JUDGMENT OF THE COURT (Sixth Chamber)
15 April 1997 *

In Case C-292/95,

Kingdom of Spain, represented by Alberto Navarro González, Director General for Community Legal and Institutional Coordination, and Miguel Bravo-Ferrer Delgado, Abogado del Estado, of the State Legal Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

applicant,

v

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, and Francisco Enrique González Díaz, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of the Commission's decision, notified by letter of 6 July 1995 and published in the *Official Journal of the European Communities* (1995 C 284, p. 3), to prolong, with retroactive effect from 1 January 1995, its decision of 23 December 1992 which had itself prolonged the validity of the Community framework on State aid to the motor vehicle industry,

* Language of the case: Spanish.

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, C. N. Kakouris, P. J. G. Kapteyn, G. Hirsch and R. Schintgen (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General delivered at the sitting on 7 January 1997,

gives the following

Judgment

1 By application lodged at the Court Registry on 1 September 1995, the Kingdom of Spain brought an action under Article 173 of the EC Treaty for annulment of the Commission's decision, notified by letter of 6 July 1995, to prolong, with retroactive effect from 1 January 1995, the Commission's decision of 23 December 1992 which had itself prolonged the validity of the Community framework on State aid to the motor vehicle industry. The contested decision appeared as a communication, 95/C 284/03, published in the *Official Journal of the European Communities* (1995 C 284, p. 3).

2 By letter of 31 December 1988, the Commission informed the Spanish Government that, at its meeting of 22 December 1988, it had adopted the conditions for implementing the general Community framework for State aid to the motor vehicle industry, laid down by its decision of 19 July 1988 and based on

Article 93(1) of the EEC Treaty. Those conditions were reproduced in a document which was annexed to the letter and which, according to the Commission, took into account the main observations made by the representatives of the Member States at a multilateral meeting held on 27 October 1988. The Commission requested the Spanish Government to inform it within a period of one month that it agreed to the framework.

3 The framework appeared in a communication, 89/C 123/03, published in the *Official Journal of the European Communities* (1989 C 123, p. 3). Point 2.2 laid down an obligation for the Member States to notify various categories of aid and to provide the Commission with an annual report containing information on all aid payments, including those not subject to the obligation to provide prior notification.

4 Point 2.5 of the communication provides that the framework measures are to enter into force on 1 January 1989, that they shall be valid for two years and that at the end of this period the Commission will review the utility and the scope of the framework.

5 Pending its acceptance by all the Member States, implementation of the framework was delayed until the end of the first half of 1989 in the case of ten States, until January 1990 in the case of the Kingdom of Spain and until May 1990 in the case of the Federal Republic of Germany. By letter of 5 February 1990, the Spanish Government had not in fact agreed to the application of the framework in the Kingdom of Spain until after 1 January 1990.

6 By letter of 31 December 1990 the Commission informed the Spanish Government that it had re-examined the utility and the scope of the framework and that, in view of the situation of the Community motor vehicle industry, it considered it necessary to prolong the framework measures.

7 The Commission's decision to prolong the framework measures was the subject of a communication, 91/C 81/05, published in the *Official Journal of the European Communities* (1991 C 81, p. 4).

8 The fifth paragraph of that communication provided:

'After two years the framework shall be reviewed by the Commission. If modifications appear necessary (or the possible repeal of the framework) these shall be decided upon by the Commission following consultation with the Member States'.

9 By letter of 27 January 1993 the Commission first reminded the Spanish Government that in December 1990 it had decided to prolong the framework measures without limiting their period of validity, even though it had undertaken to re-examine them after two years and to amend or repeal them, if this was necessary, after consultation with the Member States. It then indicated that, in accordance with the undertaking given in its letter of 31 December 1990, it had undertaken this re-examination with the Member States at a multilateral meeting held on 8 December 1992 at which a large majority of the Member States had expressed their satisfaction with the application of the framework measures and their wish to see them continued during the next years. Finally, the Commission informed the Spanish government that, in consequence, it had decided, on 23 December 1992, not to modify the framework measures, adding that these would remain valid 'until the next revision to be organized by the Commission'.

10 That Commission decision appeared in Communication 93/C 36/06, published in the *Official Journal of the European Communities* (1993 C 36, p. 17).

11 Taking the view that, by the decision of 23 December 1992, the Commission had prolonged the validity of the framework measures for an indefinite period and that it had thus modified their nature, without consulting the Member States, or even obtaining their consent, in breach in particular of Article 93(1) of the Treaty, the Kingdom of Spain, by application lodged at the Court on 5 April 1993, sought annulment of that decision.

