JUDGMENT OF THE COURT (Second Chamber)

14 December 2006 *

In Joined Cases C-485/03 to C-490/03,

ACTIONS for failure to fulfil obligations pursuant to Article 88(2) EC, brought on 19 November 2003,

Commission of the European Communities, represented initially by J.L. Buendía Sierra, and subsequently by F. Castillo de la Torre, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Klučka, R. Silva de Lapuerta, J. Makarczyk and L. Bay Larsen (Rapporteur), Judges,

Advocate General: E. Sharpston,
Registrar: H. von Holstein, Deputy Registrar,

having regard to the written procedure and further to the hearing on 11 May 2006,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 In the context of six applications, the Commission of the European Communities is seeking a declaration by the Court that, by failing to adopt within the prescribed period all of the measures necessary to comply with Articles 2 and 3 of each of the following decisions:

— Commission Decision 2002/820/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Álava in the form of a tax credit amounting to 45% of investments (OJ 2002 L 296, p. 1) (Case C-485/03);

— Commission Decision 2002/892/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Álava (OJ 2002 L 314, p. 1) (Case C-488/03);

— Commission Decision 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Vizcaya in the form of a tax credit amounting to 45% of investments (OJ 2003 L 17, p. 1) (Case C-487/03);

— Commission Decision 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Vizcaya (OJ 2002 L 279, p. 35) (Case C-490/03);

— Commission Decision 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Guipúzcoa in the form of a tax credit amounting to 45% of investments (OJ 2002 L 314, p. 26) (Case C-486/03), and

— Commission Decision 2002/540/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (OJ 2002 L 174, p. 31) (Case C-489/03),

or, in any event, by failing to communicate those measures to the Commission pursuant to Article 4 of each decision, the Kingdom of Spain has failed to fulfil its obligations under those decisions ('the contested decisions') and under the EC Treaty.

The contested decisions

2 On 11 July 2001, the Commission adopted the contested decisions, Articles 1 of which provide respectively as follows:

— Decision 2002/820:

> 'The State aid in the form of a 45% tax credit for investments, which, in violation of Article 88(3) [EC], has been unlawfully put into effect by Spain in Álava pursuant to Provincial Law No 22/1994 of 20 December 1994, the fifth additional provision of Provincial Law No 33/1995 of 20 December 1995, the sixth additional provision of Provincial Law No 31/1996 of 18 December 1996, as amended by point 2.11 of the derogating provision in Provincial Law No 24/1996 of 5 July 1996 on corporation tax, the eleventh additional provision of Provincial Law No 33/1997 of 19 December 1997 and the seventh additional provision of Provincial Law No 36/1998 of 17 December 1998, is incompatible with the common market';

— Decision 2002/892:

> 'The State aid in the form of a reduction in the tax base, unlawfully put into effect by Spain in the Province of Álava, in breach of Article 88(3) [EC], through Article 26 of Provincial Law No 24/1996 of 5 July 1996, is incompatible with the common market';

— Decision 2003/27:

'The State aid in the form of a 45% tax credit for investments, unlawfully put into effect by Spain in the Province of Vizcaya, in breach of Article 88(3) [EC], through the fourth additional provision of Provincial Law No 7/1996 of 26 December 1996, extended indefinitely by the second provision of Provincial Law No 4/1998 of 2 April 1998, is incompatible with the common market';

— Decision 2002/806:

'The State aid in the form of a reduction of the tax base, unlawfully put into effect by Spain in the Province of Vizcaya, in breach of Article 88(3) [EC], through Article 26 of Provincial Law No 3/1996 of 26 June 1996, is incompatible with the common market';

— Decision 2002/894:

'The State aid in the form of a 45% tax credit for investments, unlawfully put into effect by Spain in the Province of Guipúzcoa, in breach of Article 88(3) [EC], through the 10th additional provision of Provincial Law No 7/1997 of 22 December 1997, is incompatible with the common market';

— Decision 2002/540:

'The State aid in the form of a reduction of the tax base, unlawfully put into effect by Spain in the Province of Guipúzcoa, in breach of Article 88(3) [EC], through Article 26 of Provincial Law No 7/1996 of 4 July 1996, is incompatible with the common market.'

