JUDGMENT OF THE COURT (Sixth Chamber)

29 April 2004 *

In Case C-298/00 P,

Italian Republic, represented by I.M. Braguglia, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,

applicant,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta and Others* v *Commission* [2000] ECR II-2319, seeking to have that judgment set aside,

the other parties to the proceedings being:

Commission of the European Communities, represented by V. Di Bucci, acting as Agent, with an address for service in Luxembourg,

defendant at first instance,

* Language of the case: Italian.

Impresa Edo Collorigh Edo and Others, represented by V. Cinque, avvocato,

Mauro Alzetta and Others,

Masotti Srl and Others,

Impresa Anna Maria Baldo and Others,

SUTES SpA and Others,

Ditta Pietro Stagno and Others,

Ditta Carlo Fabris & C. Snc,

Ditta Franco D'Odorico,

Ditta Fiorindo Birri,

Ditta Maria Cecilia Framalicco,

Autotrasporti Claudio Di Viola & C. Snc,

and

Impresa Amedeo Musso,

applicants at first instance,

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 March 2003,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 3 August 2000, the Italian Republic brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 15 June 2000 in Joined Cases

T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta and Others* v *Commission* [2000] ECR II-2319 (hereinafter 'the contested judgment'), in which the Court of First Instance partially dismissed the action for the partial annulment of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18, hereinafter 'the contested decision').

Legal framework and factual background

Legal framework

2 The legal framework of the dispute was set out in the contested judgment as follows:

'2 The general provisions on State aid set out in Articles 92 of the EC Treaty (now, after amendment, Article 87 EC) and 93 and 94 of the EC Treaty (now Articles 88 EC and 89 EC) apply within the field of transport, subject to the special provisions of Article 77 of the EC Treaty (now Article 73 EC), which state that aids meeting the needs of coordination of transport or representing reimbursement for the discharge of certain obligations inherent in the concept of a public service are compatible with the Treaty.

3 Article 2 of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ, English Special Edition 1970 (II), p. 360), as last amended by Council Regulation (EC) No 543/97 of 17 March 1997 (OJ 1997 L 84, p. 6), which is based on

Article 75 of the EC Treaty (now, after amendment, Article 71 EC) and Articles 77 and 94 of the Treaty, confirms that Articles 92 to 94 of the Treaty are to apply in the field concerned. The regulation also lays down certain special rules on the aid in question in so far as they relate specifically to activities in that sector. It thus sets out the cases in and conditions on which Member States are entitled to adopt coordination measures or impose obligations inherent in the concept of a public service which involve the granting of State aid pursuant to Article 77 of the Treaty.

4 Regarding the coordination of transport, Article 3(1)(d) of Regulation No 1107/70 authorises, until the entry into force of Community rules on access to the transport market, aid granted as an exceptional and temporary measure in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting the needs of the transport market more effectively.

5 In the course of introducing a common transport policy, the international road haulage market was partially liberalised within the Community by Council Regulation No 1018/68 of 19 July 1968 on the establishment of a Community quota for the carriage of goods by road between Member States (Journal Officiel 1968 L 175, p. 13), which introduced a quota system in 1969. In 1991 and 1992, for example, the Community quota consisted of 47 094 and 65 936 authorisations distributed among the various Member States in accordance with a specific formula. The Italian Republic was allocated 5 550 authorisations in 1991 and 7 770 in 1992. Community authorisations permitted their holders to carry goods between Member States for a period of one year. This system was kept in force up to 1 January 1993, the date on which this activity was fully liberalised by Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ 1992 L 95, p. 1).

6 Regarding the market for the carriage of goods within a Member State, Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1989 L 390, p. 3) made cabotage, that is to say, the carriage of goods within one Member State by a carrier established in another Member State, subject, with effect from 1 July 1990, to a transitional system in the form of a progressively increasing Community quota. The total initial quota consisted of 15 000 cabotage authorisations valid for a period of two months, allocated among the Member States according to a given formula. Within this framework, 1 767 authorisations were allocated to the Italian Republic. Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1993 L 279, p. 1) provided for the continuance of this transitional system, in the form of a total initial Community quota of 30 000 authorisations (including 3 520 for the Italian Republic), increasing by 30% a year until the definitive introduction of the full liberalisation of cabotage activities with effect from 1 July 1998.'

Factual background

3 The facts set out in this paragraph are taken from the findings of fact made by the Court of First Instance in the contested judgment as follows:

'7 Articles 4, 7 and 8 of Friuli-Venezia Giulia Regional Law No 28 of 18 May 1981, on action to promote and develop transport of concern to the Friuli-Venezia Giulia Region and the carriage of goods by road for hire or reward ("Law No 28/1981"), provided for certain aid for road haulage contractors established within that region.

8 The system introduced by Law No 28/1981 was replaced by Regional Law No 4 of 7 January 1985 on action to promote and develop transport of concern to the Friuli-Venezia Giulia Region and the carriage of goods by road for hire or reward (... hereinafter "Law No 4/1985"). Articles 4 to 6 of Law No 4/1985 introduced a system of regional aid that was essentially identical to the system set up by Law No 28/1981.

9 These laws provided for three measures in favour of road haulage contractors established in the Friuli-Venezia Giulia Region:

(a) annual financing, over a maximum period of ten years, of up to 60% (for individual contractors) and 70% (for cooperatives and groups) of the reference rate laid down by Ministerial Decree, of interest on loans contracted for the purpose of (Articles 4 of Laws No 28/1981 and 4/1985):

— developing the contractor's infrastructure (construction, purchase, expansion, completion and modernisation of premises required for its operations, including those to be used for the warehousing, storage and handling of goods);

— purchasing, developing and renewing fixed and movable equipment, together with internal and road transport vehicles;

(b) financing the cost of leasing, for a period of three or five years, new vehicles, trailers and semi-trailers and their swap-bodies, suitable for the operation of road haulage, together with the installations, machinery and

equipment for the use, maintenance and repair of vehicles and for the handling of goods, up to the level of 25% (for individual contractors) and 30% (for cooperatives and groups) of the purchase price of the assets. This aid, laid down in Article 7 of Law No 28/1981 and Article 5 of Law No 4/1985, was reduced to 20% and then to 15% of the purchase price by subsequent regional laws;

(c) annual financing, for groups and other forms of association, of up to 50% of investment to be used for the construction or purchase of installations and equipment required in pursuing the aims of the group or association, or contributing to the operation and development of service centres for housing, maintenance and repair of vehicles or related facilities and equipment (Article 8 of Law No 28/1981 and Article 6 of Law No 4/1985).

