JUDGMENT OF THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition)

29 September 2000 *

In Case T-55/99,

Confederación Española de Transporte de Mercancías (CETM), having its registered office in Madrid (Spain), represented by J. Pérez Villar, of the Madrid Bar, 322 Calle López de Hoyos, Madrid,

applicant,

v

Commission of the European Communities, represented by J. Guerra Fernández and D. Triantafyllou, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for annulment of Commission Decision 98/693/EC of 1 July 1998 concerning the Spanish *Plan Renove Industrial* system of aid for the

* Language of the case: Spanish.

purchase of commercial vehicles (August 1994 — December 1996) (OJ 1998 L 329, p. 23) in that Articles 3 and 4 of that decision declare certain aid illegal and incompatible with the common market and order its recovery,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Third Chamber, Extended Composition),

composed of: K. Lenaerts, President, J. Azizi, R.M. Moura Ramos, M. Jaeger and P. Mengozzi, Judges,

Registrar: J. Palacio González, Administrator,

having regard to the written procedure and to the hearing fixed for 11 April 2000, which the parties waived,

gives the following

Judgment

Legal and factual background to the dispute

1 The present case concerns Commission Decision 98/693/EC of 1 July 1998 concerning the Spanish *Plan Renove Industrial* system of aid for the purchase of

commercial vehicles (August 1994 — December 1996) (OJ 1998 L 329, p. 23) ('the contested decision').

2 On 28 July 1994 the Spanish Government, without first informing the Commission, adopted the '*Plan Renove Industrial*' ('PRI') in favour of natural persons, small and medium-sized enterprises ('SMEs'), regional public bodies and bodies providing local public services. That system, which was initially applicable between August 1994 and December 1995, was extended until the end of 1996.

3 The PRI was set up under an agreement concluded on 27 September 1994 between the Instituto de Crédito Oficial ('ICO') and the Spanish Ministry of Industry and Energy. Under that agreement, the ICO was responsible for arranging mediation contracts with a number of financial institutions, under which those financial institutions implemented the aid scheme and were subsequently compensated by the ICO.

4 The contested measure consisted of a subsidy towards the interest on the loans granted for purchasing industrial vehicles or for leasing them with intention to purchase. The loans could cover as much as 70% of the total value of the new vehicle (excluding VAT) and lasted for four years, with no grace period. The loan guarantees were negotiated between the recipient and the financial institution.

5 The initial budget envisaged by the PRI was for approximately ESP 9 000 000 000. The credit line opened with the ICO was ESP 100 000 000 000. The maximum subsidy was ESP 93 196 per million borrowed.

6 The interest rate subsidy was provided for the purchase of five categories of commercial vehicles:

— semi-trailers and lorries weighing more than 30 tonnes;

— commercial vehicles weighing between 12 and 30 tonnes;

— commercial vehicles weighing between 3.5 and 12 tonnes;

— car-based vehicles, light commercial vans and commercial vehicles weighing up to 3.5 tonnes;

— motor buses and coaches.

7 A condition of obtaining the interest rate subsidy was the irrevocable withdrawal from the market of a vehicle registered more than 10 years previously (seven years previously in the case of tractor units). Proof that the vehicle had been withdrawn from the market was to be issued by the Dirección General de Tráfico (Directorate-General for Traffic).

8 Between 9 February 1995 and 20 February 1996 the Commission requested the Kingdom of Spain to provide information on the PRI, of which it had become aware through an unofficial source. The Kingdom of Spain complied with those requests by letters of 6 March and 26 July 1995 and 14 March 1996.

9 By letter dated 26 June 1996, the Commission informed the Kingdom of Spain that it had decided to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC). It invited the Kingdom of Spain to submit its observations. The Commission informed the other Member States and interested third parties that that procedure had been initiated by publishing the above-mentioned letter in the *Official Journal of the European Communities* of 13 September 1996 (OJ 1996 C 266, p. 10) and invited them to submit observations. In its letter, the Commission stated that it considered the PRI illegal and expressed doubts as to its compatibility with the common market.

10 The Kingdom of Spain submitted its observations by letter dated 26 July 1996, receipt of which was recorded by the Commission on 1 August 1996. The publication in the *Official Journal of the European Communities* drew no reactions from any interested third parties. Following a request for further information sent by the Commission on 19 December 1996, the Kingdom of Spain provided certain details at a meeting with the Commission held on 14 January 1997 and by letter of 12 February 1997.

11 The Commission requested the Kingdom of Spain, first by fax and then by letter dated 19 November 1997, to provide further information on companies not providing haulage services as a main activity and operating only in local markets. The Kingdom of Spain complied with that request by letters of 27 November 1997 and 20 February 1998.

12 On 1 July 1998 the Commission adopted the contested decision.

13 The contested decision contains the following provisions:

'*Article 1*

Aid granted under the [PRI] to regional public bodies and bodies providing local public services, in the form of interest rate subsidies on loans for the purchase of commercial vehicles between August 1994 and December 1996, under the cooperation Agreement of 27 September 1994 between the Spanish Ministry of Industry and Energy and the Instituto de Crédito Oficial, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

Aid granted to natural persons or SMEs pursuing a business other than transport on a solely local or regional level, for the purchase of commercial vehicles of Category D, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 3

All other aid granted to natural persons and SMEs constitutes State aid within the meaning of Article 92(1) of the Treaty, is illegal and is incompatible with the common market.

Article 4

Spain shall abolish and recover the aid referred to in Article 3. The aid shall be repaid in accordance with the provisions of national law, and maturity interest shall be added to the sums recovered. The interest shall be calculated on the basis of the reference rates used in evaluating regional aid schemes and shall run from the date when the illegal aid was granted until the date when it is actually repaid.

Article 5

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the steps it has taken to comply therewith.

Article 6

This Decision is addressed to the Kingdom of Spain.'

Procedure and forms of order sought by the parties

14 It was against that background that, by application lodged at the Registry of the Court of First Instance on 25 February 1999, the applicant brought the present action.

15 The applicant claims that the Court should:

— annul Articles 3 and 4 of the Commission Decision of 1 July 1998 concerning the Spanish system of aid for the purchase of commercial vehicles (PRI);

— order the Commission to pay the costs.

16 The Commission contends that the Court should:

— dismiss the action as unfounded;

— order the applicant to pay the costs.

17 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure, after adopting measures of organisation of procedure in the form of a series of written questions to the defendant. By letter of 10 March 2000 the defendant answered those questions. Those answers were supplemented by a letter of 21 March 2000.

18 By letter lodged at the Registry of the Court of First Instance on 4 April 2000, the applicant's legal representative informed the Court that, for reasons of internal policy, he would not be attending the hearing fixed for 11 April 2000.

19 By letter to the Registry of the Court of First Instance dated 10 April 2000, the defendant stated that in the circumstances it would not attend the hearing either.

20 On 11 April 2000 the Court took note of the fact that the parties were not present at the hearing.

Admissibility

21 Since the conditions of admissibility of an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) are a matter of public policy, the Court may examine them of its own motion. Its power of review is not limited to the pleas of inadmissibility put forward by the parties (see Case 294/83 *Les Verts* v *Parliament* [1986] ECR 1339, paragraph 19).

22 In the present case, it should be pointed out that it is apparent from the contested decision that the aid referred to in Articles 3 and 4, which the applicant challenges, concerned natural persons and SMEs engaged in a wide variety of economic sectors, who have in common that their main or auxiliary business consists in the transport of goods or passengers requiring the use of commercial vehicles (see in particular section IV, eighth paragraph, of the preamble to the contested decision).

23 The applicant is the Spanish Confederation of Goods Transporters, a trade association governed by Spanish law. It has consistently been held that an association responsible for protecting the collective interests of undertakings is as a matter of principle entitled to bring an action for annulment of a final decision of the Commission on State aid only where the undertakings in question are also entitled to do so individually (see, in particular, Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraph 16, and Case C-6/92 *Federmineraria and Others* v *Commission* [1993] ECR I-6357, paragraph 17), or where it is able to rely on a

particular interest in acting, especially because its negotiating position is affected by the measure which it seeks to have annulled (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 29 and 30; and Case T-380/94 *AIUFFASS and AKT* v *Commission* [1996] ECR II-2169, paragraph 50).

24 In the present case, it is common ground that, by the present action, the applicant intends to protect the individual interests of certain of its members. It is evident upon reading the application in conjunction with the applicant's articles of association annexed thereto that, in the context of the present dispute, it is protecting the interests of those of its members which, as SMEs habitually engaged in the transport of goods by road, have received the aid in question and are required to repay it pursuant to Article 4 of the contested decision.

