JUDGMENT OF THE COURT
2 April 1998 *

In Case C-367/95 P,

Commission of the European Communities, represented by Jean-Louis Dewost, Director-General of its Legal Service, Jean-Paul Keppenne and Michel Nolin, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

appellant,

supported by

French Republic, represented by Catherine de Salins, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Marc Belorgey, *chargé de mission* in the same directorate, acting as Agents,

intervener in the proceedings at first instance,

and

Federal Republic of Germany, represented by Ernst Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and Bernd Kloke, Regierungsrat in that Ministry, acting as Agents,

* Language of the case: French.

Kingdom of Spain, represented by Gloria Calvo Díaz, Abogado del Estado, acting as Agent,

Kingdom of the Netherlands, represented by Marc Fierstra, Assistant Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

interveners,

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 28 September 1995 in Case T-95/94 *Sytraval and Brink's France* v *Commission* [1995] ECR II-2651, seeking to have that judgment set aside,

the other parties to the proceedings being:

Chambre Syndicale Nationale des Entreprises de Transport de Fonds et Valeurs (Sytraval) and Brink's France SARL,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), H. Ragnemalm, M. Wathelet (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch, P. Jann and L. Sevón, Judges,

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

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 27 May 1997,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 28 November 1995, the Commission of the European Communities brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 28 September 1995 in Case T-95/94 *Sytraval and Brink's France* v *Commission* [1995] ECR II-2651 ('the contested judgment'), in which the Court of First Instance annulled the Commission's decision of 31 December 1993 ('the contested decision') rejecting the request of the Chambre Syndicale Nationale des Entreprises de Transport de Fonds et Valeurs (Sytraval) and of Brink's France SARL for a declaration that the French Republic had infringed Articles 92 and 93 of the EC Treaty by granting aid to Sécuripost SA ('Sécuripost').

2 The French Republic, which intervened in the proceedings at first instance in support of the form of order sought by the Commission, has lodged a reply. The Chambre Syndicale Nationale des Entreprises de Transport de Fonds et Valeurs (Sytraval) and Brink's France SARL ('the complainants') have not submitted any observations to the Court.

3 By three applications lodged at the Registry of the Court of Justice on 24 January, 22 February and 26 February 1996, the Federal Republic of Germany, the Kingdom of Spain and the Kingdom of the Netherlands sought leave to intervene in support of the form of order sought by the Commission. Those applications were granted by three orders of the Court of 5 March 1996.

Facts and procedure before the Court of First Instance

4 The contested judgment states that, until 1987, the French post office ('the post office') undertook, through its internal departments, the transportation of its own moneys and valuables. In 1986 the post office decided to carry on certain of its activities through the intermediary of commercial companies. On 16 December 1986 the Société Holding des Filiales de la Poste ('Sofipost'), controlled as to 99% by the French Republic, was accordingly set up. On 16 April 1987 Sofipost formed Sécuripost SA ('Sécuripost'), which it controls as to 99.92%. The object of that company is the secure transportation of moneys, the provision of caretaking and protection services, and surveillance. The post office seconded over 220 officials to Sécuripost.

5 By agreement under private law dated 28 September 1987, the post office entrusted Sécuripost with the performance of the activities falling within the spheres referred to above, which it had previously carried on itself. Thereafter, Sécuripost was to widen its customer base and its range of activities. On 30 September 1987 a framework agreement was concluded between the Minister of Posts and Telecommunications and Sécuripost. Between 1987 and 1989 Sofipost granted two loans to Sécuripost, in the sums of FF 5 000 000 and FF 15 000 000, and increased the latter's capital.

6 On 4 September 1989 various French undertakings and associations of undertakings, including the complainants, submitted to the Commission two requests for the initiation of a proceeding, one made pursuant to Articles 85, 86 and 90 of the EEC Treaty, and the other pursuant to Articles 92 and 93 of that Treaty. The present case concerns only the second of those requests.

7 Acting on that complaint, the Commission sought an explanation from the French Government by letter of 14 March 1990. The French Government replied by letter of 3 May 1990.

8 On 28 June 1991 the Commission informed the complainants that their complaint raised 'a number of important points of principle calling, in this instance, for an in-depth examination by the relevant Commission departments'. On 9 October 1991 the Commission again informed the complainants that the matter raised by them appeared 'particularly complex, necessitating extensive technical analysis of the ample documentation produced both by the complainants and by the French authorities ...'.

9 On 5 February 1992 the Commission adopted a decision in which it stated that it could not be said that there had been a grant of State aid within the meaning of Article 92 of the Treaty. It found, in particular, that, on the basis of the evidence at its disposal, the operation which had led to the formation of Sécuripost was comparable to a reorganisation carried out by an undertaking which has decided to set up a subsidiary to manage one of its activities separately.

10 On 13 April 1992 the complainants brought an action under Article 173 of the EC Treaty for annulment of that decision. However, on 22 June 1992 the Commission withdrew its decision of 5 February 1992 and that action therefore became devoid of purpose.

11 On 24 July 1992 the complainants supplemented the complaint which they had made to the Commission. On 21 January 1993 the Commission informed them that it had entered the measures taken by the French Government with regard to Sécuripost in the register of unnotified aids.

12 On 26 March 1993 the French Government authorised Sofipost to transfer Sécuripost's property to the private sector. On 22 April 1993 the complainants again supplemented their complaint. On 5 May 1993 the Commission informed them that it had decided to divide the inquiry into the matter into two parts, dealing respectively with the situation before and after the privatisation.

13 On 11 October 1993 the complainants called upon the Commission, pursuant to Article 175 of the EC Treaty, to adopt a decision in response to their complaint submitted on 4 September 1989.

14 On 31 December 1993 the Commission — represented by its Member responsible for competition matters — wrote to the French Government, informing it, without providing any specific statement of reasons, that it had decided, on the basis of the evidence at its disposal, to close the file by declaring that no State aid existed within the meaning of Article 92(1) of the Treaty. It emphasised, however, that its decision did not extend to the measures taken since 1992 in the context of the privatisation of Sécuripost.

15 On the same day, the Commission — again represented by its Member responsible for competition matters — wrote to the complainants, informing them, in response to the arguments which they had advanced, that the investigation which it had carried out provided no grounds for concluding that State aid within the meaning of Article 92 of the Treaty had been granted in this case, and that it had therefore decided to close the file.

16 By application of 2 March 1994 the complainants brought an action before the Court of First Instance for annulment of that decision.

17 They relied on four pleas in law in support of their action. The first plea was based on infringement of Article 93(2) of the Treaty, in that the Commission had wrongly decided, having regard to the circumstances of the case, not to initiate the procedure provided for by that provision. The second plea alleged breach of the complainants' right to a fair hearing, in that the Commission referred in its decision — which adversely affected them — to documents which had not been communicated to them, such as the observations of the French Government. The third plea alleged infringement of Article 190 of the EC Treaty, in that the Commission had failed to respond in the contested decision to the objections raised by the complainants in their complaint concerning (1) the secondment to Sécuripost

of administrative staff of the post office, (2) the placing at the disposal of Sécuripost of post office premises, (3) the supply of fuel and maintenance for vehicles on excessively favourable terms and (4) the loan of FF 15 000 000 granted by Sofipost to Sécuripost at a preferential rate. The fourth plea alleged the existence of manifest errors of assessment concerning the way in which the decision dealt with the increase of FF 9 775 000 in the capital of Sécuripost, advances made against orders placed by the post office with Sécuripost and abnormal charges applied and guarantees provided to it by the post office.

The contested judgment

18 According to the contested judgment, the complainants' action sought annulment of the contested decision 'rejecting the applicants' request for a declaration by the Commission that the French Republic has infringed Articles 92 and 93 of the Treaty by granting aid to Sécuripost'.

19 The Court of First Instance began from the position, stated at paragraph 32 of the contested judgment, that it was appropriate, in the light of the documents in the case, to focus its examination jointly on the third and fourth pleas, alleging infringement of Article 190 of the Treaty and manifest error of assessment.