3 Article 2 of each of the contested decisions calls on the Kingdom of Spain to abolish the aid scheme in question in so far as it continues to produce effects.

4 Articles 3 and 4 of each of those decisions provide as follows:

'*Article 3*

1. Spain shall take all necessary measures to recover from the recipients the aid referred to in Article 1, which has been unlawfully made available to them.

Spain shall cancel all payment of outstanding aid.

2. Recovery shall be effected without delay in accordance with the procedures of national law, provided these allow the immediate and effective execution of this Decision. The sums to be recovered shall bear interest from the date on which they were available to the recipients until their actual recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 4

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with it.'

The actions brought against the contested decisions

5 By applications lodged at the Registry of the Court of First Instance of the European Communities on 25 September 2001, the Diputación Foral d'Álava and the Gobierno del País Vasco brought together against the Commission two actions for annulment, respectively, of Decisions 2002/820 (Case T-227/01) and 2002/892 (Case T-230/01). By applications lodged at the Registry of the Court of First Instance on 22 October 2001, the Confederación Empresarial Vasca (Confebask, 'Confebask') also brought against the Commission two actions for annulment of those decisions (Cases T-265/01 and T-267/01 respectively).

6 By applications lodged at the Registry of the Court of First Instance on 25 September 2001, the Diputación Foral de Vizcaya and the Gobierno del País Vasco brought

together against the Commission two actions for annulment, respectively, of Decisions 2003/27 (Case T-228/01) and 2002/806 (Case T-231/01). By applications lodged at the Registry of the Court of First Instance on 22 October 2001, Confebask also brought against the Commission two actions for annulment of those decisions (Cases T-266/01 and T-268/01 respectively).

7 By applications lodged at the Registry of the Court of First Instance on 25 September 2001, the Diputación Foral de Guipúzcoa and the Gobierno del País Vasco brought together against the Commission two actions for the annulment, respectively, of Decisions 2002/894 (Case T-229/01) and 2002/540 (Case T-232/01). By applications lodged at the Registry of the Court of First Instance on 22 October 2001, Confebask also brought against the Commission two actions for annulment of those decisions (Cases T-270/01 and T-269/01 respectively).

8 The abovementioned proceedings are still pending before the Court of First Instance.

Background to the disputes submitted to the Court

9 Each of the contested decisions was notified to the Kingdom of Spain by letter of 12 July 2001.

10 The Commission noted that the two-month period referred to in Articles 4 had expired on 13 September 2001, without its having been informed of the adoption of any executing measures.

11 On 12 October 2001, it sent the Permanent Representation of the Kingdom of Spain to the European Union letters which provided as follows:

'By letter of 12 July 2001, the Commission informed your government of its decision concerning the abovementioned aid scheme.

Article 4 of that decision provides that your government must inform the Commission, within two months of the date of notification thereof, of the measures taken to comply with it.

As the Commission has not to date received any reply on this subject, I request you to recall this obligation to your authorities, and to inform the Commission of the measures taken to comply with the decision within 20 days of the date of this letter.'

12 The Kingdom of Spain replied on 3 and 23 October 2001, forwarding letters from the provincial authorities (together, 'the letters from the provincial authorities'), in which the Commission was asked two questions, one concerning the possibility of applying the de minimis rule, the other, concerning the tax credits amounting to 45% of investments, that of applying the Community guidelines on national regional aid (OJ 1998 C 74, p. 9, 'the guidelines').

13 The Commission then proposed to the Spanish authorities that a meeting be organised in order to clarify matters. The authorities accepted by letter of 21 January 2002.