25 It follows that the applicant is entitled to request annulment of Articles 3 and 4 of the contested decision only in so far as they declare illegal and incompatible with the common market, and require repayment of, the aid granted within the framework of the PRI to Spanish SMEs which are members of the applicant and for which the transport of goods by road is their main business.

Substance

26 The applicant puts forward three pleas in law in support of its action for annulment.

27 The first plea, alleging infringement of the principle of protection of legitimate expectations, seeks annulment of Article 4 of the contested decision. The second plea, alleging infringement of Article 92(1) of the EC Treaty (now, after

amendment, Article 87(1) EC) and Article 190 of the EC Treaty (now Article 253 EC) and, in the alternative, of Article 92(3)(c) of the EC Treaty, seeks annulment of Article 3 of the contested decision. The third plea, alleging infringement of the principles of proportionality, protection of legitimate expectations, equal treatment and 'prohibition of arbitrariness', and also of the obligation to state reasons, seeks, like the first plea, annulment of the obligation to recover the aid laid down in Article 4.

28 In accordance with the structure of the operative part of the contested decision, and because there is no need to consider the plea seeking annulment of Article 4 unless the plea seeking annulment of Article 3 proves to be unfounded, the Court will consider the second plea first. The first and third pleas will then be considered together, since both seek annulment of Article 4 and overlap in part.

1. *Second plea, alleging infringement of Articles 92(1) and 190 of the Treaty and, in the alternative, Article 92(3)(c) of the Treaty, and seeking annulment of Article 3 of the contested decision*

29 This plea consists of three parts. In the first part, the applicant complains that the Commission considered that the PRI was a selective measure. In the second part it disputes that the PRI distorted competition and affected trade between Member States. In the third part it claims that the PRI should in any event have been declared compatible with the common market by virtue of Article 92(3)(c) of the Treaty.

30 Before considering the various parts of the plea, it should be noted that the applicant does not dispute that the measure contained in the PRI constituted a subsidy, in that it enabled those taking advantage of it to acquire a commercial vehicle at a reduced price. The applicant itself thus states that 'without the aid,

[the recipients] would have found it difficult to meet expenditure of that kind'. Nor does it deny that the measure was financed by the budget of the Spanish Ministry of Industry and Energy and that it therefore had its origin in the State.

31 The principal arguments put forward by the applicant in the context of this plea relate to the other conditions for the application of Article 92(1) of the Treaty, namely that the aid be specific, on the one hand, and that competition be distorted and trade between Member States affected, on the other hand.

First part of the plea

32 The applicant claims that the Commission wrongly considered that the measure contained in the PRI was not a general measure. It also complains that the contested decision fails to state reasons on that point.

The merits of the Commission's assessment

— Arguments of the parties

33 The applicant maintains, first, that the measure contained in the PRI was aimed not at a particular category of addressees but at a range of potential recipients not defined in advance. It relies on three factors in support of its argument.

34 First, the PRI was open to any natural person or SME which acquired a new commercial vehicle in Spain and at the same time irrevocably withdrew from the market a commercial vehicle registered at least 10 years previously (seven years in the case of tractor units). Second, it made no distinction on grounds of the nationality of the purchaser. The fact that the vehicle withdrawn had to be registered in Spain did not deprive carriers not established in that State of the opportunity to take part in the PRI. There was no requirement that the vehicle withdrawn from the market had to be the property of the recipient of the aid. If a foreign transport operator wished to take advantage of the subsidy, it was therefore sufficient to conclude an agreement with a local carrier whereby the latter withdrew a used vehicle from the market. Third, vehicles imported from other Member States were able to satisfy the condition of withdrawal from service, provided that they were registered in Spain.

35 Next, the applicant contends that, according to the Agreement on Subsidies and Countervailing Measures of the World Trade Organisation (WTO), a subsidy is not deemed to be specific where it is based on 'criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application'. In the present case, the granting of the subsidy did not involve the exercise of any discretion, as the Commission acknowledges in the contested decision (section IV, 11th paragraph, of the preamble thereto).

36 Finally the applicant asserts, referring to Commission Decision 96/369/EC of 13 March 1996 concerning fiscal aid given to German airlines in the form of a depreciation facility (OJ 1996 L 146 p. 42), and to the judgment of the Court of Justice in Case 173/73 *Italy* v *Commission* [1974] ECR 709, cited in that decision, that the classification of aid within the meaning of Article 92 of the Treaty cannot apply to the PRI since, first, it was accessible to all undertakings which appeared to be eligible for the subsidy in question in the light of the nature and structure of the Spanish system, which is aimed at promoting environmental protection and road safety and at putting more modern vehicles on the road and, second, the economic reasons for excluding large undertakings meant that their exclusion was necessary and contributed to the proper functioning and efficiency of the system.

37 In its reply, the applicant denies that the points which the Commission raises in its defence constitute evidence of selectivity and asserts that it is only where specific sectors of economic activity are excluded from an aid that there are grounds for concluding that the aid in question was specific in nature (Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraphs 28 and 30). In the present case the PRI did not exclude any sector of economic activity from its scope.

38 The Commission refers to the conditions set out in the agreement of 27 September 1994 referred to in paragraph 3 above and disputes that the measure provided for in the PRI was a general measure. It does not accept that the concept of 'specific subsidy' in the WTO Agreement on Subsidies and Countervailing Measures is relevant for the purpose of assessing the conditions of application of Article 92(1) of the Treaty. It rejects the explanations put forward by the applicant to justify the PRI on grounds of sound economic sense linked with the efficiency of the system.

— Findings of the Court

39 It should be observed that the specific nature of a State measure, namely its selective application, constitutes one of the characteristics of State aid within the meaning of Article 92(1) of the Treaty. In that regard, it is necessary to determine whether or not the measure in question entails advantages accruing exclusively to certain undertakings or certain sectors of activity (see Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraph 24, Case C-200/97 *Ecotrade* [1998] ECR I-7907, paragraphs 40 and 41, and *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 26).

40 The applicant's argument that there was no prior identification, in the PRI, of the individual addressees of the measure contained therein, must be rejected. The fact that the aid is not aimed at one or more specific recipients defined in advance, but that it is subject to a series of objective criteria pursuant to which it may be

granted, within the framework of a predetermined overall budget allocation, to an indefinite number of beneficiaries who are not initially individually identified, cannot suffice to call in question the selective nature of the measure and, accordingly, its classification as State aid within the meaning of Article 92(1) of the Treaty. At the very most, that circumstance means that the measure in question is not an individual aid. It does not, however, preclude that public measure from having to be regarded as a system of aid constituting a selective, and therefore specific, measure if, owing to the criteria governing its application, it procures an advantage for certain undertakings or the production of certain goods, to the exclusion of others.

41 In the present case, the Commission claims that, '[f]rom the point of view of these purchasers [of commercial vehicles], the aid is intended to benefit natural persons, SMEs, local or regional authorities or local service providers. The subsidies reduce their normal business expenses, thus giving them an advantage over their competitors' (section IV, fourth paragraph, of the preamble to the contested decision). The Commission considers (same paragraph) 'that the aid strengthens the financial position of the recipient firms, giving them greater scope for action and a competitive advantage'.

42 According to those extracts from the contested decision, the selective character of the measure contained in the PRI therefore lies in the fact that that measure was aimed at only natural persons, SMEs and local service providers, thus excluding other acquirers of commercial vehicles.

43 In answer to a written question put by the Court, the Commission sent, as an annex to its letter of 10 March 2000 (referred to in paragraph 17 above), a copy of the agreement of 27 September 1994 determining the conditions for the grant of interest subsidies within the framework of the PRI.

44 The agreement defines the intended beneficiaries of the PRI as follows:

'That line [of credit] is open to natural and legal persons purchasing a commercial vehicle. In the case of legal persons, they must be small or medium enterprises, that term designating enterprises which satisfy the following characteristics:

— employing fewer than 250 persons;

— annual turnover not exceeding ECU 20 million;

— total annual profits not exceeding ECU 10 million;

— and of which a maximum of 25% of the capital is held by a large undertaking, except in the case of public undertakings or venture-capital undertakings.

If the legal person is a local authority, an autonomous community or a body which administers public services, the small or medium enterprise requirement shall not apply.

By way of exception, the ICO may, after consulting the Directorate-General for Industry of the Ministry of Industry and Energy, authorise finance in favour of persons not fulfilling any of the above conditions.'

45 In the course of the administrative procedure, the Kingdom of Spain explained that 'there had never been any recourse to the theoretical option of exceptionally granting loans which did not meet the stipulated conditions, since the purpose of this exception was to [ensure that] the [PRI would] benefit firms which met all the criteria for consideration as SMEs but which, for exceptional reasons, marginally failed to meet one or other of those criteria at some point in the process' (section III, 14th paragraph, of the preamble to the contested decision).