20 Next, in paragraph 51, it found, first, that the contested decision was a decision of the Commission rejecting the complainants' allegations on the ground that the measures complained of did not constitute State aid within the meaning of Article 92 of the Treaty and, second, that it was common ground that the contested decision was a decision within the meaning of the fourth paragraph of Article 189 of the Treaty and that it should therefore have contained a statement of reasons pursuant to Article 190 of the Treaty. Consequently, the Court of First Instance considered, in paragraph 53, that it was necessary to verify whether the contested decision disclosed in a clear and unequivocal manner the reasoning which had led the Commission to conclude that the measures complained of by the complainants did not constitute State aid within the meaning of Article 92 of the Treaty, in such a way as to make the complainants aware of the reasons for the rejection of their

complaint and thus enable them to defend their rights and the Court of First Instance to exercise its power of review.

21 The Court of First Instance stated in that regard, in paragraph 54, that the judicial review which such a statement of reasons must allow was not, in the instant case, a review of the question whether there had been a manifest error of assessment, similar to a review of the exercise by the Commission of its exclusive power to examine the compatibility of national measures already found to constitute State aid, but a review of the interpretation and application of the concept of State aid referred to in Article 92 of the Treaty which the Commission had undertaken with a view to determining whether or not the national measures complained of by the complainants were to be classified as State aid.

22 In paragraph 55, the Court of First Instance considered that it was necessary to bear in mind the context within which the contested decision had been adopted, since the question whether or not a statement of reasons is adequate must be assessed with regard not only to its wording but also to its context. The Court of First Instance made four points in that regard: first, the contested decision had been adopted after a particularly long period of time had elapsed (paragraph 56); second, the Commission had stated in its correspondence with the complainants that their complaint raised a number of important points of principle calling for an in-depth examination and extensive technical analysis (paragraph 57); third, the Commission had withdrawn its initial decision of 5 February 1992 in response to the action for annulment brought by the complainants, even though that action merely repeated the various objections raised in their original complaint, without raising any new objections (paragraph 58); and, fourth, the Commission had entered the measures complained of in the register of unnotified aid and had expressed regret, in a letter to the French Government, that no advance notice had been given pursuant to Article 93(3) of the Treaty in relation to any of the measures taken (paragraph 59).

23 In the light of those findings, the Court of First Instance considered, in paragraph 60, that it was necessary to examine whether, in the case before it, the reasons set out in the contested decision were capable of supporting the contention that the measures complained of by the complainants did not constitute State aid within the meaning of Article 92 of the Treaty.

24 It concluded in that regard that, as regards the complainants' objection concerning the secondment of administrative staff, the contested decision was vitiated by an inadequate statement of reasons (paragraphs 62 and 63) and that, as regards the objections relating to the placing of premises at Sécuripost's disposal (paragraphs 65 and 66), the maintenance of vehicles (paragraph 69), the loan of FF 15 000 000 (paragraph 72) and the prices charged by Sécuripost to the post office (paragraphs 74 to 76), the reasons given for that decision were insufficient.

25 In that connection, the Court of First Instance considered, in paragraphs 66 and 72, that, where the Commission decides to reject a complaint concerning a measure characterised by the complainant as unnotified State aid, without allowing the complainant to comment, prior to the adoption of the definitive decision, on the information obtained in the context of the Commission's investigation, it is under an automatic obligation to examine the objections which the complainant would certainly have raised if it had been given the opportunity of taking cognisance of that information.

26 The Court of First Instance considered, moreover, in paragraph 78, that the Commission's obligation to state reasons for its decisions may in certain circumstances require an exchange of views and arguments with the complainant, since, in order to justify to the requisite legal standard its assessment of the nature of a measure characterised by the complainant as State aid, the Commission needs to ascertain what view the complainant takes of the information obtained by it in the course of its inquiry. The Court of First Instance considered that, in those circumstances, that obligation constitutes a necessary extension of the Commission's obligation to deal diligently and impartially with its inquiry into the matter by eliciting all such views as may be necessary.

27 Finally, in paragraph 80, the Court of First Instance held that the contested decision must be annulled, since the reasons stated for the decision did not bear out the conclusion that the measures complained of by the complainants did not constitute State aid within the meaning of Article 92 of the Treaty.

The appeal

28 The Commission claims that the Court should:

— set aside the contested judgment and, in consequence of that, take all requisite legal steps and, in particular, refer the case back to the Court of First Instance for a decision on the merits; and

— order the applicants in the proceedings before the Court of First Instance to pay the costs.

29 The French Republic claims that the Court should:

— allow the Commission's appeal and set aside the contested judgment; and

— grant the form of order sought by the Commission in the proceedings at first instance.