10 ... the amount of credits earmarked for the aid referred to in Article 4 of Law No 4/1985, for the period from 1985 to 1995, amounted to ITL 13 000 million (EUR 6.7 million), and 155 applications had been [accepted]. On average, the level of aid disbursed ranged from 13% to 26% of the cost of the loans and interest. The budget for the period 1981 to 1985 was ITL 930 million (EUR 0.4 million), and 14 applications had been accepted during this period (section II of the contested decision).

11 ... the budget allocated for the aid covered by Article 5 of Law No 4/1985 amounted to ITL 23 300 million (EUR 11.8 million) for the period from 1985 to 1995, and 1 691 applications had been accepted, with an average financing rate of around 19%, over that period. In 1993, 83 applications had been accepted and the level of aid was 10%. From 1981 to 1985, 305 applications had been [granted] and aid amounting to ITL 5 790 million (EUR 2.9 million) had been disbursed (contested decision, section II).

12 According to the information sent by the Italian Government to the Commission [of the European Communities] after the initiation of the administrative procedure, aid granted under Article 6 of Law No 4/1985 was for investment in the combined transport sector (section II, seventh paragraph, of the contested decision). According to the contested decision (point VIII, seventh paragraph), that aid was between 10% to 15% of the total amount of aid allocated.

...

16 By letter of 14 February 1997 the Commission informed the Italian Government of its decision to initiate the procedure provided by Article 93 (2) of the Treaty in respect of the system of aid for commercial road hauliers laid down by Law No 4/1985 and Law No 28/1981 (OJ 1997 C 98, p. 16). It asked the Italian authorities and interested third parties to submit their observations and furnish all documents, information and data required in order to examine the compatibility of the aid in question with the common market. The Commission received the Italian Government's observations on 3 April 1997 ...

17 On 30 July 1997, the Commission closed the proceeding by adopting the contested decision. ...'

4 Section VI of the reasons for the contested decision states that, since the aid in dispute seeks to improve the competitive position of commercial road haulage companies in the Friuli-Venezia Giulia Region (hereinafter 'the Region'), by reducing their normal business running costs, whereas such costs have to be borne in full by their competitors outside the region, it benefited those companies and that specific activity in such a way that it was liable to produce a distortion of competition.

5 First, the Commission makes a distinction, in section VII, third to eleventh paragraphs, of the reasons for the contested decision, between the road haulage market at local, regional and national level, on the one hand, and the international road haulage market, on the other. It points out that the former was not open to Community competition until Regulation No 4059/89 entered into force on 1 July 1990. Consequently, aid granted before that date to carriers operating exclusively at local, regional or national level could not affect intra-Community trade and therefore did not constitute State aid for the purposes of Article 92(1) of the Treaty. However, aid granted to those carriers after that date is State aid for the purposes of that provision, since it was capable of affecting trade between Member States.

6 With regard to the international road haulage market, the Commission states, in section III, fourth paragraph, of the reasons for the contested decision, that it has been open to intra-Community competition since 1969, when Regulation No 1018/68 entered into force. It infers from this, in section VII, last paragraph, of those reasons, that the aid provided for by Laws Nos 28/1981 and 4/1985 had strengthened the financial position and hence the scope of commercial haulage companies in the Region vis-à-vis their competitors since 1969 for companies engaged in international transport and was accordingly capable of affecting trade between Member States. That aid therefore constitutes State aid for the purposes of Article 92(1) of the Treaty and the local or limited nature of the competition represented by the regional hauliers cannot preclude the application of that provision.

7 Next, in examining, in section VIII, ninth paragraph, of the contested decision, whether the aid thus characterised as State aid qualifies for a derogation, the Commission considers that the aid granted under Article 6 of Law No 4/1985 for financing equipment designed for combined transport can benefit from the exemption provided for in Article 3(1)(e) of Regulation (EEC) No 1107/70. None of the other derogations provided for by that article or by the Treaty was applicable to the other aid granted by the Region.

8 Finally, section VIII, last paragraph, of the reasons for the contested decision states that aid granted under Laws Nos 28/1981 and 4/1985 to commercial road haulage companies in the Region engaged in local, regional or national transport operations from 1 July 1990 onwards, as well as to those engaged in international transport operations, is incompatible with the common market within the meaning of Article 92 of the Treaty. The Commission therefore concludes, in section IX of those reasons, that, since the Italian Government implemented the aid scheme in question without having fulfilled the obligation to notify it, the scheme should be regarded as illegal and recovery of the aid in question should be regarded as necessary in order to restore the fair conditions of competition which existed before that aid was granted.

9 The operative part of the contested decision is worded as follows:

'Article 1

Subsidies granted under Laws No 28/1981 and No 4/1985 of the Friuli-Venezia Giulia Region (hereinafter referred to as "the subsidies") up to 1 July 1990 to companies exclusively engaged in transport operations at local, regional or national level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

The subsidies not covered by Article 1 of this Decision constitute aid within the meaning of Article 92(1) of the Treaty and are illegal since they were introduced in breach of Article 93(3).

Article 3

The subsidies for financing equipment specifically adapted for, and used solely for, combined transport constitute aid within the meaning of Article 92(1) of the Treaty but are compatible with the common market by virtue of Article 3(1)(e) of Regulation (EEC) No 1107/70.

Article 4

The subsidies granted from 1 July 1990 onwards to companies engaged in transport operations at a local, regional or national level and to companies engaged in transport operations at an international level are incompatible with the common market since they do not fulfil any of the conditions for derogation provided for in Article 92(2) and (3) of the Treaty, or the conditions provided for in Regulation (EEC) No 1107/70.

Article 5

Italy shall abolish and recover the aid referred to in Article 4. The aid shall be reimbursed in accordance with the provisions of domestic law, together with interest, calculated by applying the reference rates used for assessment of regional aid, as from the date on which the aid was granted and ending on the date on which it is actually repaid.

...

Article 7

This Decision is addressed to the Italian Republic.'

10 Following the adoption of the contested decision, the Region, which had suspended the granting of the aid in question from 1 January 1996 onwards, abolished the system of aid provided for by Law No 4/1985 and took the steps necessary to recover the aid already disbursed.

Procedure, forms of order sought and pleas in law before the Court of First Instance and the contested judgment

11 It was in those circumstances that, by applications lodged at the Registry of the Court of First Instance on 2 December 1997 (T-298/97), 11 December 1997 (T-312/97 and T-313/97), 16 December 1997 (T-315/97), 19 December 1997 (T-600/97 to T-607/97), 2 January 1998 (T-1/98), 5 January 1998 (T-3/98 to T-6/98) and 26 January 1998 (T-23/98), certain of the undertakings in receipt of the aid in question brought an action for the partial annulment of the contested decision.

12 By order of the President of the Fourth Chamber (Extended Composition) of 29 September 1998, the Italian Republic was granted leave to intervene in support of the applicant undertakings at first instance (hereinafter 'the applicants').