46 The information provided by the Kingdom of Spain during the course of the administrative procedure — and which the applicant has not challenged before the Court — confirms that the sole beneficiaries of the PRI were legal persons falling within the 'category of "regional public bodies and bodies providing local public services"' (section III, third paragraph, of the preamble to the contested decision) and 'natural persons or SMEs, covered by the definition laid down in the Community guidelines on State aid for SMEs and the Commission Recommendation of 3 April 1996 concerning the definition of small and medium sized enterprises, engaged in transport for hire-and-reward but also own account transport operations' (section III, fourth paragraph).

47 It follows from all of the foregoing that the PRI was intended to, and did in fact, benefit, among users of commercial vehicles, only natural persons, SMEs, local and regional public bodies and bodies providing local public services. Other users of vehicles of that type, namely large undertakings, were not eligible under the PRI even when, like the beneficiaries of the PRI, they acquired a new commercial vehicle in place of a used vehicle for the purposes of their transport businesses.

48 Having regard to the foregoing considerations, and without its being necessary to consider the relevance of the other matters put forward by the Commission on that point in its written submissions, it must be concluded that the Commission

was justified in taking the view that the measure contained in the PRI was selective and therefore specific for the purposes of Article 92(1) of the Treaty.

49 The alleged absence of any distinction on grounds of the nationality of the person acquiring the commercial vehicle and the fact that it was possible to benefit from the subsidy even where the vehicle withdrawn from the market was imported from another Member State of the Community cannot invalidate the conclusion drawn in the preceding paragraph.

50 The reference to the concept of 'subsidy' within the meaning of the WTO Agreement on Subsidies and Countervailing Measures has, as the Commission submits, no relevance whatsoever to the classification of the measure in question as State aid within the meaning of Community law.

51 Finally, the argument based on the nature and structure of the Spanish system aimed at promoting the protection of the environment and road safety and at modernising the vehicles on the road cannot be accepted.

52 Measures entailing differences in treatment between categories of undertakings or between sectors of activity may be justified by the nature or structure of the system of which they form part (see *Italy* v *Commission*, cited in paragraph 36 above, paragraph 33, and *Belgium* v *Commission*, cited in paragraph 37 above, paragraphs 33 and 34; see also Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, paragraph 76).

53 In the present case, however, the sole circumstance, put forward by the applicant, that the PRI was aimed at modernising the commercial vehicles on the road in Spain in the interest of environmental protection and improving road safety cannot suffice for a finding that the PRI constituted a system or a general measure

in itself or formed part of any 'Spanish system', which, moreover, the applicant does not even identify. If that argument were followed, it would be sufficient for the public authorities to invoke the legitimacy of the objectives which the adoption of an aid measure sought to attain for that measure to be regarded as a general measure outside the scope of Article 92(1) of the Treaty. That provision does not distinguish between measures of State intervention by reference to their causes or aims but defines them in relation to their effects (Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 79, *France* v *Commission*, cited in paragraph 39 above, paragraph 20, and *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 25).

54 Furthermore, as the Commission points out in its written submissions, the applicant does not explain how the exception for large undertakings was justified by the nature or structure of the alleged system to which the PRI corresponded or of which it formed part. In any event, the objectives which the applicant claims the Spanish authorities sought to attain by means of the PRI do not justify such an exception, since the age of commercial vehicles used by large enterprises also presents risks in terms of environmental protection and road safety.

55 In conclusion, the arguments whereby the applicant seeks to challenge the substance of the Commission's assessment of the selective nature of the PRI must be rejected.

The statement of reasons

— Arguments of the parties

56 The applicant claims that at section IV of the preamble to the contested decision, the Commission describes the concept of aid by reference to three factors, namely

the use of State resources, the distortion of competition and an effect on trade, without making the slightest reference to the criterion of specificity. Such an omission amounts to a failure to state reasons.

57 The Commission does not comment on that point.

— Findings of the Court

58 It has consistently been held that the statement of reasons required by Article 190 of the Treaty must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted that measure in such a way as to enable the persons concerned to ascertain the reasons for it in order to protect their rights and to enable the Court to carry out its review. It is also clear from the relevant case-law that it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (*Belgium* v *Commission*, cited in paragraph 53 above, paragraph 86).

59 When applied to the classification of a measure as aid, the requirement to state reasons assumes that the reasons for which the Commission considers that the aid measure in question falls within the scope of Article 92(1) of the Treaty should be indicated (Case T-214/95 *Vlaams Gewest* v *Commission* [1998] ECR II-717, paragraph 64, and Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 66).

60 In the present case, it should be observed that, in section IV, first paragraph, of the preamble to the contested decision, the Commission refers first of all to the terms of Article 92(1) of the Treaty. The fact that it then summarises the concept of aid for the purposes of that provision without formal reference to the requirement that the aid be specific cannot obscure the fact that the passages of that section of the contested decision, set out in paragraph 41 above, clearly and unequivocally reveal that the Commission took that requirement into consideration when considering the applicability of Article 92(1) of the Treaty to the PRI.

61 Moreover, the applicant was fully aware that the reason why it was concluded in the contested decision that the PRI was selective in nature was connected with the exclusion of large undertakings from the benefit of the PRI. In its application it seeks to justify that exclusion by considerations linked with the alleged nature and structure of the Spanish system (see paragraph 36 above).

62 The arguments whereby the applicant alleges a failure to state reasons as regards the specific nature of the aid system at issue must therefore be rejected.

63 The first part of the plea must therefore be rejected in its entirety.

Second part of the plea

64 The applicant maintains that the Commission wrongly considered that the PRI had distorted competition and affected trade between Member States. It further complains that the contested decision fails to state reasons on that point.

The merits of the Commission's assessment

— Arguments of the parties

65 First of all, the applicant claims that the PRI was aimed essentially at vehicles which were not in competition with those of other Member States of the Community. Vehicles subject to such competition are replaced well before they have been registered for 10 years, which was a condition of eligibility under the PRI. Furthermore, the only category of vehicles for which intra-Community competition could exist is that of goods vehicles authorised to operate national public road haulage services. Only 10% of vehicles coming within that category reached the 10 year registration threshold.

66 The applicant also claims that the apparent lack of attraction of the PRI for carriers not established in Spain is solely to do with the additional costs to which they were exposed in order to take advantage of it. That disadvantage was more than compensated by the low interest rates from which those foreign carriers benefited in their countries of origin. In any event, since the PRI did not exclude undertakings established in other Member States, the fact that in practice it proved less advantageous for them than for Spanish undertakings does not serve to bring it within the scope of Article 92(1) of the Treaty (Commission Notice on monitoring of State aid and reduction of labour costs, OJ 1997 C 1, p. 10, points 12 and 13).

67 For all those reasons, the applicant contends that the impact of the PRI on competition in the transport sector was quite insignificant. The case-law requires that, for Article 92(1) of the Treaty to apply, competition and inter-State trade must be significantly or substantially affected (Case 47/69 *France* v *Commission* [1970] ECR 487, paragraph 16, Case 248/84 *Germany* v *Commission* [1987]

ECR 4013, paragraph 18, and Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219, paragraph 58).

68 The applicant further contends that the small amount of the subsidy at issue (ECU 3 341 per vehicle, in absolute value; 6.5% of the purchase price of the vehicle excluding VAT, in relative value) cannot have distorted competition on an international market characterised, as in the present case, by significant national differences in the conditions of finance. In any event, the aid influenced only the decision to purchase, not the rates applied by the recipient undertaking to its transport services, since the saving thus made was spread over the entire working life of the vehicle thus acquired. The applicant further states that other considerations, connected with the ease of access to credit allowed by the PRI and the beneficial effects of the modernisation of the commercial vehicles on the road (improved security, improved comfort and improved quality of life for carriers; reduction in pollution) provided the principal incentive for the beneficiaries to take advantage of the measure at issue.

69 Finally, the applicant refers to a number of characteristics of the transport sector and comments on the question of overcapacity in that sector to which the Commission refers in the contested decision.

70 First, it states that the PRI did not lead to an increase in the number of commercial vehicles, since the grant of the subsidy was conditional upon a used vehicle being withdrawn from the market. As the Commission points out in section III, ninth paragraph, of the preamble to the contested decision, the new subsidised vehicle was in a higher category than the vehicle withdrawn from the market in only 12.3% of cases (1 758 vehicles), which, according to the applicant, resulted in an increase of 0.05% in the capacity of the commercial vehicle fleet in Spain.

71 Second, according to Eurostat figures, 91.4% of transport undertakings operating in Spain are involved in transport within Spain, which shows the small impact of the subsidy at issue on the international transport market.

72 Third, it cannot be asserted that the saving made by a SME which chose to take advantage of the PRI and to replace its vehicle at an earlier stage than it would otherwise have done was automatically transformed into an advantage or a reduction in its tariffs of such a kind as to distort competition, having regard to the numerous expenses associated with transport, on the one hand, and the size of the financial investment and depreciation costs which the purchase of a commercial vehicle represents for a SME, on the other hand.

73 The Commission contends that Article 92(1) of the Treaty does not require that competition be distorted by the grant of the aid at issue. That provision supposes only that the aid threatens to distort competition (see *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 46). It observes that the road haulage sector is facing serious structural problems of overcapacity. Consequently, any aid, however modest, which is liable to aggravate that situation should be analysed according to particularly strict criteria. Furthermore, that sector is characterised by a significant atomisation of supply, particularly in Spain, so that an aid which may seem modest in absolute terms may in reality have a significant impact on competition and on trade between Member States (Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 42). In the present case, that impact was doubly significant: not only did the recipients modernise their business resources, but in certain cases they expanded them, since the vehicle purchased could be in a higher category than the vehicle withdrawn from the market.

74 The Commission submits that, in those circumstances, the only proper conclusion was that the aid referred to in Article 3 of the contested decision affected intra-Community trade (*Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 49). Relying on that judgment, the Commission maintains that in the

present case there was no need to analyse the actual effects of the aid on trade within the Community. It also rejects the applicant's argument that the majority of vehicles at which the PRI was aimed were outside the scope of the Community rules on competition (paragraph 65 above).

— Findings of the Court

75 First of all, it should be pointed out that, in the light of what has been stated in paragraphs 24 and 25 above, the Court must, in the present dispute, assess the conditions under which competition is distorted and trade affected between Member States with sole reference to the road haulage sector.

76 In section II of the preamble to the contested decision the Commission sets out the various regulations adopted by the Council, as a result of which that sector has been gradually opened to Community competition in both international and national transport (cabotage).

77 In section IV of the preamble to the contested decision, the Commission states that the subsidy granted under the PRI reduced the normal business expenses of its recipients, whereas their competitors had to bear those expenses (fourth paragraph, second sentence). It considers that in doing so the aid strengthened the financial position of the recipients, giving them greater scope for action and a competitive advantage (same paragraph, third sentence). It claims (eighth paragraph) that '[t]he... recipients [of the aid], having transport as their main business..., compete with transport companies which are not eligible for aid under the [PRI] both from Spain or from other Member States since the liberalisation of road transport in 1990 led to competition with firms from other Member States, both in international transport and in the cabotage sector'.

78 The Commission goes on to explain why the fact that the grant of the subsidy is conditional upon the withdrawal from service of a vehicle registered in Spain constituted indirect discrimination against carriers not established in Spain and thereby led to distortion of competition between them and carriers established there (9th and 10th paragraphs).

79 The Commission concludes (12th paragraph):

'Where aid strengthens the financial position of firms in a particular sector involved in intra-Community trade, this trade must be regarded as affected within the meaning of Article 92(1) of the Treaty. Since the aid provided for in the [PRI] strengthens the financial position and scope for action of the recipient companies as compared with their competitors, and since this effect takes place within the context of intra-Community trade, the Commission considers that the latter is likely to be affected by the granting of such aid.'

80 The Court must examine the merits of the Commission's analysis in the light of the arguments developed by the applicant.

81 It is indisputable that in the sphere of road haulage the SMEs which received the disputed aid are in competition with large undertakings which were not eligible for aid under the PRI (see paragraph 47 above). Nor can it be denied that the international road haulage sector, in which the applicant accepts that at least some of the SMEs which it represents in the present case are active, is marked by strong competition at Community level, precisely because of the transborder aspect of that type of activity, and that the effect of the liberalising regulations referred to by the Commission in section II of the preamble to the contested decision has been such that competition in the internal road haulage sector has for a number of years had, at least potentially, a Community dimension.

82 Nor does the applicant dispute that the subsidy at issue lightened the normal burden inherent in the day-to-day activities of those in receipt of it by 'reduc[ing] their normal business expenses' (section IV, fourth paragraph, of the preamble to the contested decision). On the contrary, as already stated in paragraph 30 above, the applicant states that without the aid the recipients would have been unable to meet the expenditure associated with the purchase of a new commercial vehicle.

83 According to the case-law, aid is operating aid where, as in this case, it covers a part of the costs of a modernisation investment which must be made periodically (see Joined Cases 62/87 and 72/87 *Exécutif régional wallon and Glaverbel* v *Commission* [1988] ECR 1573, paragraphs 31 to 34). Such aid, which is intended to relieve the recipient undertakings of all or part of the expenses which they would normally have had to bear in their day-to-day management or their usual activities, in principle distorts competition (Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraphs 48 and 77, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 43). In this case, as the Commission asserts in the contested decision, the advantage conferred on the recipient undertakings by the public scheme actually strengthened their financial position, giving them greater scope for action and an advantage over competitors from Spain or other Member States which, owing to their size, were not eligible for the contested aid (see, in that regard, Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24).

84 Furthermore, as the Commission points out (section IV, ninth paragraph, of the preamble to the contested decision), even though the conditions laid down in the agreement of 27 September 1994, referred to in paragraph 3 above, did not formally preclude SMEs not established in Spain from taking advantage of the PRI, they none the less in fact exposed such undertakings to additional expenses, as the applicant itself admits. By making the aid conditional upon the withdrawal from service of a vehicle registered in Spain, the PRI obliged carriers not established in Spain, if they wished to take advantage of a subsidy, to conclude a prior agreement with a local carrier under which the local operator would withdraw such a vehicle from the market, whereas local carriers could take

advantage of the subsidy directly, without having to resort to such arrangements. The Commission was therefore correct to conclude (section IV, 10th paragraph, of the preamble to the contested decision) that the granting of aid under the PRI '[had] also [led] to a distortion of competition between carriers established in Spain and those who operate[d] in Spain but [were] based in other Member States'.

85 The applicant's allegation that that disadvantage was largely compensated by the low rates of interest applied in other Member States, apart from the fact that it is not supported by any solid evidence, cannot invalidate the finding that the action by the Spanish public authorities in the context of the PRI led to an artificial change in the conditions of competition resulting from the normal application of market laws. Moreover, a public scheme cannot escape classification as aid for the purposes of Article 92(1) of the Treaty on the ground that, notwithstanding the advantage conferred on its beneficiaries, they would not, even so, be placed in a position as favourable as that of their competitors from other Member States.

86 As the Commission correctly points out in the contested decision, when, as in the present case, State financial aid or aid from State resources strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid (see Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11, *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 47, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 50). Furthermore, an aid may be of such a kind as to affect trade between Member States and distort competition even if the recipient undertaking, which is in competition with undertakings from other Member States, does not itself participate in crossborder activities. Where a Member State grants aid to an undertaking, internal supply may be maintained or increased, with the consequence that the opportunities for undertakings established in other Member States to offer their services to the market of that Member State are reduced (see, in that regard, Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 27).

87 The applicant does not dispute the Commission's finding that the road transport sector is a market with overcapacity (section V, 15th paragraph, of the preamble to the contested decision). It is common ground, moreover, that under the PRI a used vehicle in categories B, C or D could be replaced by a new vehicle in a higher category (section I, final paragraph, of the preamble to the contested decision), which, as the applicant accepts, actually happened in 12.3% of cases (section III, ninth paragraph, of the preamble to the contested decision). That factor therefore increased overcapacity in the sector.

88 The Commission was therefore entitled to conclude (section IV, final paragraph, of the preamble to the contested decision) that intra-Community trade was likely to have been affected by the granting of the subsidy at issue (see, in that regard, Case C-75/97 *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 51).

89 Whatever may have been the percentage of subsidised commercial vehicles in the business sector under consideration compared with the total number of commercial vehicles on the road, and whatever the market share of the SMEs receiving the aid, the fact remains that Community competition was distorted and trade between Member States was affected accordingly.

90 As regards the argument based on the uncompetitive nature of the vehicles to which the PRI applied, it should be pointed out that the aid was made specifically conditional upon the replacement by a new a vehicle of a vehicle registered more than 10 years previously. Thus, the PRI, as the Commission rightly contends in its written submissions, strengthened the competitive position of the recipient undertakings by removing the disadvantage connected with the age of the vehicle replaced.

91 Finally, it is necessary to reject the applicant's arguments based on the modest nature of the aid, its limited impact on the decision of undertakings to take advantage of the PRI and its lack of effect on their tariffs.

92 According to the case-law, where the benefit granted by a public authority to an undertaking is small, competition is distorted to a lesser extent, but it is still distorted. The prohibition in Article 92(1) of the Treaty applies to any aid which distorts or threatens to distort competition, irrespective of the amount, in so far as it affects trade between Member States (see *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 46). In that regard, the relatively small amount of aid or the relatively small size of the undertaking which receives it does 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, paragraph 43, *Spain* v *Commission*, cited in paragraph 73 above, paragraphs 40 to 42, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 48). Thus, aid of a relatively small amount is liable to affect trade between Member States where there is strong competition in the sector in question (*Italy* v *Commission*, cited in paragraph 86 above, paragraph 27), which is the case in the road haulage sector, with its large number of small undertakings.

93 Furthermore, the applicant itself acknowledges that without the subsidy at issue its recipients would have been unable to meet the expenditure involved in renewing their commercial vehicle fleets (see paragraph 30 above). Whatever other reasons may have encouraged those recipients to take advantage of the PRI, and whatever the impact of the advantage thus obtained on their rates, the subsidy in question therefore undeniably helped them improve their resources, thus strengthening their position in comparison with their competitors, whether local or foreign, actual or potential.

94 Having regard to all the foregoing, the Court finds that the Commission was correct to conclude that trade between Member States had been affected and competition distorted, or threatened with distortion, owing to the granting of the aid referred to in Article 3 of the contested decision. Contrary to what the applicant maintains, there is no requirement in case-law that, in order for there to be a finding to that effect, the distortion of competition, or the threat of such distortion, and the effect on intra-Community trade, must be significant or substantial (see *Belgium* v *Commission*, cited in paragraph 92 above, paragraphs 42 and 43, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 46).

95 Consequently, the arguments whereby the applicant seeks to challenge the validity of the Commission's analysis on this point must be rejected.

The statement of reasons

— Arguments of the parties

96 The applicant criticises the Commission for merely making, in the contested decision, an abstract reference to the formal liberalisation of the road haulage sectors, without examining the actual situation on the relevant market, the market share of the undertakings in receipt of the aid, the position of competing undertakings and the normal trade in the services in question between Member States, contrary to the requirements of case-law (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 24, and Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others* v *Commission* [1996] ECR I-5151, paragraph 54).

97 Nor did the Commission state the reasons for its tacit rejection of the arguments put forward during the administrative procedure concerning the absence of a significant distortion of competition and an effect on trade between Member States, contrary to the requirements of case-law (Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraph 43).

98 The applicant, relying on the case-law cited in paragraph 96 above, further maintains that the Commission is under a more extensive obligation to state reasons as regards the distortion of competition and an effect on intra-Community trade when the aid in question was granted illegally.

99 The Commission explains why in its view the case-law cited in paragraph 96 above is not applicable in the present case. It contends that it satisfied the requirement to state reasons laid down in the case-law by explaining in the contested decision why the PRI was likely to affect trade between Member States. It further states that when, as in the present case, the aid was not notified to it, the case-law does not require it to demonstrate the actual effect of that aid on competition and on intra-Community trade (*France* v *Commission*, cited in paragraph 97 above, paragraph 33).

— Findings of the Court

100 While in certain cases the very circumstances in which the aid has been granted may show that it is liable to affect trade between Member States and to distort or threaten to distort competition, the Commission must at least set out those circumstances in the statement of the reasons for its decision (Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 38, and *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission*, cited in paragraph 96 above, paragraph 24).

101 In the present case, the passages from the contested decision referred to in paragraphs 76 to 79 above contain a sufficient account of the facts and legal considerations taken into account in the assessment of the conditions under which competition was distorted and inter-State trade affected. Such information enables the applicant and the Court to ascertain the reasons for which the Commission considered that the contested aid fulfilled those conditions.

102 Contrary to what the applicant maintains, the Commission was not required to carry out an economic analysis of the actual situation on the relevant market, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings and of trade flows of the services in question between Member States, since it had explained how the aid in question distorted

competition and affected trade between Member States (see, in that regard, *Philip Morris* v *Commission*, cited in paragraph 86 above, paragraphs 9 to 12, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 67).

103 Furthermore, in the case of aid granted illegally, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade between Member States. Such an obligation would ultimately favour Member States which pay aid without complying with the duty to notify the aid laid down in Article 93(3) of the Treaty, to the detriment of those which notify the aid at the proposal stage (see *France* v *Commission*, cited in paragraph 97 above, paragraph 33, and *Vlaams Gewest*, cited in paragraph 59 above, paragraph 67).

104 Last, in addition to the case-law referred to in paragraph 58 above, it should be pointed out that, in giving its reasons for the decisions it is required to take in order to ensure compliance with the rules on competition, the Commission is not obliged to adopt a position on all the arguments relied on by the parties concerned. It is sufficient if it sets out the facts and legal considerations having decisive importance in the context of the decision (Case T-44/90 *La Cinq* v *Commission* [1992] ECR II-1, paragraph 41 and the case-law cited therein, *Siemens* v *Commission*, cited in paragraph 83 above, paragraph 31, and *Vlaams Gewest* v *Commission*, cited in paragraph 59 above, paragraph 63), which it did in the present case.

105 In conclusion, the argument which the applicant bases on a failure to state reasons in regard to distortion of competition and an effect on trade between Member States must be rejected.

106 The second part of the plea must therefore be rejected in its entirety.

Third part of the plea

Arguments of the parties

107 The applicant maintains that, even if the PRI affected competition and trade between Member States, it should be declared compatible with the common market by virtue of Article 92(3)(c) of the Treaty.

108 The Commission makes no comment on that point.

Findings of the Court

109 According to established case-law, in the application of Article 92(3) of the Treaty the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context (see *Philip Morris* v *Commission*, cited in paragraph 86 above, paragraph 24, and Case C-75/97 *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 55). The determination of the question whether a State aid is or is not compatible with the common market raises problems which presuppose the examination and appraisal of complex social and economic facts and conditions which may change rapidly (C-301/87 *France* v *Commission*, cited in paragraph 97 above, paragraph 15, Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 36, and Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 18).

110 In those circumstances, the function of the Community judicature in an action for annulment is solely to determine whether the Commission's decision not to apply

to the aid at issue the derogation provided for in Article 92(3)(c) of the Treaty is vitiated by one of the grounds of illegality set out in Article 173 of the Treaty; it cannot substitute its own assessment of the facts for that of the institution which adopted the decision, especially in the economic sphere (see Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 23; *Ladbroke Racing* v *Commission*, cited in paragraph 52 above, paragraph 147). It follows that review by the Court in such a situation must be confined to verifying compliance with the rules governing procedure and the statement of reasons, the accuracy of the facts on which the decision was made and the absence of manifest error of assessment and of misuse of powers (see *Matra* v *Commission*, cited above, paragraph 25, and Case C-56/93 *Belgium* v *Commission*, cited in paragraph 53 above, paragraph 1; Case T-106/95 *FFSA and Others* v *Commission* [1997] ECR II-229, paragraph 101, *Ladbroke Racing* v *Commission*, cited in paragraph 52 above, paragraph 148, and Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 79).

111 In the present case the applicant has failed to adduce the slightest evidence on which the Court might conclude that the contested decision is vitiated by any illegality whatsoever in that the Commission refuses in it, following the detailed analysis set out in section V of the preamble to the contested decision, to apply the derogation provided for in Article 92(3)(c) of the Treaty to the aid referred to in Article 3 of that decision,.

112 In conclusion, the second plea must be rejected in its entirety.

2. *First and third pleas, alleging infringement of the principles of legitimate expectations, proportionality, equal treatment and 'prohibition of arbitrariness' and also of Article 190 of the Treaty, and seeking annulment of Article 4 of the contested decision*

113 By the first and third pleas the applicant seeks annulment of Article 4 of the contested decision, which requires the Kingdom of Spain to abolish and recover

from the recipients the aid referred to in Article 3. In support of these two pleas, the applicant relies on and develops a number of grounds alleging infringement of the principles of protection of legitimate expectations and proportionality and the obligation to state reasons. It also refers to a number of grounds linked with infringement of the principles of equal treatment and the 'prohibition of arbitrariness'. Since the applicant's written submissions devote no particular argument to the latter grounds, they must be regarded as being subsumed in the three grounds previously referred to.

Infringement of the principle of legitimate expectations

114 In support of this ground, the applicant alleges, first, that there were exceptional circumstances which led the recipients of the aid to believe that it was lawful. Second, it maintains that the length of the administrative procedure also gave rise to a legitimate expectation in the recipients.

The alleged existence of exceptional circumstances

— Arguments of the parties

115 The applicant refers to the objectives of environmental protection and road safety pursued by the PRI and asserts that case-law recognises that in exceptional circumstances the recipient of allegedly illegal aid might legitimately have believed the aid to be lawful (Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 16, and Case C-183/91 *Commission* v *Greece* [1993] ECR I-3131, paragraph 18).

116 It alleges that such exceptional circumstances did in fact exist in the present case. First, the recipients concluded the loans essentially with private banks, without any involvement on the part of the public authorities, and without being aware, having regard to the general ignorance of European matters among small undertakings, that such loans might conceal elements of public aid. Second, at no time were they informed by the Spanish authorities of the procedure concerning the PRI taking place before the Community authorities. Third, they legitimately doubted that the measure contained in the PRI could constitute State aid for the purposes of Article 92(1) of the Treaty. Fourth, having regard to the fact that the PRI had been presented as a general measure aimed at modernising the commercial vehicles operated by all SMEs, it was reasonable that they should consider that the system was covered by the '*de minimis*' rule described in the Commission notice on the *de minimis* rule for State aid (OJ 1996 C 68, p. 9).

117 The applicant claims, relying on the judgment in Case 223/85 *RSV* v *Commission* [1987] ECR 4617, the Opinion of Advocate General Tesauro in Case C-169/95 *Spain* v *Commission*, cited in paragraph 109 above (at [1997] ECR I-138, at I-146 and I-147), and Article 14(1), second sentence, 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), that undertakings in receipt of aid are entitled to rely on their legitimate expectation before the Community Court to challenge the repayment of that aid. It also maintains that, having regard to the fact that the PRI had been presented at the time as a general measure, and having regard to the complex question of what constitutes State aid within the meaning of Community law, the fact that the aid was conditional upon a vehicle registered in Spain being withdrawn from service could not lead the recipients to suspect that the PRI might involve State aid contrary to Article 92(1) of the Treaty.

118 The Commission asserts that the principle of protection of legitimate expectations cannot be effectively relied upon before the Court (*Siemens* v *Commission*, cited in paragraph 83 above, and *Ladbroke Racing* v *Commission*, cited in paragraph 52 above). It contends that, in any event, the circumstances on which the applicant relies cannot be regarded as exceptional.

— Findings of the Court

119 First of all, it should be observed that the applicant does not contend that the SMEs which it represents in the present case were not aware at the material time that the loans granted to them to purchase new commercial vehicles within the framework of the PRI had been granted at a preferential rate of interest. The proper conclusion, therefore, is that those undertakings were clearly aware of the advantage and, therefore, the aid resulting from the reduction in the rate of interest on those loans.

120 It is common ground, moreover, that the PRI was not implemented in accordance with the procedure laid down in Article 93(3) of the Treaty.

121 It is settled case-law that, in view of the mandatory nature of the supervision of State aid by the Commission under Article 93 of the Treaty, undertakings to which an aid has been granted cannot, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article. A diligent operator should normally be able to determine whether that procedure has been followed (see *Germany* v *Commission*, cited in paragraph 115 above, paragraph 14; Case C-169/95 *Spain* v *Commission*, cited in paragraph 109 above, paragraph 51; and Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, paragraph 25).

122 Admittedly, the case-law does not preclude the possibility that the recipients of illegal aid may, in order to challenge its repayment, plead exceptional circumstances which legitimately give rise to a legitimate expectation that the aid was lawful (*Commission* v *Germany* and *Commission* v *Greece*, cited in paragraph 115 above, paragraph 16 and paragraph 18 respectively; see also Joined Cases T-126/96 and T-127/96 *BFM and EFIM* v *Commission* [1998] ECR II-3437, paragraph 69).

123 However, irrespective of whether the recipients of an illegal aid are or are not entitled to plead such circumstances before the Community Court, it is clear that in any event none of the circumstances put forward by the applicant in the present case can be accepted.

124 Thus, the fact that the loans were essentially made by private banks, without any direct involvement on the part of the public authorities, cannot give rise to the conclusion that the recipients of the loans had no reason to suspect that the reductions in interest rate granted in respect of those transactions were of State origin.

125 First, it follows from the press cuttings submitted by the Commission in Annex B to its answers of 10 March 2000 to the written questions put by the Court that at the material time the PRI was the subject of a wide public information campaign on the part of the Spanish ministerial authorities ('una intensa campaña del ministerio [de Industria] a partir de septeimbre u octubre', *El Pais*, 9 August 1994) and that the articles devoted to it in the daily press clearly referred to the State origin of the aid thus granted ('El govierno abonará 93.193 pesetas por cada millón invertido en comprar vehículos industriales', *El Pais*, 28 September 1994). Next, the applicant cannot reasonably deny that the condition that a used vehicle be withdrawn from the market is not a normal feature of a loan by a private body. Last, the fact, alleged by the applicant itself, that the PRI was presented as a measure aimed at modernising the commercial vehicles operated by SMEs gave them little reason to doubt the public origin of such a measure. Having regard to those various aspects, the recipients of the aid could not but be aware that the aid was the result of action by the Spanish public authorities and not of a private initiative.

126 The SMEs' alleged ignorance of the rules applicable to public aid and the complex question of what constitutes State aid cannot be regarded as exceptional circumstances of such a kind as to give rise to a legitimate expectation that the aid was lawful. Moreover, recipients of aid cannot, on grounds of their size, be

relieved of the obligation to keep themselves informed of the rules of Community law, otherwise the practical effect of Community law would be undermined.

127 Nor can the fact that the recipients of the aid were not informed by the Spanish authorities of the administrative procedure concerning the PRI, even supposing that it is correct, be regarded as an exceptional circumstance capable of giving rise to a legitimate expectation that the aid was lawful. Furthermore, the Commission's decision to initiate the formal examination procedure provided for in Article 93(2) of the Treaty was published in the *Official Journal of the European Communities* on 13 September 1996 (OJ 1996 C 266, p. 10). The Commission stated there that it considered the system of aid in question illegal and expressed doubt as to its compatibility with the common market. It reserved 'the right, in line with the case-law of the Court of Justice, to take a decision requiring the Member State to recover all illegally granted aid, as again pointed out to the Member States in the communication published in the *Official Journal of the European Communities* No C 156/5 of 22 June 1995, p. 5'.

128 The mere fact that the classification of the measure contained in the PRI as State aid within the meaning of Article 92 of the Treaty may have appeared doubtful to the recipients is clearly insufficient to justify any legitimate expectation on their part as to the lawfulness of the aid received.

129 As regards the fact that the PRI was presented at the material time as a general measure aimed at modernising the commercial vehicles operated by SMEs, apart from the aspects considered in paragraph 125 above, that fact should have induced the recipients to doubt the compatibility of the aid with the common market, since such a presentation clearly revealed the selective nature of that aid system. In any event, that aspect cannot be regarded as an exceptional circumstance capable of inducing the recipients of the aid to think that the Commission would not object to the PRI.

130 Nor, finally, can the argument based on the Commission notice on the *de minimis* rule for State aid be accepted. That notice expressly states that the rule is not to apply to aid granted in the transport sector.

131 In conclusion, the Court must reject the argument that there are exceptional circumstances capable of justifying the expectation of the recipients of the aid that the aid was lawful.

The length of the administrative procedure

— Arguments of the parties

132 The applicant maintains, with reference to the judgment in *RSV* v *Commission*, cited in paragraph 117 above, that the excessive length of the administrative procedure led the recipients to believe that the measure contained in the PRI was lawful. It asserts that the Spanish authorities provided the Commission with the desired information concerning the PRI, so that they cannot be held responsible for the length of the administrative procedure. Once in possession of that information, the Commission waited 17 months before opening the formal procedure provided for in Article 93 of the Treaty. The Commission finally recognised, after an inquiry lasting 41 months, that the measure referred to in the PRI did not in certain cases constitute State aid within the meaning of Article 92(1) of the Treaty.

133 The applicant asserts that the contested decision makes no reference to any reluctance on the part of the Spanish authorities in providing the Commission with the information necessary for the proper pursuit of the administrative procedure. It further states that, in any event, an alleged failure to cooperate on

the part of the Spanish authorities cannot justify the length of that procedure, since case-law recognises that the Commission is entitled to order the Member State to provide it with all such documentation, information and data as are necessary in order that it may examine the compatibility of the aid in question with the common market, and, if the Member State concerned does not comply, to terminate the procedure and take a final decision on the basis of the information available to it (Case C-301/87 *France* v *Commission*, cited in paragraph 97 above, paragraphs 19 and 22).

134 The applicant also states that when the Commission decides to initiate the formal procedure it must complete it within a reasonable time (order in Case 59/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2425). Furthermore, in Decision 92/329/EEC of 25 July 1990 on aid granted by the Italian Government to a manufacturer of ophthalmic products (Industrie Ottiche Riunite — IOR) (OJ 1992 L 183, p. 30) the Commission deemed it inappropriate to demand repayment, in view of the time which had passed between the date on which the aid had become known to the Commission and the date on which the decision was adopted.

135 The applicant further maintains that the Spanish carriers who were best informed of European legislation because they had access to the relevant official documents could have become aware of the Commission's doubts as to the lawfulness of the measure at issue only in September 1996 — the date of publication in the *Official Journal of the European Communities* of the Commission's decision to initiate the formal procedure laid down in Article 93(2) of the Treaty —, in other words two years after the PRI was implemented. The passage of such a long period instilled a legitimate expectation in the recipients of the aid as to the lawfulness of that aid.

136 The Commission asserts that the length of the administrative procedure was in keeping with the difficulty of the present case and that in any event it is largely attributable to the lack of cooperation on the part of the Spanish authorities, both during the preliminary procedure and during the formal procedure of examining the system at issue. It rejects the parallel drawn by the applicant between the

present case and the case which gave rise to the judgment in *RSV* v *Commission*, cited in paragraph 117 above. Relying on the judgment of the Court of First Instance in Case T-49/93 *SIDE* v *Commission* [1995] ECR II-2501, paragraph 83 et seq, the Commission further submits that when a Member State does not provide it with the information requested it may decide, having regard to the particular circumstances of the case, to wait until it has fuller information before adopting its decision, rather than terminate the procedure and adopt a decision on the compatibility of the aid solely on the basis of the information available to it.

— Findings of the Court

137 First of all, it should be pointed out that the aid measure in question was not notified to the Commission, so that, pursuant to the case-law referred to in paragraph 122 above, the recipients could not as a matter of principle, except in exceptional circumstances, rely on a legitimate expectation as to the lawfulness of the aid as a ground for not repaying it. The Court must therefore ascertain whether, in the present case, the length of the administrative procedure was so exceptional as to provide a basis for such an expectation.

138 In that regard, it should be pointed out, first, that according to the documents relating to the correspondence between the Commission and the Spanish authorities during the administrative procedure (Annex C to the Commission's answers of 10 March 2000 to the written questions put by the Court), the Spanish authorities, who had not informed the Commission of the PRI, provided the Commission, at the latter's request, with the first information on that aid scheme by letter of 6 March 1995 — received by the Commission on 7 April 1995 —, or more than seven months after their decision of 28 July 1994 to adopt the scheme (see paragraph 2 above).

139 After examining that initial information, the Commission considered that further information was needed and, accordingly, on 6 July 1995 it sent a request for information, to which the Spanish authorities replied by letter of 26 July 1995. It

was only with that letter, or one year after the PRI had been adopted, that the Commission obtained a copy of the Agreement of 27 September 1994 determining the operating rules of the PRI.

140 On 20 February 1996 the Commission sent the Spanish authorities a fresh request for information on certain conditions in the Agreement, on the actual results, as at 31 December 1995, of the application of the PRI, and of the average length of registration of commercial vehicles in Spain. The Spanish authorities sent the information requested by letter of 14 March 1996, which the Commission received on 18 March 1996.

141 It follows from those various matters that the delay in initiating and then in pursuing the preliminary procedure of examining the compatibility with the common market of the aid system at issue is primarily the responsibility of the Spanish authorities, who not only adopted and implemented the system without complying with the duty to inform the Commission laid down in Article 93(3) of the Treaty, but then delayed providing the Commission with all the relevant information.

142 In those circumstances, it was reasonable for the Commission to allow itself three months from 18 March 1996 in which to consider the matter before informing the Spanish authorities, by letter of 26 June 1996, of its decision to initiate the formal procedure provided for in Article 93(2) of the Treaty (see Case C-301/87 *France* v *Commission*, cited in paragraph 97 above, paragraph 27).

143 In the light of those circumstances, the overall length of the preliminary procedure involving examination of the aid clearly cannot be regarded as exceptional and, accordingly, cannot give rise to a legitimate expectation as to the lawfulness of the aid capable of constituting a bar to its recovery.

144 A further reason why the length of the formal procedure cannot have led the recipients of the aid to entertain a legitimate expectation as to its lawfulness is that the persons concerned were informed, on 13 September 1996 at the latest, of the content of the letter of 26 June 1996 from the Commission to the Spanish authorities in which the Commission stated that the aid was unlawful, expressed doubt as to its compatibility with the common market and stated that it might have to be recovered.

145 In those circumstances, the length of the formal procedure, approximately two years — which, according to the information in the contested decision, confirmed by the documents relating to the correspondence between the Commission and the Spanish authorities during the procedure, may be explained, first, by the various formal and informal contacts necessitated by the complexity of the case-file and, second, by the fact that it was only on 23 February 1998 that all the information essential for the assessment of the lawfulness of the aid was available to the Commission — cannot have led the recipients to entertain a reasonable belief that the doubts expressed by the Commission in its letter of 26 June 1996 no longer persisted and that the aid would no longer meet with any objection (see, in that regard, Case C-301/87 *Commission* v *France*, cited in paragraph 97 above, paragraph 28).

146 The fact that the Commission, in its decision of 1 July 1998, eventually authorised part of the aid granted in application of the PRI cannot serve to justify an alleged legitimate expectation on the part of the recipients of the aid during the administrative procedure as to the lawfulness of the aid system.

147 Last, while it is true that in the judgment in *RSV* v *Commission*, cited in paragraph 117 above, the Court considered that the period of 26 months taken by the Commission in adopting its decision could in that particular case establish a legitimate expectation on the applicant's part so as to prevent the Commission from requiring the national authorities concerned to order the refund of the aid in question (see paragraph 17 of the grounds of the judgment), it is necessary to bear in mind the particular circumstances of that case.

148 The aid in question had been formally notified to the Commission, admittedly after it had been paid to the recipient. It concerned the supplementary costs of one transaction, which had already been the subject of aid authorised by the Commission. It concerned a sector which since 1977 had been in receipt of aid granted by the national authorities and authorised by the Commission. Consideration of the compatibility of the aid with the common market had not called for deep research. The Court concluded that in those circumstances the applicant had reasonable grounds for believing that the aid would encounter no objection from the Commission (see paragraphs 14 to 16 of the grounds of the judgment).

149 Those facts are fundamentally different from the facts of the present case.

150 In the present case it is common ground that the Spanish authorities never informed the Commission of the PRI.

151 Furthermore, it is apparent from the answers provided to the Court by the Commission on 10 March 2000 that the PRI did not form part of the extension of comparable aid for the purchase of commercial vehicles previously approved by the Commission. The Commission states that it had in the past authorised another 'Plan Renove', which, however, unlike the PRI, was aimed at the purchase of private motor cars. It also follows from the Commission's answers that the only public aid previously granted with the Commission's approval to Spanish SMEs active in the goods haulage sector had had an objective and a purpose quite different from those of the aid paid within the framework of the PRI. In that case the relevant measures were intended to encourage the early retirement of hauliers, cooperation between undertakings and a reduction in capacity in the sector.

152 Finally, it is clear from the contested decision, and confirmed by the documents relating to the correspondence between the Commission and the Spanish

authorities during the administrative procedure, that the Commission had to make numerous requests for information in order to evaluate the PRI in the light of Article 92(1) of the Treaty.

153 In those circumstances, the applicant cannot validly rely in this case on the judgment in *RSV* v *Commission*, cited in paragraph 117 above.

154 In conclusion, the applicant's arguments based on the length of the administrative procedure must be rejected.

Infringement of the principle of proportionality

Arguments of the parties

155 The applicant claims, first, that the recovery of unlawful aid must be ordered for reasons to do with the gravity and extent of the infringement (Case C-303/88 *Italy* v *Commission*, cited in paragraph 86 above, paragraph 54). It must comply with the principle of proportionality (Case C-301/87 *France* v *Commission*, cited in paragraph 97 above, paragraphs 59 to 62, and order of the President of the Court of Justice in Case C-399/95 R *Germany* v *Commission* [1996] ECR I-2441, paragraph 67; *Cityflyer Express* v *Commission*, cited in paragraph 59 above, paragraphs 54 and 55). Furthermore, it is optional, not automatic (Case

310/85 *Deufil* v *Commission* [1987] ECR 901), as the Commission acknowledged in its notice of 13 May 1991, amending its notice of 4 March 1991, on aid applied in breach of the rules laid down in Article 93(3) of the Treaty.

156 Next, the applicant relies on a series of decisions in which the Commission did not require recovery of the unlawful aid. In a number of those cases the reasons which the Commission gave for not requiring recovery were connected with the fact that the aid had contributed to the protection of the environment, the marginal nature of the advantage granted or, again, legitimate expectations, grounds which should have been accepted in the present case.

157 The applicant concludes that the order addressed to the Kingdom of Spain to recover the aid granted to each of the recipients of the PRI is wholly disproportionate. The consequent harm to those recipients is out of proportion to the alleged distortion of competition associated with the grant of the aid in question. The applicant further states, with reference to the judgment in *Cityflyer Express* v *Commission*, cited in paragraph 59 above, that the rule of proportionality requires the adoption of the measures necessary to ensure a system of healthy competition in the internal market which is least damaging to the promotion of a harmonious and balanced development of economic activities throughout the Community. In the present case, by requiring repayment of the aid, the Commission undermined the development of economic activities in the Community, but did nothing to assist healthy competition in the internal market, as the PRI had no effect on intra-Community trade.

158 The Commission claims, in reliance on the relevant case-law, that in the present case recovery of the aid is necessary in order to restore the conditions of competition which existed before it was granted. While the recovery of aid granted illegally may not be required in exceptional circumstances, there were no

such circumstances in the present case. The Commission also briefly states the reasons which induced it not to order recovery of the aid in the various decisions to which the applicant refers. However, such reasons do not exist in the present case.

Findings of the Court

159 First of all, it should be pointed out that consideration of the second plea has not revealed any flaws in the Commission's analysis of the incompatibility with the common market of the aid referred to in Article 3 of the contested decision, which was granted to the undertakings represented by the applicant.

160 It also follows from a well-established body of case-law that when the Commission finds that State aid is incompatible with the common market it may order the Member State concerned to order the recipients to repay it, since abolishing unlawful aid by means of recovery is the logical consequence of that finding of illegality, in so far as it allows the previously existing situation to be restored (see *Deufil* v *Commission*, cited in paragraph 155 above, paragraph 24, Case C-142/87 *Belgium* v *Commission*, cited in paragraph 92 above, paragraph 66, and Case C-169/95 *Spain* v *Commission*, cited in paragraph 109 above, paragraph 47).

161 It 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 of Justice (judgment in *Deufil* v *Commission*, cited in paragraph 155 above, paragraph 24), if it asks the Member State to recover the sums granted by way of unlawful aid since it is only restoring the previous situation (Case C-75/97 *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 66).

162 The fact that in certain specific cases the Commission has not required recovery of the aid in question, for whatever reasons, cannot support a finding that it exceeded its discretion in the present case by ordering the Spanish authorities to recover the aid unlawfully granted and properly found incompatible with the common market.

163 Next, it must be borne in mind that the principle of proportionality requires that the measures adopted by Community institutions must not exceed what is appropriate and necessary for attaining the objective pursued; where there is a choice between several appropriate measures, the least onerous measure must be used (see, for example, Case 15/83 *Denkavit Nederland* v *Hoofdproduktschap voor Akkerbouwprodukten* [1984] ECR 2171, paragraph 25, and Case 265/87 *Schräder* v *Hauptzollamt Gronau* [1989] ECR 2237, paragraph 21).

164 The recovery of unlawful aid, 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 aid (Case C-142/87 *Belgium* v *Commission*, cited in paragraph 92 above, paragraph 66, Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, cited in paragraph 73 above, paragraph 75, and Case C-169/95 *Spain* v *Commission*, cited in paragraph 109 above, paragraph 47). Even if such a measure is implemented long after the aid in question was granted, it cannot constitute a penalty not provided for by Community law.

165 The applicant's allegation that the harm caused to the recipients by repayment of the aid would be much more serious than that resulting from the distortion of competition and effect on intra-Community trade caused by the aid, quite apart

from the fact that it is not supported by any specific evidence, cannot lead to the conclusion that the obligation to recover the aid is disproportionate to the objectives pursued by the Treaty (see, in that regard, Case C-142/87 *Belgium* v *Commission*, cited in paragraph 92 above, paragraphs 65 to 67, and Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, cited in paragraph 73 above, paragraphs 73 to 75).

166 Finally, the applicant cannot successfully rely in the present case on the judgment in *Cityflyer Express* v *Commission*, cited in paragraph 59 above.

167 In that case, which concerned a loan granted at a preferential rate by the Flemish Region (Belgium) to an airline, the Court of First Instance held that, in the light of the circumstances of the case, the Commission had been entitled to classify as aid incompatible with the common market, and to require repayment of, only the difference between the interest which the undertaking in receipt of the loan would have had to pay at the market rate and that which it had actually paid (paragraph 53 of the grounds of the judgment). After observing that a fundamental distinction could not be drawn between aid granted in the form of a loan and aid in the form of a capital injection, the Court of First Instance held that the uniform application of the private investor test in both cases might nevertheless, having due regard to the principle of proportionality, require different measures to be adopted in order to eliminate distortions of competition found and to restore the situation prevailing prior to the payment of the unlawful aid (paragraphs 54 and 55). On that basis, the Court of First Instance held that, where an equity injection was involved, the Commission was entitled to take the view that abolition of the advantage granted must require the repayment of the capital contributed, whereas, in the case of a loan, if the competitive advantage resided in the grant of a preferential rate of interest and not in the actual value of the funds made available, the Commission, instead of requiring the principal sum simply to be repaid, was justified in requiring the application of the interest rate which would have been charged under normal market conditions and repayment of the difference between the interest which would have been paid under those circumstances and the interest actually paid on the basis of the preferential rate (paragraph 56).

168 In the present case, the aid deemed incompatible with the common market corresponds to the reduction in interest charged on the loans granted to the natural or legal persons referred to in Article 3 of the contested decision, attributable to the intervention of the Spanish public authorities. Only those reductions in interest are therefore covered by the obligation to recover the aid as set out in Article 4 of the contested decision and, accordingly, the Commission cannot be accused of infringing the principle of proportionality.

169 In conclusion, the applicant's arguments based on infringement of the principle of proportionality must be rejected.

Infringement of the obligation to state reasons

— Arguments of the parties

170 The applicant maintains that the explanations set out in the final sentence of section VI of the preamble to the contested decision do not constitute a sufficient statement of reasons for the obligation to recover the aid. It asserts that, having regard to the numerous cases in which the Commission declined to require recovery of unlawful aid, it was required to give specific reasons for imposing such an obligation in the present case.

171 The Commission contends that the statement of reasons for the contested decision is sufficient in that regard.

— Findings of the Court

172 It should be pointed out that, in the matter of State aid, where, contrary to the provisions of Article 93(3) of the Treaty, the proposed aid has already been granted, as in the present case, the Commission, which has the power to require the national authorities to order its repayment, is not obliged to provide specific reasons in order to justify the exercise of that power (see Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, cited in paragraph 73 above, paragraph 78, and Case C-75/97 *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 82).

173 In the present case, in section VI of the preamble to the contested decision, the Commission observes that, since the Kingdom of Spain did not inform it of the PRI within the prescribed period in accordance with Article 93(3) of the Treaty, it considers the system illegal under Community law (first paragraph). It rejects the argument raised by the Spanish authorities during the administrative procedure that the aid became legal by virtue of time elapsing since the scheme was first put into effect, and reminds them that the fact of implementing aid measures without informing the Commission of them at the draft stage constitutes an infringement of Community law which may result in recovery of the aid, with interest (second paragraph). It observes that, in its letter of 26 June 1996 to the Spanish authorities, it drew their attention to the fact that any aid illegally granted might be the subject of a decision ordering the Member State concerned to recover it. It states that, in its letter in reply to the initiation of the formal procedure, the Kingdom of Spain stated that, owing to the low level of aid involved, a decision requiring repayment would be contrary to the principle of proportionality (third paragraph). The Commission nevertheless considers that, in this instance, the aid should be recovered in order to restore the conditions of fair competition which prevailed before the aid was granted (fourth paragraph).

174 As the applicant does not refer to any particular matter which might have called for further reasons on the part of the Commission, it must be concluded that the considerations referred to in the preceding paragraph, which, moreover, form

part of a decision which explains in detail how the aid subject to recovery is incompatible with the common market, constitutes sufficient reasoning, under Article 190 of the Treaty, for the obligation to recover the aid laid down in Article 4 of the contested decision (see, in that regard, Case C-303/88 *Italy* v *Commission*, cited in paragraph 86 above, paragraph 54, and Case C-75/97 *Belgium* v *Commission*, cited in paragraph 37 above, paragraph 83).

175 The applicant's arguments alleging a failure to state reasons must therefore be rejected.

176 In the light of all the foregoing, the first and third pleas must be rejected.

177 Consequently, the application must be dismissed in its entirety.

Costs

178 Under Article 87(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 applicant has been entirely unsuccessful and the Commission has applied for costs, the applicant must be ordered to bear its own costs and to pay those incurred by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE
(Third Chamber, Extended Composition),

hereby:

1. **Dismisses the application;**

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

Lenaerts Azizi Moura Ramos

Jaeger Mengozzi

Delivered in open court in Luxembourg on 29 September 2000.

H. Jung
Registrar

K. Lenaerts
President