12 In its judgment of 29 June 1995 in Case C-135/93 *Spain* v *Commission* [1995] ECR I-1651 the Court first stated that Article 93(1) of the Treaty, which had been used as the basis for the adoption of the framework, involved an obligation of regular, periodic cooperation on the part of the Commission and the Member States, from which neither the Commission nor a Member State could release itself for an indefinite period depending on the unilateral will of either of them (paragraph 24).

13 In the same judgment the Court then held that:

— by making application of the framework subject to its acceptance by the Member States and by providing for it to be valid for two years, at the end of which the Commission was to review its utility and scope, the original framework fully complied with the obligation of regular, periodic cooperation imposed on the Commission and the Member States by Article 93(1) of the Treaty (paragraph 26);

— by providing for a further review to take place after two years of application, the 1990 extension decision, despite a slightly different formulation, was intended to renew the framework for a further period of two years, at the end of which a decision was to be taken to maintain, amend or repeal it (paragraph 27);

— the decision of 23 December 1992 must be interpreted as having extended the framework only until its next review, which, like the previous ones, had to take place at the end of a further period of application of two years (paragraph 39).

14 Since the Kingdom of Spain's objections to the Commission's decision of 23 December 1992 to prolong the validity of the framework until that institution organized its review were thus founded on the incorrect premiss that the decision had altered the duration of validity of the framework by prolonging it for an indefinite period, the Court dismissed the application. However, considering that the legal position taken by the Kingdom of Spain had been largely upheld, the Court decided that the parties were to bear their own costs.

15 On the day following delivery of that judgment, that is to say on 30 June 1995, the Commission sent to the Member States a letter in which it stated that it followed from that judgment that, by its decision of 23 December 1992, it had prolonged the validity of the framework only until its next re-examination, that is to say until 31 December 1994. It therefore expressed its intention to submit to the next multilateral meeting of the Member States, called for 4 July 1994, a series of measures aimed at providing a framework for the future for aid to the motor vehicle industry and at providing transitional regulation of the situation as from 31 December 1994. On 3 July 1995 the Commission sent the Member States a communication, in English, entitled 'Community Framework on State aids to the Motor Vehicle Industry — Follow-up to the judgment of the Court of Justice of 29 June 1995', which was to be the subject of consultations at the multilateral meeting. The other language versions of this document, in particular the Spanish version, were sent to the delegations at the beginning of the multilateral meeting on 4 July 1995.

16 In that communication, the Commission first stated that it followed from the judgment in Case C-135/93 *Spain* v *Commission*, cited above, that the framework had ceased to be valid on 1 January 1995 and that the legal void thus created had serious implications, both political and legal, to the application by the Commission of the Treaty rules on State aid in the highly sensitive motor vehicle sector. The Commission was therefore minded to remedy this situation by proposing the reintroduction of the framework pursuant to Article 93(1) of the Treaty and by adopting transitional measures guaranteeing effective and uninterrupted application of the monitoring of State aid established by the framework.

17 By letter of 6 July 1995, the Commission informed the Spanish Government that, in the Community interests, it had decided to prolong its decision of 23 December 1992 with retroactive effect from 1 January 1995, so that the framework was to remain in application without interruption. The Commission stated that the prolongation was provisional and would apply only until the completion of the procedure provided for in Article 93(1) of the Treaty, which it had decided to commence simultaneously (followed, if necessary, by procedures under Article 93(2)) and, at the most, for a period of one year, that is to say until 31 December 1995. It stated that its decision was justified by an overriding Community interest, namely maintenance of undistorted competition in the motor vehicle sector, and was intended to avoid effects contrary to the common interest and irreversible for the structure of the market in the sector concerned.

18 The Commission went on to state that the measure which it had decided on was a mere prolongation, pursuant to Article 93(1) of the Treaty, for a limited period, of the initial framework which had been agreed to by the Member States. It reminded the Spanish Government that this measure had been presented to the Member States at the multilateral meeting held on 4 July 1995 and that, consequently, in accordance with the obligations to cooperate under the Treaty, in particular Article 5, the decision meant that the Member States had to refrain from granting

aid in the motor vehicle sector without first notifying it to the Commission or without waiting for its final decision in accordance with the rules laid down in the framework.