30 The Federal Republic of Germany, the Kingdom of Spain and the Kingdom of the Netherlands also claim that the Court should allow the Commission's appeal.

31 The Commission advances three pleas in law in support of its appeal. It submits that the Court of First Instance erred in law:

— as to the addressee of a decision concerning State aid;

— as to the scope of the obligation to provide a statement of reasons; and

— as to the procedural rules to be followed in dealing with State aid cases.

32 In the Commission's submission, the Court of First Instance failed to take proper account of the legal framework established by the Treaty with regard to State aid and disregarded the case-law of the Court of Justice relating thereto. Where, as in the present case, the Commission makes a decision concerning the existence of State aid objected to in a complaint, the complainant enjoys no special rights and can contest the legality of that decision only on the same basis as any other applicant to whom it is of direct and individual concern.

Findings of the Court

The system established by the Treaty for monitoring State aid

33 Before examining the pleas relied on in the appeal, it is appropriate to recall the relevant rules under the system established by the Treaty for monitoring State aid.

34 Article 92(1) of the Treaty provides that, '[s]ave as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.'

35 Article 93 of the Treaty provides for a special procedure by which the Commission is to keep State aid under constant review. As regards proposed new grants of aid by the Member States, it establishes a procedure which must be followed before any aid can be regarded as lawfully granted. Under the first sentence of Article 93(3) of the Treaty, as interpreted by the case-law of the Court, the Commission is to be notified of any plans to grant or alter aid before those plans are implemented.

36 The Commission then conducts an initial review of the planned aid. If at the end of that review it considers a plan to be incompatible with the common market, it must without delay initiate the procedure under the first paragraph of Article 93(2), which provides: 'If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 92, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.'

37 It follows from the last sentence of Article 93(3) that throughout the preliminary period the Member State concerned may not put the planned aid into effect. Where the examination procedure is initiated under Article 93(2), that prohibition continues until the Commission reaches a decision on the compatibility of the planned aid with the common market. However, if the Commission has not responded within two months of notification, the Member State concerned may implement the plan after informing the Commission (see, in particular, Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 38).

38 In the context of the procedure laid down by Article 93, the preliminary stage of the procedure for reviewing aid under Article 93(3) of the Treaty, which is intended merely to allow the Commission to form a prima facie opinion on the partial or complete conformity of the aid in question, must therefore be distinguished from the examination under Article 93(2), which is designed to enable the Commission to be fully informed of all the facts of the case (Case C-198/91 *Cook*

v *Commission* [1993] ECR I-2487, paragraph 22, and Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 16).

39 The procedure under Article 93(2) is essential whenever the Commission has serious difficulties in determining whether an aid is compatible with the common market. It follows that the Commission, when taking a decision in favour of an aid, may restrict itself to the preliminary examination under Article 93(3) only if it is able to satisfy itself after an initial examination that the aid is compatible with the Treaty. If, on the other hand, the initial examination leads the Commission to the opposite conclusion or if it does not enable it to overcome all the difficulties involved in determining whether the aid is compatible with the common market, the Commission is under a duty to carry out all the requisite consultations and for that purpose to initiate the procedure under Article 93(2) (see, in particular, Case 84/82 *Germany* v *Commission* [1984] ECR 1451, paragraph 13, and the judgments, cited above, in *Cook* v *Commission*, paragraph 29, and *Matra* v *Commission*, paragraph 33).

40 Where, without initiating the procedure under Article 93(2), the Commission finds, on the basis of Article 93(3), that an aid is compatible with the common market, the persons intended to benefit from the procedural guarantees provided by Article 93(2) may secure compliance therewith only if they are able to challenge that decision by the Commission before the Court (see, in particular, *Cook* v *Commission*, paragraph 23, and *Matra* v *Commission*, paragraph 17).

41 The parties concerned, within the meaning of Article 93(2) of the Treaty, who, as persons directly and individually concerned, are thus entitled under the fourth paragraph of Article 173 of the Treaty to institute proceedings for annulment are those persons, undertakings or associations whose interests might be affected by the grant of the aid, in particular competing undertakings and trade associations (see, in particular, Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 16).

42 It is in the light of those legal elements that the three pleas in law advanced by the Commission in support of its appeal must be considered.