14 The meeting took place on 18 April 2002.

15 By letters of 3 June 2002, the Commission:

— provided the Kingdom of Spain with some guidance, in particular, concerning the possibility of applying Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid (OJ 2001 L 10, p. 30), at the time of recovery of the aid;

— noted that it had still not received the report concerning the recovery of the aid;

— asked the Kingdom of Spain to communicate to it, within 20 days, the measures taken to comply with the contested decisions.

16 On 27 August 2002, it sent the Permanent Representation of the Kingdom of Spain to the European Union a letter in which it stated, after having recalled the obligation laid down by Article 4 of each of the contested decisions:

'However, despite the reminder sent on 3 June 2002, I note that your government has not sent the necessary information concerning recovery of the aid.

I would therefore be grateful if you would again ask your authorities to communicate the measures adopted to the Commission within 15 working days of the date of this letter.

If no response is received within the prescribed period, I will be obliged to propose to the Commission that it refer the matter directly to the Court of Justice, pursuant to Article 88(2) [EC].'

17 On 26 September 2002 the Kingdom of Spain requested an extension of the deadline until 8 October 2002.

18 The Commission granted that request by letter of 3 October 2002, and underlined that, after 8 October 2002, it would grant no more extensions.

19 By letter of 25 October 2002 forwarding reports from the relevant provincial authorities ('the letter of 25 October 2002'), the Kingdom of Spain stated that execution of the contested decisions had started in accordance with the applicable national rules concerning review of acts which are void, the domestic legal order not expressly providing for a mechanism for the recovery of the unlawful and incompatible aid in the case of final administrative measures. It stated its firm intention to inform the Commission of the execution of the contested decisions.

20 On 24 February 2003, the Commission indicated to the Kingdom of Spain that the letter of 25 October 2002 did not constitute the report concerning the recovery requested, did not mention the actual recovery of the unlawful and incompatible aid and did not contain precise information on the identity of the recipients, the

commencement of the execution procedure or the measures taken or to be taken to achieve the actual recovery of the aid. It added that, in the absence of concrete information on the recovery procedure, it would be obliged to consider bringing an action before the Court of Justice, pursuant to Article 88(2) EC.

21 Taking the view that the Kingdom of Spain had still not sent it information on the execution of the contested decisions, the Commission finally decided to bring the present action for failure to fulfil obligations.

Procedure before the Court

22 By orders of the President of the Court of 22 March 2004, the applications for leave to intervene in support of the applicant, presented in each of Cases C-485/03 to C-490/03 by the Comunidad Autónoma de La Rioja, were dismissed, as being inadmissible in the light of the second paragraph of Article 40 of the Statute of the Court of Justice.

23 By order of the President of the Court of 22 February 2006, the six cases were joined for the purposes of the oral procedure and the judgment, pursuant to Article 43 of the Rules of Procedure.

24 On 14 March 2006, the Court dismissed in the present cases applications by the Kingdom of Spain, based on Article 82a of the Rules of Procedure, that proceedings be stayed until the delivery of judgments in the cases pending before the Court of First Instance.

The actions

Arguments of the parties

Arguments of the Commission

25 According to the Commission, the time-limit of two months set by the contested decisions expired on 13 September 2001, without the Kingdom of Spain having adopted or communicated the measures taken to comply with them, and, in the absence of which, without the Kingdom of Spain having requested from the Commission an extension of this time-limit before its expiry.

26 None of the Commission's letters can be interpreted as amending the time-limit for the execution of the contested decisions. The letter of 3 October 2002 granting an extension of the time-limit until 8 October 2002 only concerned a request to that effect made by the Kingdom of Spain in response to a reminder from the Commission containing a request for information on the measures taken for the purposes of recovery of the aid. In any event, even on 8 October 2002, the defendant Member State had still not adopted or communicated the necessary measures.

27 Despite the Commission's repeated requests, the Kingdom of Spain contented itself, in the present case, with sending information which was late, incomplete, general and completely ambiguous.