19 In the same letter of 6 July 1995, the Commission indicated, finally, the reasons for which it considered that retroactive application of its decision of 1 January 1995 was justified. First, the fact that the judgment in the *Spain* v *Commission* case had been pronounced after the date on which re-examination of the framework ought to have taken place was an exceptional circumstance which, according to the case-law of the Court, may, in certain conditions, justify entry into force of a Community act at a date prior to its adoption. Furthermore, the aim of maintaining undistorted competition in the motor vehicle sector could be achieved only by maintaining without discontinuity the notification rules contained in the framework, which were the only measures capable of preventing irreversible effects which would be entailed by the grant of aid without taking account of its sectoral impact in a particularly sensitive sector in which there was a need for major investment notwithstanding current production overcapacity. Finally, the presumption of validity which the Commission's decision of 23 December 1992 enjoyed prevented those concerned from acquiring any legitimate interest; the Member States and the undertakings had, in any event, believed that the framework was in application.

20 In support of the action which it has brought against that decision, the Kingdom of Spain maintains, first, that it is legally impossible to prolong a legal act having a validity period which has come to an end.

21 Second, it raises a plea alleging breach of Article 93(1) of the Treaty. This plea is in two parts.

22 First, the consultations which the Commission maintains it held during the multilateral meeting of 4 July 1995 took place in conditions which did not satisfy the obligation of regular and periodic cooperation which, according to the judgment in *Spain* v *Commission*, ensued from that provision.

23 Second, having regard to the expiry of the validity period of the framework established by the decision of 23 December 1992, such as was confirmed by that judgment, its restoration has the effect of novation and should have been decided upon according to the procedure applicable to the introduction of a framework as an 'appropriate measure' within the meaning of Article 93(1), requiring the Member States' agreement.

24 Third, the Kingdom of Spain disputes that the exceptional circumstances arising from the judgment in *Spain* v *Commission*, relied on by the Commission, are such as to justify making the contested decision retroactive.

25 In response to those objections, the Commission states that the aim of the contested decision was solely to fill, as a matter of urgency and on a transitional basis, the legal void which was created following the judgment in Case C-135/93 *Spain* v *Commission* while respecting the spirit of Article 93(1) of the Treaty. It considers that, owing to the overriding need to fill that void, it was entitled to adopt the contested decision without having recourse to the normal procedure for adopting a framework, involving a proposal on its part, a multilateral meeting with the Member States and their agreement.

26 Finally, it reiterates the reasons already stated in the contested decision as justification for giving the decision retroactive effect.

27 In judging the merits of the objections raised by the Kingdom of Spain, a distinction must be drawn between those relating to the procedure followed by the Commission for the adoption of the contested decision and those challenging its retroactive effect.

28 Amongst the procedural objections, it is necessary to examine together the first objection and the second part of the second objection by which the Kingdom of Spain maintains in substance that the retroactive extension of the framework is equivalent to its reintroduction, that is to say, the adoption of a new framework having the same content as that which had just expired, and that it ought therefore to have been decided on with the agreement of the Member States.

29 That argument must be accepted.

30 Without any prolongation, the framework ceases to exist on the date on which it is set to expire, so that a decision to prolong it, adopted, as in this case, after expiry of the period of validity of the decision which it prolongs constitutes a modification of the existing legal situation and must be adopted according to the same procedure as that required for the adoption of the decision which established the original framework or of a decision making modifications to it.

31 During the procedure before the Court, the Commission did in fact accept that its decision would normally have to be adopted according to the procedure for adopting a new framework, requiring the Member States' agreement.

32 The Commission did indeed state that, in view of the exceptional circumstances created by the judgment in Case C-135/93 *Spain* v *Commission* and having regard to the overriding need to maintain undistorted competition in the motor vehicle sector and to avoid effects contrary to the common interest and irreversible for the structure of the market in the sector concerned, it could dispense with obtaining the Member States' agreement in this case.

33 However, it is precisely such considerations which the Commission must also take into account when deciding to introduce a framework according to the procedure normally applicable which, as it accepts, requires the Member States' agreement.

34 It must accordingly be concluded that the exceptional circumstances relied on by the Commission, whilst allowing it to justify giving retroactive effect to the contested decision, could not dispense it from obtaining the Member States' agreement for the purposes of adopting that decision.

35 It follows that the pleas to the effect that the Commission was obliged to obtain the Member States' agreement in order to adopt the contested decision are well founded. That decision must therefore be annulled without its being necessary to examine the other pleas.

Costs

36 Under Article 69(2) of the Rules of Procedure, 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 Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Annuls the Commission's decision, notified by letter of 6 July 1995, to prolong, with retroactive effect from 1 January 1995, the Commission decision of 23 December 1992 which had itself prolonged the validity of the Community framework on State aid to the motor vehicle industry;**

2. **Orders the Commission to pay the costs.**

Mancini Kakouris Kapteyn

Hirsch Schintgen

Delivered in open court in Luxembourg on 15 April 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber