where appropriate notify the applicant company of its provisional authorisation, to be formally adopted by decision of the Álava Provincial Council.

...'

Facts

9 Ramondín SA is a company incorporated under Spanish law and specialised in the manufacture of capsules for sealing bottles of still and sparkling wines and other quality beverages. Since 1971 it had been established at Logroño in the Autonomous Community of La Rioja.

10 In 1997 Ramondín decided to transfer its industrial plant from Logroño to Laguardia, a town in the Territorio Histórico de Álava in the Basque Country.

Accordingly, on 15 December 1997 Ramondín SA set up a new company, Ramondín Cápsulas SA, in which it holds 99.8% of the capital. It was intended that Ramondín Cápsulas would take over all Ramondín SA's activities.

11 Under Decision 738/1997 of 21 October 1997 of the Diputación Foral de Álava, Ramondín SA obtained the tax credit of 45% provided for by the Sixth Additional Provision of Norma Foral 22/1994. As a newly-established company, Ramondín Cápsulas SA was eligible for the reduction in the basis of assessment to corporation tax provided for in Article 26 of Norma Foral 24/1996.

12 By letter dated 2 October 1997, the Commission received a complaint from the President of the Autonomous Community of La Rioja, concerning State aid granted to Ramondín SA on the occasion of the transfer of its activities to the Basque Country.

13 By letter of 30 April 1999 (OJ 1999 C 194, p. 18), the Commission notified the Spanish authorities that it had decided to initiate the procedure under Article 93(2) of the EC Treaty (now Article 88(2) EC) with regard to the tax aid granted to Ramondín SA and Ramondín Cápsulas SA by the Basque authorities.

14 On conclusion of the procedure, the Commission adopted the contested decision.

15 Article 2(a) of the decision finds the grant to Ramondín Cápsulas SA of a reduction in the basis of assessment to corporation tax to be State aid incompatible with the common market. In Article 2(b) of the decision, the tax credit of 45% granted to Ramondín SA is also found to be State aid incompatible with the common market as regards the part of the aid which, in accordance with the rules on the cumulation of aid, exceeds the ceiling of 25% nge for regional aid in the Basque Country.

16 In Article 3 of the contested decision, the Commission orders the Kingdom of Spain to take all necessary measures to withdraw the benefits deriving from the aid concerned and, where appropriate, recover that aid from the beneficiaries.

The actions before the Court of First Instance and the judgment under appeal

17 By applications lodged at the Registry of the Court of First Instance on 19 and 26 April 2000 respectively, the Territorio Histórico de Álava (Case T-92/00) and Ramondín SA and Ramondín Cápsulas SA (hereinafter, together, 'Ramondín') (Case T-103/00) brought actions against the Commission.

18 The applicants claimed that the contested decision should be annulled in so far as it (i) found the relevant tax measures laid down by Normas Forales 22/1994 and 24/1996 incompatible with the common market and (ii) ordered the Kingdom of Spain to recover the aid relating to those measures.

19 By order of 5 June 2001, the two cases were joined for the purposes of the oral procedure and the judgment.

20 By the judgment under appeal, the Court of First Instance:

— dismissed the applications;

— ordered the applicants to pay the costs.

The appeals

21 By orders of 6 March 2003 made in each of Case C-186/02 P and C-188/02 P, the President of the Court:

— granted the Comunidad Autónoma de La Rioja leave to intervene in support of the forms of order sought by the Commission;

— dismissed the applications of the Gobierno Foral de Navarra (Government of Navarra) to intervene in support of the forms of order sought by the appellants.

22 Ramondín claims that the Court should:

— set aside the judgment under appeal;

— annul the contested decision in so far as it (i) declares incompatible with the common market the tax aid provided for by Normas Forales 22/1994 and 24/1996 and (ii) orders the Kingdom of Spain to recover the aid;

— order the Commission to pay the costs.

23 The Territorio Histórico de Álava contends that the Court should:

— set aside the judgment under appeal;

— give judgment itself in the matter and annul the contested decision in so far as it concerns the tax credit of 45% and the reduction in the basis of assessment to corporation tax;

— in the alternative, refer the case back to the Court of First Instance;

— order the Commission to pay the costs of the proceedings at first instance and those of the proceedings on appeal.