28 The Commission submits that the Kingdom of Spain has not complied with the obligation to abolish the aid schemes in so far as they continue to produce effects or that of cancelling all outstanding aid, provided for respectively in Article 2 and in the second subparagraph of Article 3(1) of each of the contested decisions.

29 The measures of which the Commission is made aware in paragraph 3 of each of the letters from the provincial authorities appear to prevent, in the future, other companies which have not already benefited from the schemes from benefiting from the tax advantages at issue.

30 However, the Spanish authorities have not indicated whether and how they cancelled those advantages as regards firms which benefited from them prior to the adoption of the contested decisions. In the case of such firms, it would probably have been necessary to review the measures granting the advantages.

31 Neither paragraph 3 nor any other paragraph of each of the letters from the provincial authorities contained useful information. The Commission still does not know what type of measure could have been brought to the attention of the firms which could no longer benefit from the tax advantages. It also does not know whether any action of this kind produced any actual effects, whether any of the firms brought proceedings and whether such proceedings had suspensory effects. Finally, the Commission received no information at all on the identity of the firms concerned and the amount of outstanding aid.

32 Concerning the cancellation of the tax advantages of the firms which received aid prior to the contested decisions, the Kingdom of Spain has therefore failed to fulfil the obligation, imposed by Article 2 of each of the contested decisions, to take the measures necessary to prevent the aid schemes from continuing to produce effects, and the obligation, provided for in the second subparagraph of Article 3(1) of each of those decisions, to cancel all outstanding aid.

33 The Commission submits that the Kingdom of Spain has also failed to comply with the obligation to recover immediately and without delay the aid already made available, as laid down in the first subparagraph of Article 3(1) and Article 3(2) of each of the contested decisions.

34 The only ground of defence which may be invoked by a Member State is that it is absolutely impossible properly to give effect to a decision. That condition is not met where the defendant Government merely informs the Commission of the legal, political or practical difficulties involved in giving effect to the decision.

35 The Kingdom of Spain has never submitted that the execution of the contested decisions was absolutely impossible. It limited itself to invoking the complexity arising from various administrative difficulties of an internal nature, in particular because of the absence, in the domestic legal order, of a mechanism for execution in the case of final administrative measures.

Arguments of the Spanish Government

36 The time-limit to be taken into consideration in the present cases for the assessment of the existence of a failure to fulfil obligations did not expire on 13 September 2001, as the Commission submits, but on 8 October 2002.

37 Where the Commission sets a new time-limit for the provision of information distinct from that contained in the decision declaring the aid to be incompatible, it is that new time-limit which is relevant.

38 The Spanish Government points out that in the present case an exchange of correspondence and even, on 18 April 2002, a meeting took place with the aim, in particular, of clarifying two questions raised in the letters from the provincial authorities concerning whether, at the time of execution of the contested decisions, it would be possible to apply the de minimis rule and, concerning the tax credits amounting to 45% of investments, the guidelines.

39 Thus, in so far as, during April 2002, clarification of questions concerning the execution of those decisions took place, the time-limit set by them was already no longer relevant.

40 The Commission itself recognised this situation by setting a new time-limit, which expired on 8 October 2002, by the letter of 3 October 2002.

41 In any event, no failure to fulfil obligations existed when the actions were brought. At that time, the action necessary to comply with the contested decisions had already been initiated, the Commission being informed of this through the letters from the provincial authorities, then by the letter of 25 October 2002.

42 Concerning the obligations referred to in Article 2 and the second subparagraph of Article 3(1) of each of the contested decisions, the Spanish Government takes the view that they have been complied with.

43 It submits, first, that the Commission acknowledges having been informed, in October 2001, of the abolition for the future of the aid schemes in question.

44 As regards the complaint concerning the cancellation of aid granted prior to the contested decisions and continuing to produce effects subsequent thereto, it underlines that the tax measures classified as aid which is incompatible with the common market did not consist in payments by the administration, a situation which would have allowed for simply suspending any payments.

45 It points out that the measures in question allowed the economic operator to deduct the aid at the time of payment of its tax liabilities.