13 The Italian Republic also brought an action, by application lodged at the Registry of the Court of Justice on 28 October 1997, registered under number C-372/97, for the partial annulment of the contested decision or, in the alternative, the annulment of that decision only in so far as, in Article 5, it requires that Member State to recover the aid granted from 1 July 1990 onwards. Those proceedings were stayed, by order of the Court of 24 November 1998, pending delivery of the contested judgment.

14 By their actions before the Court of First Instance, the applicants claimed that the Court should partially annul the contested decision or, in the alternative, annul it only in so far as, in Article 5, it requires the Italian Republic to recover the aid granted from 1 July 1990 onwards, together with interest. In support of their claims, they put forward essentially four pleas for annulment.

15 The first plea for annulment put forward alleged infringement of Article 92(1) of the Treaty. The applicants maintained that the Commission had erred in law by merely mentioning the simple possibility that trade between Member States might be affected, without demonstrating the existence of a real, concrete risk of distortion of competition. In this case, since the aid in question was of a modest amount, its recipients engaged in mainly regional operations and it had a compensatory function, that aid was not likely to affect trade between Member States or affect competition. The applicants also complained that the contested decision was vitiated by a failure to state reasons.

16 The Court of First Instance rejected that first plea in law on the grounds specified in paragraphs 76 to 106 of the contested judgment. It is apparent from those grounds, inter alia, that, on the one hand, the Commission was not required to establish that the aid in question had a real effect on trade between Member States and competition, and that, on the other hand, neither the allegedly trivial amount of that aid nor the relatively small size of the recipient undertakings and the fact

that they operate at a local level necessarily led to the conclusion that the aid in question had no effect on the market and intra-Community trade. Moreover, the complaint concerning inadequacy of the statement of reasons for the contested decision was also rejected by the Court of First Instance on the ground that, in that decision, the Commission had stated, concisely but clearly, the reasons why the aid in question was such as to affect trade between Member States and distort competition.

17 The second plea for annulment put forward by the applicants alleged, firstly, infringement by the Commission of Articles 92(3)(a) and (c) of the Treaty and 3(1)(d) of Regulation No 1107/70 so far as concerns the interpretation of the derogating provisions of those articles and, secondly, failure to state reasons for the contested decision in that regard.

18 The Court of First Instance rejected that second plea, holding, in paragraphs 124 to 135 of the contested judgment, that the contested decision cannot be regarded as vitiated by an error of law on that point or, moreover, by a failure to state reasons.

19 The third plea for annulment put forward by the applicants maintained that, since the aid in question had been instituted by laws predating the liberalisation of the transport sector, it should not be classified as new aid, but should be regarded as existing aid.

20 The Court of First Instance upheld that plea only in so far as it relates to aid granted to undertakings engaged solely in local, regional or national transport and rejected it so far as concerns those operating in the international road haulage

sector. The grounds on which the Court of First Instance based its reasoning are the following:

'142 According to established case-law, existing aid is aid introduced before the Treaty came into force or before the accession of the Member State concerned to the European Communities and aid which has been properly put into effect under the conditions laid down in Article 93(3) of the Treaty ([Case C-387/92] *Banco Exterior de España* [[1994] ECR I-877], paragraph 19, and Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 48).

143 Likewise, a system of aid established in a market that was initially closed to competition must, when that market is liberalised, be regarded as an existing aid system, since at the time of its establishment it did not come within the scope of Article 92(1) of the Treaty, which, having regard to the requirements set out in that provision regarding effect on trade between Member States and repercussions on competition, applies only to sectors open to competition.

...

145 In the present case, as the international road haulage sector had been opened up to competition by Regulation No 1018/68 with effect from 1969, the systems of aid in question, established in 1981 and 1985, came within the scope of Article 92(1) of the Treaty from the time of their introduction and should therefore be regarded as new systems of aid which should thus have been notified to the Commission pursuant to Article 93(3) of the Treaty.

146 On the other hand, as the cabotage market was liberalised by Regulation No 4059/89 only from 1 July 1990, the systems of aid in question did not, at the time of their introduction in 1981 and 1985, come within the scope of Article 92(1) of the Treaty, as regards aid granted in the local, regional or national transport sector.

147 It follows that aid to undertakings engaged solely in such a type of transport must be classified as existing aid and can be the subject, if at all, only of a decision finding it incompatible as to the future.

148 Pursuant to Article 93(1) and (2) of the Treaty and in accordance with the principle of legal certainty, the Commission is, as part of its constant review of existing aid, only empowered to require the elimination or modification of such aid within a period which it is to determine. That aid can, therefore, lawfully be implemented as long as the Commission has not found it to be incompatible with the common market (Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145, paragraphs 23 and 25, and *Banco Exterior de España*, cited above, paragraph 20).

...

150 The contested decision must therefore be annulled in so far as Article 2 thereof declares aid granted with effect from 1 July 1990 to undertakings engaged solely in local, regional or national transport to be illegal, and in so far as Article 5 requires recovery of that aid.'

21 The fourth plea for annulment put forward by the applicants was based on the fact that Article 4, to which Article 5 of the contested decision refers in providing for the recovery of aid incompatible with the Treaty, unequivocally finds that the aid disbursed from 1 July 1990, a date which applies not only to aid granted to undertakings engaged exclusively in local, regional or national transport, but also to aid granted to those engaged in international road haulage, was incompatible with the common market. They complain that the Commission acted in breach both of the principles of proportionality and the protection of legitimate expectations and of the obligation to state reasons so far as the recovery of the aid is concerned.

22 The Court of First Instance also rejected that plea in law, on the grounds set out in paragraphs 162 to 177 of the contested judgment, which are based on the consideration that Article 4 of the contested decision must be interpreted as covering the aid granted to undertakings engaged in local, regional or national transport from 1 July 1990 onwards and that granted to undertakings engaged in international road haulage since the introduction of the aid systems in question.

23 The Court of First Instance also held that, since the aid in question had not been notified to the Commission, the applicants had not established the existence of any specific factor which would give grounds for assuming that the obligation to reimburse individual aid granted to undertakings engaged in international road haulage was, in view of the effect of such aid on competition, manifestly disproportionate to the objectives of the Treaty or any exceptional circumstance of such a kind as to create legitimate expectations as to the lawfulness of such aid paid to undertakings engaged in international road haulage. It also concluded that the statement of reasons for the contested decision is adequate in that regard.

24 The operative part of the contested judgment is worded as follows:

'1. Annuls Article 2 of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road

haulage companies in the Region in so far as it declares illegal aid granted after 1 July 1990 to undertakings engaged exclusively in local, regional or national transport;

2. Annuls Article 5 of Decision 98/182 in so far as it requires the Italian Republic to recover that aid;

3. Dismisses the remainder of the application;

4. Orders each party to bear its own costs.'

The appeal

25 By its appeal, the Italian Republic claims that the Court should:

— partially set aside the contested judgment;

— in the alternative, annul the contested decision in so far as it imposes the obligation to recover the subsidies granted, together with interest;

— order the Commission to pay the costs.

26 The Commission contends that the Court should:

— dismiss the appeal;

— set aside the contested judgment or, in the alternative, set it aside in so far as it partially annulled the contested decision;

— order the Italian Republic and Impresa Edo Collorigh and Others (hereinafter 'Collorigh and Others'), which were among the applicants at first instance, to pay the costs.

27 In the pleading which they filed in response to the notification of the appeal, Collorigh and Others claim in essence that the Court should:

— set aside the contested judgment in so far as it:

— finds incompatible with the common market the aid granted to undertakings engaged in international road haulage operations which received subsidies granted pursuant to Laws Nos 28/1981 and 4/1985;

— classifies as 'new aid' the subsidies paid to undertakings which engaged in international road haulage operations during the period from 1981 to 1995;

— orders the competent authorities of the Italian Republic to recover the allegedly illegal aid;

— in the alternative, annul the contested decision in so far as it imposes the obligation to recover the subsidies granted, together with interest;

— in the further alternative, annul the contested decision by limiting to the minimum amount the obligation to refund, taking account of the profit actually made by the undertakings concerned and of the tax burdens on them.

The cross-appeal

Arguments of the parties

28 By its cross-appeal, which must be examined first, the Commission claims that the Court of First Instance infringed both its obligation to satisfy itself of its own motion as to the admissibility of the actions brought at first instance and the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC), which lays down the criterion of individual concern. In the Commission's view, the Court of First Instance should have held that those actions had to be declared inadmissible for lack of any such individual

concern, since the applicants are unable to rely either on any attributes peculiar to them or on any circumstances by which they are distinguished from all other actual or potential recipients of the aid in question.

29 Taking the view that the contested decision is a measure of general application, the Commission claims that it is not of individual concern to the applicants which are undertakings which have not claimed and cannot claim the slightest specific factor by which they are distinguished from other interested undertakings which did not participate in the formal procedure for reviewing the aid in question. More specifically, that decision did not infringe any of those applicants' specific rights which were different from those of other undertakings in receipt of that aid.

30 In the Commission's view, that analysis is confirmed by the case-law (see, inter alia, Case 282/85 *DEFI* v *Commission* [1986] ECR 2469 and Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219) and is not invalidated by the judgment in Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855). In particular, the undertaking concerned in the case which gave rise to the latter judgment was in a different position, since it was not only affected by the Commission's decision by virtue of being a potential beneficiary of the aid scheme, 'but also by virtue of being an actual beneficiary of individual aid granted under that scheme, the recovery of which has been ordered by the Commission'.

31 The Commission points out, inter alia, that, firstly, the order for recovery of the aid already paid out is only one of the aspects of the contested decision, which continues to apply to all recipients, including those which are only potentially so. It maintains, secondly, that it will be possible to determine the actual existence of an obligation imposed on each undertaking to repay the aid received only at the conclusion of complex investigations. Finally, if all the undertakings which received aid granted under schemes declared illegal and incompatible with the common market and recovery of which was ordered by a Commission decision

were allowed to bring actions contesting that decision before the Court of First Instance, in cases where those undertakings did not bring actions, any reference for a preliminary ruling concerning the recovery of such aid would be declared inadmissible (see Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 25 and 26). The Commission is of the opinion that the perverse effect of such a situation would be to oblige recipient undertakings to contest the decision before the Court of First Instance within the limited period laid down for bringing an action for annulment, even before knowing whether, under national law, they will actually be required to repay the aid received, such an effect potentially weakening the judicial protection of those undertakings.

32 The Commission is of the view that this plea of inadmissibility constitutes a ground involving a question of public policy. Consequently, since the Court of First Instance should have ascertained of its own motion whether the contested decision is of individual concern to the applicants, the Court of Justice must declare such a breach of that obligation. In the alternative, the Commission contends that the Court of Justice should itself examine the question of the admissibility of the actions brought at first instance. Giving judgment in accordance with the first paragraph of Article 61 of the Statute of the Court of Justice, the latter could dismiss those actions as inadmissible.

Findings of the Court

33 As a preliminary point, it must be observed that the Commission has abandoned its claims made in the alternative for the contested judgment to be set aside in so far as it partially annulled the contested decision.

34 It must be recalled that Article 173 of the Treaty, by virtue of which the Court of Justice is to review the legality of Community acts, provides that any natural or legal person may on grounds of lack of competence, infringement of an essential

procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former.

35 Where a decision is not of individual concern to a natural or legal person within the meaning of that provision, which is an essential condition for having *locus standi* in proceedings seeking judicial review of a Community act, such proceedings are inadmissible and that inadmissibility therefore constitutes a ground involving a question of public policy which may, and even must, be raised of its own motion by the Community judicature (see, with regard to a party having no interest in bringing or in maintaining an appeal, Case C-19/93 P *Rendo and Others* v *Commission* [1995] ECR I-3319, paragraph 13).

36 According to settled case-law, persons other than those to whom a decision is addressed may only claim to be individually concerned if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors distinguishes them individually just as in the case of the person addressed (see, inter alia, judgments in Case 25/62 *Plaumann* v *Commission* [1963] ECR 95; Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 7 and 28, and *Italy and Sardegna Lines* v *Commission*, cited above, paragraph 32).

37 The Court has thus held that an undertaking cannot, in principle, contest a Commission decision prohibiting a sectoral aid scheme if it is concerned by that decision solely by virtue of belonging to the sector in question and being a potential beneficiary of the scheme. Such a decision is, vis-à-vis the undertaking should it seek to contest the decision, a measure of general application covering situations which are determined objectively and entails legal effects for a class of

persons envisaged in a general and abstract manner (*Van der Kooy and Others* v *Commission*, cited above, paragraph 15; Case C-6/92 *Federmineraria and Others* v *Commission* [1993] ECR I-6357, paragraph 14, and *Italy and Sardegna Lines* v *Commission*, paragraph 33).

38 However, it is appropriate to recall the position adopted by the Court in the judgment in *Italy and Sardegna Lines* v *Commission* with regard to Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia (OJ 1998 L 20, p. 30), which required the Italian Republic to recover from each beneficiary of the loans and leases in question the element of aid which they contained. In paragraphs 34 and 35 of that judgment, the Court held that, since Sardegna Lines was not only concerned by Decision 98/95 by virtue of being an undertaking in the shipping sector in Sardinia and a potential beneficiary of the aid scheme for Sardinian shipowners, but also by virtue of being an actual beneficiary of individual aid granted under that scheme, the recovery of which had been ordered by the Commission, it was individually concerned by that decision and its action directed against that decision was admissible.

39 Contrary to what the Commission claims, that is precisely the case here, since the applicants are in a different position from that of applicants for whom a Commission decision is in the nature of a measure of general application. The former are not only concerned by the contested decision by virtue of being undertakings in the road haulage sector in the region and potential beneficiaries of the aid scheme in question, but also by virtue of being actual recipients of individual aid granted under that scheme, the recovery of which has been ordered by the Commission. As paragraphs 10 and 11 of the contested judgment show, the number of applications accepted and the amount budgeted for the aid in question during the periods from 1981 to 1985 and from 1985 to 1995 were specified in section II of the reasons for the contested decision and the Commission must therefore have known of the existence of those actual recipients.

40 Since it follows from the foregoing that, in this case, the actions brought by the applicants were admissible, the Court of First Instance did not err in law by not raising of its own motion, as a ground of inadmissibility, the point that those applicants were not individually concerned by the contested decision.

41 Accordingly, the Commission's cross-appeal must be dismissed as unfounded.

Substance

42 In support of its appeal, the Italian Republic raises two pleas in law. By its first plea, it claims essentially that the Court of First Instance infringed Article 92(1) of the Treaty. By the first part of that plea, it submits that the Court of First Instance erred in law in interpreting that provision. By the second and third parts of that plea, it maintains that it was as a consequence of an error of assessment that the Court of First Instance held that the aid granted to undertakings engaged in international road haulage (hereinafter 'the aid in dispute') affected intra-Community trade and competition and must therefore be regarded as new systems of aid and subject, as such, to the obligation to notify laid down in Article 93(3) of the Treaty. By the fourth part of that plea, it maintains that the contested judgment is vitiated by an inadequate statement of reasons as regards the effect of the aid in dispute on that trade. By its second plea, concerning the demand for recovery of that aid, the Italian Republic alleges that the Court of First Instance made an error of assessment and acted in breach of the principles of proportionality and the protection of legitimate expectations.

The first plea in law

The first part of the first plea in law, alleging that the Court of First Instance erred in law in interpreting Article 92(1) of the Treaty

— Arguments of the parties

43 The Italian Republic and Collorigh and Others maintain that the Court of First Instance erred in law by holding that Article 92(1) of the Treaty must not be restrictively interpreted as requiring that the aid referred to by that provision have a real, concrete effect on intra-Community trade. In their view, the Court of First Instance should have interpreted it as requiring that the Commission establish and specify in concrete terms whether any undertakings had suffered harm and, if so, how many were concerned.

44 However, in the Commission's view, it was not required, any more than the Court of First Instance was so required, to ascertain whether the aid measures had, in reality, harmed other Community undertakings. No such examination is required either by the wording of Article 92 of the Treaty, which simply makes reference to a threat of distortion of competition, or by the scheme of that provision. Moreover, such an examination is almost impossible to carry out, in particular in fragmented markets characterised by the presence of a very large number of operators.

— Findings of the Court

45 It must be noted in that regard that Article 92(1) of the Treaty defines the aid regulated by it as being any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, in so far as it affects trade between Member States.

46 The procedural rules laid down by the Treaty vary depending on whether aid is existing aid or new aid.

47 With regard to existing aid, under the provisions of Article 93(1) and (2) of the Treaty and in accordance with the principle of legal certainty, in the context of its constant review of such aid, if, after giving notice to the parties concerned to submit their comments, the Commission finds that that aid is not compatible with the common market having regard to Article 92 of the Treaty, or that such aid is being misused, it is to decide that the State concerned must abolish or alter such aid within a period of time to be determined by the Commission. Such aid may therefore be lawfully put into effect as long as the Commission has not found it to be incompatible (see judgments in *Italy* v *Commission*, cited above, paragraphs 23 and 25, and *Banco Exterior de España*, cited above, paragraph 20).

48 With regard to new aid, Article 93(3) of the Treaty provides that the Commission is to be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. It then undertakes an initial examination of the planned aid. If, following that examination, it considers that any such plan is not compatible with the common market, it must without delay initiate the procedure provided for in paragraph 2 of that article. In such circumstances, the Member

State concerned must not put its proposed measures into effect until the procedure has resulted in a final decision. New aid is therefore subject to a precautionary review by the Commission and may not, in principle, be put into effect until such time as the latter has declared it compatible with the Treaty.

49 As the Court of First Instance held inter alia, in paragraphs 77 to 79 of the contested judgment, in the course of the Commission's assessment of new aid which, pursuant to Article 93(3) of the Treaty, is to be notified to it before being put into effect, the Commission is required to establish, not whether such aid has a real impact on trade between Member States and on competition, but whether that aid could affect that trade. If the Commission had to demonstrate in its decision the real effect of aid already granted, such a requirement would have the effect of favouring Member States which grant aid in breach of the obligation to notify laid down in Article 93(3) of the Treaty, to the detriment of those which do notify aid at the planning stage (Case C-301/87 *France* v *Commission* [1990] ECR I-307, '*Boussac Saint Frères*', paragraphs 32 and 33).

50 Consequently, the Court of First Instance was fully entitled to hold, in paragraph 95 of the contested judgment, that it was not necessary to establish that certain Community undertakings had been adversely affected by the granting of the aid in dispute. This first part of the first plea, alleging that the Court of First Instance erred in law in interpreting Article 92(1) of the Treaty, must therefore be rejected as unfounded.

The second part of the first plea in law, relating to the impact of the aid in dispute on intra-Community trade and competition

— Arguments of the parties

51 The Italian Republic and Collorigh and Others maintain that the Court of First Instance should have concluded, having regard inter alia to certain relevant

documents in the file, that the aid in dispute had no impact on intra-Community trade and competition. In the first place, due to the fact that, on the one hand, that aid represented a very modest total amount and, on the other hand, the road hauliers of the Region constituted a completely marginal group of the intra-Community transport sector, the impact of that aid was bound to be absolutely insignificant. In the second place, the international road haulage sector, which was characterised by quotas and bilateral agreements, could not at that stage yet be regarded as being completely liberalised. Moreover, the Court of First Instance should have demonstrated that the Community quota in force on the international road haulage market had not been exhausted, although, in this instance, it had been. In the third place, in the view of Collorigh and Others, the Court of First Instance should have ruled out the possibility that the system of aid in dispute might strengthen the financial position of the recipient undertakings, since the objective of that aid was to compensate for the competition from Austrian, Croatian and Slovenian operators.

52 The Commission contends, firstly, that the application of a system of aid which is such as to favour not only one undertaking but an entire sector, in particular where the presence of a large number of small undertakings is a feature of the market structure, is bound to affect trade. As the Court of First Instance rightly points out in paragraph 86 of the contested judgment, in such a context, the effects on competition and trade of even relatively modest aid may not be negligible, and such aid cannot be regarded as of little importance.

53 Secondly, in the international road haulage sector, there existed in Italy, even before 1969, a certain degree of competition under the bilateral agreements concluded by the Italian Republic. In 1981 and 1985, when the systems of aid in dispute were instituted, the Community quotas allowed all hauliers in possession of the required authorisations to establish any transport link between two Member States and created or strengthened a competitive relationship between undertakings established in different Member States, as the Court of First Instance pointed out in paragraph 145 of the contested judgment. Indeed, on this same point, the Court of First Instance correctly stated the reasons which led it to consider that the advantages granted to the international road haulage undertakings constitute State aid for the purposes of the Treaty.

— Findings of the Court

54 In the first place, it should be recalled that, according to settled case-law, the relatively small amount of aid or the relatively small size of the undertaking which receives it do not as such exclude the possibility that intra-Community trade might be affected (see Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, '*Tubemeuse*', paragraph 43; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42, and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 81). Aid of a relatively small amount is liable to affect competition and trade between Member States where there is strong competition in the sector in which the undertakings which receive it operate (see Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24, and Case C-351/98 *Spain* v *Commission* [2002] ECR I-8031, paragraph 63).

55 The Court of First Instance, having declared that that case-law applied to the present case, was fully entitled to hold, firstly, in paragraphs 84 and 86 of the contested judgment, that the small size of the recipient undertakings and the relatively small amount of aid allocated did not mean that there was no effect on competition and trade where, as in the road haulage sector, the presence of a large number of small-sized undertakings was a feature of the market structure. Secondly, as the Court of First Instance pointed out in paragraph 94 of the contested judgment, although hauliers from the Region played only a small part in that sector, the limited nature of the competition cannot preclude the application of Article 92(1) of the Treaty. It therefore concluded, in the same paragraph, that the aid in dispute strengthened the financial position and hence the scope of commercial haulage companies in the Region vis-à-vis their competitors and might accordingly affect trade between Member States.

56 Since the Italian Republic has not put forward any evidence that the Court of First Instance failed, in this case, to have regard to the principles recognised by the Court of Justice in the case-law mentioned in paragraph 54 of the present judgment, that argument concerning the impact of the aid in dispute on intra-Community trade and competition must be rejected as unfounded.

57 In the second place, the argument put forward by the Italian Republic and Collorigh and Others that the Court of First Instance should have concluded that the international road haulage sector, characterised as it was by the existence of quotas and bilateral agreements, could not yet be regarded as being fully liberalised on the date of the contested decision and that, consequently, the aid in dispute could not be regarded as affecting competition, must be rejected as unfounded.

58 In paragraph 92 of the contested judgment, the Court of First Instance noted that, by virtue of the relevant provisions of Regulation No 1018/68, Community authorisations issued in the carrier's name and usable only for one vehicle were granted under national quotas, for a period of one year in the case of international road haulage, holders of an international road haulage authorisation being entitled, during those periods of validity, to transport goods without limitation, with one vehicle, between Member States of their choice.

59 The Court of First Instance was therefore fully entitled to conclude that the quota schemes in force on the international road haulage market from 1969 to 1993 allowed the introduction, within the limit of the quotas laid down, of an effective competitive situation which was capable of being affected by the grant of the aid in dispute.

60 In that regard, the Court of First Instance was also fully entitled to hold, in paragraph 96 of the contested judgment, that, even assuming that the Community quota had been exhausted, that factor would not necessarily have led to the conclusion that the aid in dispute had no effect on intra-Community trade and competition. In view of the free choice given by quota schemes to holders of Community authorisations as regards the Member States between which they may provide international haulage services, exhaustion of the quotas would in any event not furnish any information as to the use made of them, in particular in the case of such haulage services from or to Italy or, more specifically, the Region.

61 In the third place, according to settled case-law, the fact that a Member State seeks to approximate, by unilateral measures, conditions of competition in a particular sector of the economy to those prevailing in other Member States cannot deprive the measures in question of their character as aid (Joined Cases 6/69 and 11/69 *Commission* v *France* [1969] ECR 523, paragraphs 20 and 21, and Case C-6/97 *Italy* v *Commission* [1999] ECR I-2981, paragraph 21).

62 It follows that the Court of First Instance was fully entitled to hold, in paragraph 101 of the contested judgment, that the aid in dispute could be justified neither by the existence of higher discount rates in Italy nor by competition from operators established in Austria, Croatia or Slovenia. The argument put forward by Colloríg and Others that the Court of First Instance should have ruled out the possibility that the system of aid in question strengthened the financial position of the recipient undertakings, since that aid was such as to compensate for that competition, must be rejected as unfounded.

63 Accordingly, the second part of the first plea in law, relating to the impact of the aid in dispute on intra-Community trade and competition, must be rejected in its entirety as unfounded.

The third part of the first plea in law, alleging error of assessment of the aid in dispute as new aid

— Arguments of the parties

64 The Italian Republic and Collorigh and Others dispute the assessment made by the Court of First Instance in paragraph 145 of the contested judgment that, since the aid in dispute came within the scope of Article 92(1) of the Treaty from the time of its introduction, it therefore had to be regarded as new systems of aid which should thus have been notified pursuant to Article 93(3) of the Treaty. In their view, the Court of First Instance should have found that such aid, which was instituted in 1981 and 1985 in a market which was not fully liberalised, had to be classified as existing aid and could be the subject only, if at all, of a decision finding it incompatible as to the future.

65 The Commission, on the other hand, while not disputing the interpretation of existing aid adopted by the Court of First Instance in paragraphs 142 and 143 of the contested judgment, nevertheless points out that it is a very broad understanding of the concept of existing aid. In any event, since the aid in dispute had been instituted in 1981 and 1985 in a sector open to competition, it came within the scope of Article 92(1) of the Treaty and had to be regarded as new aid.

— Findings of the Court

66 In this case, as the Court of First Instance has already correctly pointed out in paragraph 5 of the contested judgment, the international road haulage sector had already been partially opened up to Community competition from 1969 onwards by Regulation No 1018/68 and has been fully liberalised since 1 January 1993.

67 The Court of First Instance inferred from that, in paragraph 94 of the contested judgment, that the aid in dispute strengthened the financial position and hence the scope of commercial haulage companies in the Region vis-à-vis their competitors and might accordingly affect trade between Member States.