24 Having withdrawn during the oral procedure an objection of inadmissibility in respect of the appeal brought by the Territorio Histórico de Álava, the Commission definitively contends, in both Case C-186/02 P and Case C-188/02 P, that the Court should:

— dismiss the appeals;

— order the appellants to pay the costs.

25 The Comunidad Autónoma de La Rioja, in support of the Commission, contends in both Case C-186/02 P and Case C-188/02 P, that the Court should:

— dismiss the appeals;

— order the appellants to pay the costs.

The grounds for setting aside the judgment under appeal

26 In its application, Ramondín put forward four grounds for setting aside the judgment under appeal, alleging:

— the Comunidad Autónoma de La Rioja did not have standing to complain to the Commission;

— incorrect categorisation of the impugned fiscal measures as State aid incompatible with the common market;

— an error of law on the part of the Court of First Instance in failing to make a finding of misuse of powers on the part of the Commission;

— an error of law on the part of the Court of First Instance in failing to find an infringement of the principle of equal treatment.

27 By a pleading lodged on 18 February 2004, Ramondín informed the Court that it was maintaining the grounds of appeal based on a misuse of powers and on failure to state the grounds of the judgment under appeal on that point and that it was withdrawing its other grounds of appeal.

28 In its application, the Territorio Histórico de Álava put forward six grounds for setting the judgment under appeal aside, alleging:

— incorrect categorisation of the impugned fiscal measures as State aid incompatible with the common market;

— failure to state the grounds of the judgment under appeal on that point;

— an error of law on the part of the Court of First Instance in holding that the impugned measures were not existing aid;

— failure to state the grounds of the judgment under appeal on that point;

— an error of law on the part of the Court of First Instance in failing to make a finding of misuse of powers on the part of the Commission;

— failure to state the grounds of the judgment under appeal on that point.

29 By a pleading lodged on 20 February 2004, it informed the Court that it was:

— maintaining in part the first and second grounds of appeal alleging, respectively, incorrect categorisation of the impugned fiscal measures as State aid incompatible with the common market and failure to state the grounds of the judgment under appeal on that point;

— maintaining its fifth and sixth grounds of appeal, alleging respectively, misuse of powers and failure to state the grounds of the judgment under appeal on that point;

— withdrawing its other grounds of appeal.

The appeals

30 After hearing the parties and the Advocate General on this point, the Court considers that it is appropriate, on account of the connection between them, to join the present cases for the purposes of the judgment, in accordance with Article 43 of the Rules of Procedure of the Court of Justice.

The grounds of appeal alleging, first, an error of law on the part of the Court of First Instance in failing to make a finding of misuse of power and, second, failure to state the grounds of the judgment under appeal on that point

Arguments of the parties

31 Ramondín complains that the Court of First Instance, at paragraphs 82 to 88 of the judgment under appeal, rejected its plea based on misuse of powers on the part of the Commission. The Commission used its powers relating to the State aid procedure, an area in which it has exclusive competence and wide powers, in order to implement tax harmonisation. Such harmonisation belongs in reality to the procedure provided for in Articles 101 of the EC Treaty (now, after amendment, Article 96 EC) and 102 of the EC Treaty (now Article 97 EC), which confers competence on the Council of the European Union.

32 The Commission began with small communities or small Member States, with limited scope for decisions and action. It acted in that way because of the difficulties it had encountered in relation to tax harmonisation, since the powerful Member States refused to give up their competences.

33 In Ramondín's submission, since the only tangible objective aspect of the instant case was the absence of any complaint from a competitor, it had to be presumed that the aims pursued were other than those stated. Therefore, the procedure initiated was flawed *ab initio*.

34 The Territorio Histórico de Álava submits that the Court of First Instance ought to have made a finding of misuse of powers. It is in doubt as to the reasons which led the Commission to initiate a large number of procedures against the Normas Forales of the Basque Country. It also is in doubt as to why a series of fiscal measures were removed from the list drawn up by a group called 'Primarolo', responsible within the Council for detecting fiscal measures to be abolished for the purposes of tax harmonisation, only to be subsequently challenged through the State aid procedures.

35 In its submission, the reluctance of a number of Member States makes any agreement within the Council regarding tax harmonisation impossible. That is why the Commission chose the quicker and simpler route of State aid procedures.

36 The Territorio Histórico de Álava also complains that the Court of First Instance failed to state grounds as regards the plea alleging misuse of powers. The Court gave a fairly superficial answer, refraining from discussion of the reasons why the Commission initiated a large number of procedures against the Normas Forales of the Basque Country and failing to establish why the abovementioned series of fiscal measures was removed from the list by the Primarolo group only to be challenged through the State aid procedures.

37 The Commission, responding to Ramondín's arguments, contends that the Court of First Instance rightly stated, at paragraphs 82 to 87 of the judgment under appeal, that the conditions laid down by Community case-law for a finding of misuse of powers were not fulfilled. In the present case, the allegation that there has been a misuse of powers is based on Ramondín's subjective assessment of the Commission's

conduct. That assessment is not supported by any objective element. It is thus founded not on relevant evidence, as is required by case-law, but on purely subjective assertions concerning the Commission's supposed intentions.

38 In reality, in relation to its plea, Ramondín merely reiterates its extremely narrow interpretation of what constitutes aid and of the criterion of selectivity. The alleged misuse of powers consists only in an interpretation of 'aid' which differs from that advocated by Ramondín.

39 In reply to the arguments of the Territorio Histórico de Álava, the Commission submits that the plea alleging misuse of powers was not invoked by the appellant before the Court of First Instance. This ground of appeal is thus manifestly inadmissible. In any event, it is unfounded, for the same reasons as those invoked vis-à-vis Ramondín. Finally, the Court of First Instance adequately stated the grounds of the judgment under appeal for the purpose of rejecting the plea.

40 The Comunidad Autónoma de La Rioja contends that the Territorio Histórico de Álava's ground of appeal alleging misuse of powers is inadmissible, since that plea was not raised before the Court of First Instance.

41 In any event, it contends that Ramondín and the Territorio Histórico de Álava have produced no objective, relevant or consistent evidence from which it may be concluded that the Commission's objective in adopting the contested decision was tax harmonisation.

Findings of the Court

42 Contrary to the assertions of the Commission and the Comunidad Autónoma de La Rioja, the Territorio Histórico de Álava did raise before the Court of First Instance, in the initial application itself, at paragraph 71 et seq., a plea alleging misuse of powers on the part of the Commission.

43 That plea was examined with regard to Ramondín and the Territorio Histórico de Álava at paragraphs 82 to 88 of the judgment under appeal.

44 The Court of First Instance rightly observed that a measure is only vitiated by misuse of powers if it appears, on the basis of objective, relevant and consistent evidence, to have been taken with the exclusive or main purpose of achieving an end other than that stated (see, inter alia, Case C-110/97 *Netherlands* v *Council* [2001] ECR I-8763, paragraph 137 and the cases cited).

45 At paragraphs 85 to 87, it analysed and assessed the applicants' allegations and their arguments. It found that they had not adduced any objective evidence from which it could be concluded that the Commission's real purpose in adopting the contested decision was to achieve tax harmonisation.

46 In doing that, the Court of First Instance undertook an assessment of the facts which does not, unless the clear sense of the evidence produced to it was distorted, constitute a question of law which is subject, as such, to review by the Court of

Justice (see inter alia Joined Cases C-280/99 P to C-282/99 P *Moccia Irme and Others* v *Commission* [2001] ECR I-4717, paragraph 78, and Joined Cases C-238/99 P, C-244/99 P, C-245/99 P, C-247/99 P, C-250/99 P to C-252/99 P and C-254/99 P *Limburgse Vinyl Maatschappij and Others* v *Commission* [2002] ECR I-8375, paragraph 285).

47 The appellants confine themselves, by assertions, to challenging those findings of fact. They do not produce any evidence such as to establish that the Court of First Instance distorted the clear sense of the evidence produced to it. In any event it cannot be maintained that the Court of First Instance should have concluded from the absence of any complaint from a competitor that the Commission's objectives were other than those stated. The mere fact that there was no complaint does not admit of such a hypothesis.

48 It follows that the ground of appeal alleging misuse of powers must be rejected.

49 As regards the ground of appeal based on a failure to state the grounds of the judgment under appeal on this point, it must be held that Ramondín did not raise that plea in its appeal.

50 In stating, in its pleading lodged on 18 February 2004, that it was maintaining its ground of appeal concerning the failure to state the grounds of the judgment under appeal in relation to the plea alleging misuse of powers, Ramondín is thus, in reality, introducing a new plea in law. That plea is inadmissible under Articles 42(2) and 118 of the Rules of Procedure of the Court of Justice.

51 As regards the Territorio Histórico de Álava, which put forward a ground of appeal concerning failure to state the grounds of the judgment under appeal and maintained it in its pleading lodged on 20 February 2004, it is to be noted that that judgment states:

— at paragraph 85, that all the applicants' arguments were based on speculation regarding possible underlying reasons for the contested decision and that they had not even shown that any harmonisation had in fact been achieved at Community level by the contested decision;

— at paragraph 86, that the Territorio Histórico de Álava referred to the cases which gave rise to the order of the President of the Court of Justice of 16 February 2000 in Joined Cases C-400/97 to C-402/97 *Juntas Generales de Guipúzcoa and Others* [2000] ECR I-1073, cases in which the Commission, in the applicant's submission, undermined the legislative capacity of the Basque authorities in the field of taxation in finding that the Normas Forales constituted State aid since they were applicable exclusively to a particular area of a Member State;

— at paragraph 87, that the last-mentioned argument had to be rejected, since in the contested decision the Commission had not taken the criterion of regional selectivity as a basis for establishing that the tax advantages from which Ramondín benefited constituted State aid falling within the scope of Article 92 of the EC Treaty (now, after amendment, Article 87 EC).

52 That statement of the grounds appears adequate in the light of the arguments presented before the Court of First Instance in the application and the reply. Those arguments did not include any reference to withdrawal of a series of tax measures from a list drawn up by a group set up within the Council.

53 It follows that the Territorio Histórico de Álava's ground of appeal concerning a failure to state the grounds of the judgment under appeal so far as concerns the alleged misuse of powers on the part of the Commission must be rejected.

The grounds of appeal whereby the Territorio Histórico de Álava alleges, first, incorrect categorisation of the impugned tax measures as State aid incompatible with the common market and, second, failure to state the grounds of the judgment under appeal on that point

Arguments of the parties

54 Before the Court of First Instance, the Territorio Histórico de Álava maintained that the Commission had infringed Article 92 of the Treaty by considering the tax credit of 45% and the reduction in the basis of assessment to corporation tax to be State aid incompatible with the common market on the ground that Normas Forales 22/1994 and 24/1996 constituted specific measures favouring 'certain undertakings'. It claimed that, in any event, any selective nature which those measures might have was justified by the nature and scheme of the tax system.

55 The Territorio Histórico de Álava complains that the Court of First Instance, at paragraphs 23 to 65 of the judgment under appeal, rejected that argument and thus erred in law in applying Article 92 of the Treaty.

56 In the pleading which it lodged on 20 February 2004, it states that it maintains its ground of annulment, but at an earlier stage than that of the categorisation of the impugned tax measures as State aid. It claims that during the proceedings at first instance it maintained that those measures were outside the scope of Article 92 of

the Treaty, in so far as, as tax measures, they were justified for the purpose of attaining an economic-policy objective. The Court of First Instance took the view that that did not preclude its categorisation as State aid incompatible with the Treaty. That conclusion is incorrect because it was formulated at an inappropriate point in the interpretation process. In reality, the Court of First Instance should, before addressing any question of categorisation as State aid, have considered that tax measures adopted before the conclusions of the Ecofin Council meeting on 1 December 1997 concerning taxation policy (OJ 1998 C 2, p. 1) and the Commission notice of 10 December 1998 on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 C 384, p. 3) were excluded from the review of State aid. Where such measures formed part of the industrial policy implemented by the Member State concerned, they should have been excluded from the outset from the scope of Article 92 of the Treaty.

57 In the same pleading, the Territorio Histórico de Álava further states that it also maintains its ground of appeal alleging failure to state the grounds of the judgment under appeal as regards the point of law raised.

58 The Commission contends that, in its present form, the ground of appeal alleging incorrect categorisation of the impugned tax measures as State aid incompatible with the common market, notwithstanding the amended form in which it is presented, still requires an examination by the Court of the question of the nature as aid of those measures. The analysis carried out pursuant to Article 92 of the Treaty contains no stage preceding that of the discussion of whether the measure in question must be categorised as State aid; the fiscal nature of a measure is of no relevance to the determination of whether or not it constitutes aid. Nor could the conclusions of the Ecofin Council meeting on 1 December 1997 concerning taxation policy and the code of conduct annexed thereto alter the allocation of powers established in the Treaty. In those circumstances, by disputing the competence of the Commission, the Territorio Histórico de Álava is persisting in challenging the categorisation as State aid of the impugned tax measures.

59 The Comunidad Autónoma de La Rioja submits that the Territorio Histórico de Álava is in actual fact maintaining that the impugned fiscal measures do not constitute State aid, although it is now putting forward new arguments in support of its proposition. The Court should thus not exclude an examination and categorisation of those measures in the light of Article 92 of the Treaty.

Findings of the Court

60 It must be borne in mind that to allow a party to put forward for the first time before the Court of Justice a plea in law which it has not raised before the Court of First Instance would be to allow it to bring before the Court, whose jurisdiction in appeals is limited, a case of wider ambit than that which came before the Court of First Instance. In an appeal the Court's jurisdiction is confined to review of the findings of law on the pleas argued before the Court of First Instance (see, in particular, Case C-136/92 P *Commission* v *Brazzelli Lualdi and Others* [1994] ECR I-1981, paragraph 59, Case C-7/95 P *John Deere* v *Commission* [1998] ECR I-3111, paragraph 62, and Case C-217/01 P *Hendrickx* v *Cedefop* [2003] ECR I-3701, paragraph 37).

61 In the present case, the Territorio Histórico de Álava did not contend at first instance that:

— the impugned tax measures are precluded as such from the scope of the law on State aid;

— Article 92 of the Treaty has applied to the provisions of tax law only since the conclusions of the Ecofin Council meeting on 1 December 1997 concerning tax policy and the Commission notice of 10 December 1998 on the application of the State aid rules to measures relating to direct business taxation.

62 In reality, it referred to the economic-policy objectives of the measure reducing the basis of assessment in the course of argument concerning the selectivity of that measure, that is to say, at the stage of the argument concerning the categorisation of the measures as State aid incompatible with the common market for the purposes of Article 92 of the Treaty.

63 The Court of First Instance examined the corresponding arguments at paragraph 51 of the judgment under appeal.

64 The argument submitted to the Court in the present appeal, namely that, in substance, the tax measure at issue was excluded at the outset, at a stage preceding the legal reasoning, from the scope of Article 92 of the Treaty and, subsequently, from actual review by the Commission, therefore constitutes a plea raised for the first time in the appeal.

65 This new plea must be declared inadmissible, as must the ground of appeal alleging failure to state the grounds of the judgment under appeal on the point of law raised, since the latter cannot be dissociated from the former.

66 It follows from all of the foregoing that the appeals must be dismissed.

Costs

67 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is unfounded, the Court is to make a decision as to costs.

68 Under Article 69(2) of the Rules of Procedure, applicable to the appeal procedure by virtue of Article 118, 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 appellants have been unsuccessful, they must be ordered, in addition to bearing their own costs, to pay those incurred by the Commission and the Comunidad Autónoma de La Rioja, in accordance with the forms of order sought to that effect.

On those grounds, the Court (Second Chamber) hereby:

1. **Joins Cases C-186/02 P and C-188/02 P for the purposes of the judgment;**

2. **Dismisses the appeals;**

3. **Orders the appellants, in addition to bearing their own costs, to pay those incurred by the Commission of the European Communities and the Comunidad Autónoma de La Rioja.**

Signatures.