46 As regards those measures, the appropriate and necessary action to comply with the contested decisions was immediately to inform the firms in question that they could henceforth no longer continue to benefit from the tax advantages referred to in those decisions.

47 Such an action was brought to the Commission's knowledge in paragraph 2 of each of the letters from the provincial authorities.

48 As regards the obligation to recover the aid already granted, a completely exceptional situation existed, linked to the fact that the domestic legal order did not provide for any procedure for the execution of a Community decision ordering the recovery of State aid. The Kingdom of Spain has remedied that situation through the introduction of national procedures for the review of measures which are void, of which the Commission was informed by the letter of 25 October 2002.

49 In any event, the Commission did not honour a commitment given at the meeting of 18 April 2002.

50 In that respect, the Kingdom of Spain states that, at that meeting, which essentially concerned the second question raised in the letters from the provincial authorities relating to the guidelines, the Commission clarified that it was possible to take into account, in the context of recovery of the aid, the fact that the investment projects fulfilled all of the substantive conditions set out by those guidelines, so that there was a possibility of not recovering from the recipients all or part of the aid actually received.

51 The Commission then undertook to send a written reply to the second question after the meeting, which it however failed to do.

52 It cannot therefore invoke failures to fulfil obligations.

Findings of the Court

The relevant date for the purpose of assessing failures to fulfil obligations

53 Because the second subparagraph of Article 88(2) EC does not provide for a pre-litigation phase, in contrast to Article 226 EC, and therefore the Commission does not issue a reasoned opinion allowing Member States a certain period within which to comply with its decision, when the former provision is applied the reference period can only be that provided for in the decision failure to implement which is denied or, where appropriate, that subsequently fixed by the Commission (Case C-378/98 *Commission* v *Belgium* [2001] ECR I-5107, paragraph 26, and Case C-99/02 *Commission* v *Italy* [2004] ECR I-3353, paragraph 24).

54 Article 4 of each of the contested decisions gave the Kingdom of Spain a period of two months, from the notification of those decisions, to comply with them.

55 The contested decisions were notified by letters of 12 July 2001.

56 It should be noted that the Commission's letters of 12 October 2001 and 27 August 2002, while they set a time-limit for replies, are only letters of reminder pointing out that the time-limit provided for in Article 4 of each of the contested decisions had not been respected. They do not in any way contain an extension of the time-limit set for the adoption itself of the measures necessary to comply with those decisions.

57 Similarly, the Commission's letter of 3 June 2002 principally contained a reminder, with a time-limit for reply of 20 days, even though it also contains the Commission's opinion, requested by the Kingdom of Spain, concerning the possibility of applying Regulation No 69/2001 at the time of recovery of the aid.

58 Concerning the letter of 3 October 2002, it contains only the Commission's acceptance of a postponement to 8 October 2002 requested by the Kingdom of Spain of the time-limit for reply to the letter of reminder of 27 August 2002.

59 With regard to the meeting of 18 April 2002, organised pursuant to the cooperation between the Commission and the Member States, it cannot be regarded as implying in itself an extension of the time-limit for the adoption of the executing measures, in the absence of other elements demonstrating the Commission's intention to grant such an extension.

60 Thus, it does not follow from the documents in the file that the Commission, subsequent to the contested decisions, set a new time-limit to replace that of two months laid down by Article 4 of each of them.

The existence of failures to fulfil obligations

61 It must be determined whether, at the end of the two-month period set by the contested decisions, which started to run from their notification by the letters of 12 July 2001, the Kingdom of Spain had complied with the provisions of those decisions relied on by the Commission.

— The complaints relating to the obligations to abolish for the future the effects of aid schemes and to cancel all outstanding aid

62 Article 2 of each of the contested decisions requires the Kingdom of Spain to abolish the aid schemes in question in so far as they continue to produce effects. The second subparagraph of Article 3(1) of each of those decisions requires the cancellation of outstanding aid.

63 It is apparent from paragraphs 7 et seq. of the contested decisions that, in the context of each of the schemes in question:

— receipt of the aid was subject to an administrative decision;

— the tax credit amounting to 45% of investments, deductible from the final amount of tax payable, could give rise for a number of years, possibly subsequent to the contested decisions, to deductions which could not have been used up previously because they exceeded that final amount;

— aid in favour of newly-established firms consisted in reductions, respectively, of 99%, 75%, 50% and 25%, in the positive tax base during the four tax years following the first one in which, within four years from start-up, such a positive base was obtained.

64 Accordingly, depending on the aid scheme in question, the administrative decisions granting aid actually adopted were liable to produce or would necessarily produce effects subsequent to the contested decisions, failing concrete national measures taken in execution of those decisions.

65 The operations involving the deduction of tax credits and the reduction in the tax base which they authorised in respect of the period subsequent to the contested decisions constituted outstanding aid within the meaning of the second subparagraph of Article 3(1) of each of them.

66 The Court finds that the Kingdom of Spain has not established that it adopted measures capable of preventing prior decisions to grant aid from continuing to produce effects.

67 Even assuming, as that Member State submits, that the appropriate and necessary measure, under domestic law, to comply with the contested decisions was simply to inform the firms in question that they could henceforth no longer continue to benefit from the tax measures referred to in the contested decisions, the Court also finds that nor has it been established that the undertakings in receipt of aid were in fact so informed.

68 Paragraph 2 of each of the letters from the provincial authorities refers, in general terms, only to initiatives taken by the administration in respect of the taxpayers concerned 'in order to obtain the information necessary for the execution of' the contested decisions.

69 Therefore, it must be concluded that, on the expiry of the period prescribed by the contested decisions, the Kingdom of Spain had not fulfilled the obligation to cancel the aid granted prior to those decisions and still producing effects subsequent thereto.

70 Under those circumstances, the Commission's complaints based on non-compliance with Article 2 and the second subparagraph of Article 3(1) of each of the contested decisions are well founded.

— The complaints relating to the obligation to recover the aid already made available to firms

71 When negative decisions are taken in cases of unlawful aid, the recovery thereof ordered by the Commission takes place under the conditions set out in Article 14(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1), which provides:

'... recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the

immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.'

72 According to settled case-law, the only defence available to a Member State in opposing an application by the Commission under Article 88(2) EC for a declaration that it has failed to fulfil its Treaty obligations is to plead that it was absolutely impossible for it properly to implement the decision ordering recovery (see, in particular, Case C-404/00 *Commission* v *Spain* [2003] ECR I-6695, paragraph 45; *Commission* v *Italy*, paragraph 16; and Case C-415/03 *Commission* v *Greece* [2005] ECR I-3875, paragraph 35).

73 In the present cases, the Kingdom of Spain, through the letters from the provincial authorities, first invoked the 'complexity of certain questions' concerning the execution of the contested decisions, a complexity which was linked, in particular, to the necessity of reviewing administrative measures which had become final within the domestic legal order, a situation for which the latter provided no solution. Later, it claimed, through the letter of 25 October 2002, that the situation faced by the administration was 'totally exceptional', since the domestic legal order contained no express provisions designating or establishing a concrete procedure for the execution of a decision ordering the recovery of incompatible aid. Through the same letter, the Kingdom of Spain stated that the review, on the initiative of the authorities themselves, of the individual measures governing the grant of aid had finally been judged relevant for that purpose.

74 In that respect, it should however be recalled that the condition that it be absolutely impossible to implement a decision is not fulfilled where the defendant Government merely informs the Commission of the legal, political or practical difficulties

involved in implementing the decision, without taking any real step to recover the aid from the undertakings concerned, and without proposing to the Commission any alternative arrangements for implementing the decision which could have enabled those difficulties to be overcome (see, in particular, *Commission* v *Spain*, paragraph 47; *Commission* v *Italy*, paragraph 18; and *Commission* v *Greece*, paragraph 43).

75 The Kingdom of Spain cannot successfully submit that, in any event, no failure to fulfil obligations existed at the time the actions were brought, since the measures necessary to comply with the contested decisions had already been initiated and brought to the Commission's attention by the letters from the provincial authorities, then by the letter of 25 October 2002.

76 The existence of failures to fulfil obligations must be assessed as at the date of expiry of the time-limit imposed on the Kingdom of Spain to comply with the contested decisions.

77 The letters invoked by the defendant Member State do not in any way establish that measures allowing the immediate and effective execution of the contested decisions, within the meaning of Article 14(3) of Regulation No 659/1999, had been implemented within the prescribed period, since:

— the letters from the provincial authorities refer only to 'approaches ... made to taxpayers affected by the decisions in order to obtain the information necessary for the execution' of the contested decisions;

— the reports sent with the letter of 25 October 2002, that is more than 15 months after the contested decisions, provide only that '[t]he execution of the

Commission decisions ... has been initiated and is currently in progress in accordance with the provisions of the domestic legal order concerning the review of measures which are void', without being accompanied by any supporting documents concerning, in particular, the genuineness of the initiation of procedures and the stage they had reached, the identity of the recipients of the aid, although they are necessarily referred to by name in individual decisions governing the grant of aid, or the amount of the aid granted.

78 The Kingdom of Spain cannot, finally, dispute the Commission's right to invoke failures to fulfil obligations on the ground that it did not honour a commitment, given at the meeting of 18 April 2002, to send the Kingdom of Spain a written reply to the questions raised at that time, in particular as regards the possibility of applying the guidelines.

79 That argument is based on the assertion of a matter which is not relevant ratione temporis, that is a commitment given more than seven months after the date of expiry of the time-limit imposed on the Kingdom of Spain to comply with the contested decisions, the date at which the existence of failures to fulfil obligations must be assessed.

80 Under those circumstances, the Commission's complaints based on failure to comply with the first subparagraph of Article 3(1) and Article 3(2) of each of the contested decisions are well founded.

81 It follows from the foregoing that the actions are well founded in so far as the Commission claims that the Kingdom of Spain failed to adopt the measures necessary to cancel the aid granted prior to the contested decisions and continuing to produce effects subsequent thereto, or the measures necessary to recover the aid already made available.

82 The Court does not need to examine the form of order sought against the Kingdom of Spain for failing to inform the Commission of the measures referred to in the preceding paragraph, since that Member State did not in fact implement the contested decisions within the prescribed period (see Case C-348/93 *Commission* v *Italy* [1995] ECR I-673, paragraph 31).

83 It must therefore be declared that, by failing to adopt within the prescribed period all of the measures necessary to comply with Articles 2 and 3 of each of the contested decisions, the Kingdom of Spain has failed to fulfil its obligations under those decisions.

Costs

84 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 Kingdom of Spain has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

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

1. **Declares that by failing to adopt within the prescribed period all of the measures necessary to comply with Articles 2 and 3 of each of the following decisions:**

— **Commission Decision 2002/820/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Álava in the form of a tax credit amounting to 45% of investments (Case C-485/03);**

— **Commission Decision 2002/892/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Álava (Case C-488/03);**

— **Commission Decision 2003/27/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Vizcaya in the form of a tax credit amounting to 45% of investments (Case C-487/03);**

— **Commission Decision 2002/806/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Vizcaya (Case C-490/03);**

— **Commission Decision 2002/894/EC of 11 July 2001 on the State aid scheme implemented by Spain for firms in Guipúzcoa in the form of a tax credit amounting to 45% of investments (Case C-486/03), and**

— **Commission Decision 2002/540/EC of 11 July 2001 on the State aid scheme applied by Spain to certain newly established firms in Guipúzcoa (Case C-489/03),**

the Kingdom of Spain has failed to fulfil its obligations under those decisions;

2. Orders the Kingdom of Spain to pay the costs.

[Signatures]