68 Having been instituted in 1981 and 1985, that aid therefore came within the scope of Article 92(1) of the Treaty from the time of its introduction. It follows that, in finding in paragraph 145 of the contested judgment that the aid in question had therefore to be regarded as new systems of aid which should thus have been notified pursuant to Article 93(3) of the Treaty, the Court of First Instance did not err in law.

69 Accordingly, the third part of the first plea in law, alleging an error of assessment of the aid in dispute as new aid, must be rejected.

The fourth part of the first plea in law, alleging failure to state grounds for the contested judgment

70 So far as concerns the fourth part of the first plea in law, alleging failure to state grounds for the contested judgment as regards the impact of the aid in dispute on intra-Community trade, it should be pointed out that the Court of First Instance set out in detail, in paragraphs 76 to 106 of the contested judgment, the reasons which had led the Commission to take the view that such aid was liable to affect trade between Member States and distort competition.

71 Accordingly, the fourth part of the first plea in law, alleging failure to state grounds for the contested judgment, must be rejected as unfounded.

72 In the light of the foregoing considerations, none of the four parts of the first plea in law can be upheld and, accordingly, that plea in law must be rejected in its entirety as unfounded.

The second plea in law

73 By its second plea in law, which comprises three parts, the Italian Republic complains that the Court of First Instance erred in law in so far as it held that the contested decision, in requiring the recovery of the aid in dispute, together with interest, is compatible with the principles of proportionality and the protection of legitimate expectations and that it failed to have regard to the extent of the obligation to recover that aid.

The first part of the second plea in law, alleging breach of the principle of proportionality

— Arguments of the parties

74 By the first part of the second plea in law, Colloriqh and Others maintain that the Court of First Instance should have found that the Commission failed to provide evidence that recovery of the aid in dispute was either reasonable or necessary.

The Italian Republic, for its part, points out that, although that aid had an insignificant impact on the situation of the recipient undertakings, its repayment would place a very heavy burden on them, liable to result in economic disaster for many of them.

— Findings of the Court

75 According to settled case-law, correctly cited by the Court of First Instance in paragraph 169 of the contested judgment, abolishing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of the Treaty in regard to State aids (see *Tubemeuse*, cited above, paragraph 66, and Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 47).

76 By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (see Case C-350/93 *Commission* v *Italy* [1995] ECR I-699, paragraph 22). It also follows from that function of repayment of aid that, as a general rule, save in exceptional circumstances, the Commission will not exceed the bounds of its discretion, recognised by the case-law of the Court, if it asks the Member State to recover the sums granted by way of unlawful aid since it is only restoring the previous situation (see Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 66, and Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 99).

77 With regard to the argument put forward by Collorigh and Others that repayment of the aid in dispute would place a very heavy burden on the recipient undertakings, liable to cause many of them to disappear from the market and so giving rise to a serious employment and social crisis, making such recovery of the aid impossible in practice, it is sufficient to point out that the circumstances relied on by Collorigh and Others are by no means sufficient to demonstrate the impossibility of recovering the aid in dispute. They are merely potential internal difficulties.

78 In accordance with the case-law of the Court, the apprehension of internal difficulties cannot justify a failure by a Member State to comply with its obligations under Community law (see, inter alia, Case C-404/97 *Commission* v *Portugal* [2000] ECR I-4897, paragraph 52; Case C-310/99 *Italy* v *Commission*, cited above, paragraph 105, and Case C-404/00 *Commission* v *Spain* [2003] ECR I-6695, paragraph 55).

79 In those circumstances, the Court of First Instance was fully entitled to conclude, in paragraph 170 of the contested judgment, that no specific evidence had been put forward to show that the obligation to reimburse the aid in dispute is disproportionate to the objectives of the Treaty.

80 Accordingly, the first part of the second plea in law, by which the Italian Republic alleges that the Court of First Instance failed to observe the principle of proportionality, must be rejected.

The second part of the second plea in law, alleging breach of the principle of the protection of legitimate expectations

— Arguments of the parties

81 Although the Italian Republic does not dispute the Court's case-law which, in general, does not permit a Member State which has granted aid incompatible with the common market to plead the legitimate expectations of the recipients in order to avoid the obligation to recover that aid, it does claim, by the second part of its second plea in law, that that principle could be reformulated, in particular in cases such as this where the measure has been applied over a very long period without giving rise to any objection and has even been lawful and compatible with the Treaty for a large proportion of that period.

82 The Italian Republic maintains, firstly, that a limitation, by the operative part of the contested decision, of the temporal effect of the obligation to recover the aid in dispute would be justifiable in this case, since that was aid which had been instituted and paid out for more than 14 years at the time when the Commission initiated the procedure, namely in November 1995, and, secondly, that the contested judgment constitutes a *reformatio in pejus* of that decision, thus failing to observe the principles of the protection of legitimate expectations and legal certainty. It is precisely to prevent the adoption of acts regarding legal and economic situations which have been consolidated over time that Article 15 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1) rightly provides that the power of the Commission to act to recover illegal aid is to be subject to a limitation period of 10 years which starts to run from the date on which the aid was granted. Although that provision is not applicable, *ratione temporis*, to this case, some helpful criteria may be drawn from it for the purpose of placing reasonable limits on the temporal scope for recovery of the aid in dispute.

83 Colloríg and Others concur with that view, while pointing out that the assertion by the Court of First Instance in paragraph 173 of the contested judgment, that the undertakings in receipt of that aid were precluded from relying on any exceptional circumstances on the basis of which they might legitimately have assumed that aid to be lawful, and therefore from declining to repay it, is incorrect. In their opinion, the Court of First Instance took into account many factors which could certainly be described as exceptional circumstances.

84 The Commission replies that, in paragraphs 172 and 173 of the contested judgment, the Court of First Instance rightly refused to find that there were exceptional circumstances of such a kind as to create legitimate expectations as to the lawfulness of the aid in dispute.

85 In the Commission's view, the Italian Republic has not put forward any convincing argument to refute that conclusion. First, in the absence of any limitation period, the claim that the measures had been applied for 10 or 14 years when the Commission initiated the formal review procedure is irrelevant and the reference to Article 15 of Regulation No 659/1999 is misplaced. Second, it is wrong to claim that the measure in question was 'lawful and compatible with the Treaty for a long period of time'. On the contrary, that measure was never lawful since it was not notified. Moreover, when the Commission had the opportunity to examine it, it found it to be incompatible with the common market and its decision was confirmed by the contested judgment which is not criticised in that respect. Finally, contrary to what is claimed by the Italian Republic, that incompatibility did not occur suddenly but characterised the aid in dispute from the date on which it was instituted.

— Findings of the Court

86 It must be pointed out that a recipient of illegally granted aid is not precluded from relying on exceptional circumstances on the basis of which it had

legitimately assumed the aid to be lawful and thus declining to refund that aid. If such a case is brought before a national court, it is for that court to assess the material circumstances, if necessary after obtaining a preliminary ruling on interpretation from the Court of Justice (Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 16, and Case C-310/99 *Italy* v *Commission*, cited above, paragraph 103).

87 In the present case, the Court of First Instance first of all found, in paragraph 172 of the contested judgment, that the aid in dispute had been granted without having been notified to the Commission beforehand, contrary to the obligation imposed on Member States by Article 93(3) of the Treaty.

88 Secondly, the Court of First was fully entitled to conclude, in the same paragraph of the contested decision, that the fact that the recipient undertakings are small undertakings cannot justify a legitimate expectation on their part as to the lawfulness of that aid.

89 Finally, in so far as the Italian Republic claims that, since the recipient undertakings had relied on the lawfulness of aid instituted and paid out over many years, the Court of First Instance should have concluded that that long period had given rise to legitimate expectations on the part of those recipients with regard to recovery of the aid in dispute, which, as the Court of Justice has already held, justified a temporal limitation of the power held by the Commission, it is sufficient to reply that, in order to fulfil its function, such a limitation period must be fixed in advance, the fixing of its duration and the detailed rules for its application coming within the powers of the Community legislature (see, to that effect, Case 52/69 *Geigy* v *Commission* [1972] ECR 787, paragraph 21). On the date of the contested decision, the latter had not yet acted to fix a period of limitation in connection with the monitoring of aid granted under the Treaty, since Regulation No 659/1999, having only entered into force on 16 April 1999, does not apply to the facts of this case.

90 However, the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its powers (see *Geigy* v *Commission*, cited above, paragraphs 20 and 21, and Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I-7869, paragraph 140). In that regard, a delay by the Commission in deciding that an aid is illegal and must be abolished and recovered by a Member State could in certain circumstances establish a legitimate expectation on the part of the recipients of that aid so as to prevent the Commission from requiring that Member State to order the refund of the aid (see Case 223/85 *RSV* v *Commission* [1987] ECR 4617, paragraph 17). However, the facts of the case giving rise to that judgment were exceptional and bear no resemblance to those in the present case. The measure at issue in that judgment concerned a sector which had for some years been receiving State aid approved by the Commission and its object was to meet the additional costs of an operation which had already received authorised aid (Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraph 44).

91 In any event, in the case of State aid that has not been notified, such a delay may be imputed to the Commission only from the time when it learned of the existence of the aid incompatible with the common market.

92 In this case, it is common ground that the Commission learned of the aid in dispute only in September 1995. In view, firstly, of the fact that such aid had not been authorised by the Commission and, secondly, of the fact that the Commission was not aware of the complex situation in which that aid had been granted, it was therefore necessary, before reaching a decision, to carry out an investigation. In those circumstances, the time which elapsed between September 1995 and the date of adoption of the contested decision, namely 30 July 1997, is reasonable. Consequently, the Court of First Instance cannot be considered to have failed to observe the principle of the protection of legitimate expectations in that regard.

93 Accordingly, the second part of the second plea in law must be rejected.

The third part of the second plea in law, relating to the extent of the obligation to recover the aid in dispute

— Arguments of the parties

94 By the third part of its second plea in law, the Italian Republic maintains that Article 4 of the contested decision, to which Article 5 refers in providing for recovery of the aid incompatible with the Treaty, makes no distinction between the aid to undertakings engaged in local, regional or national transport and the aid to those engaged in international road haulage and that Article 4 unequivocally finds that all the aid paid out from 1 July 1990 onwards by the Region is incompatible. Consequently, the principle that, in circumstances where the operative part of a decision is equivocal, it is possible to make reference to the reasons for that decision is irrelevant in this case.

95 The Commission replies that it is not clear whether the date of 1 July 1990, mentioned in Article 4 of the contested decision, refers only to the subsidies granted to undertakings engaged in local, regional or national transport or whether it also refers to those granted to undertakings engaged in international road haulage. However, as the Court of First Instance correctly pointed out in paragraphs 163 and 164 of the contested judgment, the reasons for the contested decision dispel any doubt in that regard and make it clear that the temporal limit of 1 July 1990 applies only to the aid granted to the first category of undertakings and does not concern the undertakings in the second category. Indeed, the analysis set forth by the Court of First Instance in paragraph 165 of that judgment, which is based on taking the operative part of the contested decision as a whole into consideration, invalidates that view put forward by the Italian Republic.

— Findings of the Court

96 Contrary to what the Italian Republic claims, the Court of First Instance, in paragraph 164 of the contested judgment, rightly found that Article 4 of the contested decision is worded equivocally as regards the requirement of recovery, which could refer either to all the aid in dispute granted since its introduction or only to the aid granted from 1 July 1990 onwards.

97 In any event, it should be pointed out that, in paragraph 163 of the contested judgment, the Court of First Instance started from the general principle that the operative part of an act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (see, inter alia, Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549, paragraph 21, and Case C-404/97 *Commission* v *Portugal*, cited above, paragraph 41).

98 In that regard, in paragraphs 164 and 166 of the contested judgment, the Court of First Instance concluded, firstly, that, in the light of the reasons for the contested decision, and in particular section VIII, last paragraph, of those reasons, Article 4 of that decision must be interpreted as meaning that the aid granted under Laws Nos 28/1981 and 4/1985 with effect from 1 July 1990 to undertakings engaged in local, regional or national transport and that granted to undertakings engaged in international road haulage since the introduction of the aid in dispute are incompatible with the common market.

99 Secondly, in paragraph 165 of the contested judgment, the Court of First Instance held that that interpretation is clear from a reading of the operative part of the contested decision taken as a whole. Such an analysis does not reflect an error of assessment on the part of the Court of First Instance.

100 It follows that the third part of the second plea in law, relating to the extent of the obligation to recover the aid in dispute, must be rejected.

101 In the light of the foregoing considerations, the second plea in law in support of the appeal must be rejected in its entirety.

102 Since none of the pleas in law put forward by the Italian Republic in support of its appeal can be upheld, the appeal must be dismissed.

Costs

103 Under Article 69(2) of the Rules of Procedure, which applies to the appeal procedure by virtue of Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. However, under the first subparagraph of Article 69(3) of those Rules, where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs. Since the Italian Republic and Collorigh and Others have failed in their pleas in the main appeal and the Commission has failed in its pleas in the cross-appeal, they must each be ordered to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses the appeal and the cross-appeal;**

2. **Orders the Italian Republic, Impresa Edo Collorigh and Others and the Commission of the European Communities to pay their own costs.**

Skouris Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President of the Sixth Chamber