The first plea

43 By its first plea, the Commission submits that, in holding that the contested decision constituted a rejection of a complaint, the Court of First Instance misconstrued the nature of that decision. The Commission and the four intervening Member States maintain that the only decisions which the Commission may take under Articles 92 and 93 of the Treaty are decisions addressed to a Member State concerning the existence or compatibility of aid. Where, in performance of its duty to observe the principle of sound administration, the Commission communicates its decision to a complainant, that communication cannot as such constitute a decision addressed to the complainant. As Community law now stands, there is no such category of decisions in the sphere of State aid as decisions rejecting a complaint.

44 As the Court of First Instance observed in paragraph 50 of the contested judgment, neither the Treaty nor Community legislation lays down the procedural system for dealing with complaints objecting to grants of State aid.

45 In those circumstances, decisions adopted by the Commission in the field of State aid must be held to be addressed to the Member States concerned. That is also so where such decisions concern State measures to which objection is taken in complaints on the ground that they constitute State aid contrary to the Treaty and the Commission refuses to initiate the procedure under Article 93(2) because it considers either that the measures complained of do not constitute State aid within the meaning of Article 92 of the Treaty or that they are compatible with the common market. Where the Commission adopts such a decision and proceeds, in accordance with its duty of sound administration, to inform the complainants of its decision, it is the decision addressed to the Member State which must form the

subject-matter of any action for annulment which the complainant may bring, and not the letter to that complainant informing him of the decision.

46 Consequently, whilst it may be regrettable that the Commission did not inform the complainants of its position by sending them a copy of a properly reasoned decision addressed to the Member State concerned, the Court of First Instance erred in law in finding that the contested decision constituted a decision addressed not to that State but to the complainants, rejecting their application for a declaration by the Commission that the French Republic had infringed Articles 92 and 93 of the Treaty by granting the aid to Sécuripost.

47 The error of law thus committed by the Court of First Instance does not, however, invalidate its judgment, since, as the Commission has conceded, the decision in question was of direct and individual concern to the complainants. In finding in its decision that the investigation had revealed no grounds for concluding that State aid existed within the meaning of Article 92 of the Treaty, the Commission implicitly refused to initiate the procedure under Article 93(2). It follows from the judgments of the Court cited in paragraphs 40 and 41 above that, in such a situation, the persons intended to benefit from the procedural guarantees afforded by Article 93(2) may secure compliance therewith only if they are able to challenge the decision in question before the Community judicature under the fourth paragraph of Article 173 of the Treaty. That principle is of equal application, whether the ground on which the decision is taken is that the Commission regards the aid as compatible with the common market or that, in its view, the very existence of aid must be discounted.

48 Since the complainants undeniably qualify as persons entitled to the benefit of the procedural guarantees in question, they must, as such, be regarded as directly and individually concerned by the contested decision. Consequently, they were entitled to seek its annulment (*Cook* v *Commission*, paragraphs 25 and 26).

49 In the light of those considerations, it must be held that, by holding that, in the circumstances of the present case, the contested decision was a decision addressed to the complainants rejecting their application for a declaration by the Commission that Articles 92 and 93 of the Treaty had been infringed, the Court of First Instance did not commit an error in law such as to invalidate its judgment.

The second and third pleas

50 By its second and third pleas, the Commission submits that the error of the Court of First Instance as to the addressee of the Commission's decision resulted in an incorrect assessment of the obligations to state reasons and to investigate complaints.

51 Whilst acknowledging that, regardless of the addressee, it is obliged to provide a statement of reasons permitting the legality of the decision to be reviewed, and that, as regards the complainants, it was bound to examine all the facts and points of law which they brought to its notice, the Commission submits that the Court of First Instance was wrong in assessing the scope of the obligation to state reasons as if the complainants were the addressees of its decision.

52 Thus, the Commission maintains that the Court of First Instance committed an error of law in holding, in paragraph 53 of the contested judgment, that the contested decision should have disclosed reasons in such a way as to make the complainants aware of the grounds for the rejection of their complaint and thus enable them to defend their rights. It maintains that a complainant who subsequently pleads, in annulment proceedings, the insufficiency of the reasons given for a decision must be able to do so only on the same basis as any other applicant to whom that decision is of direct and individual concern.

53 The Commission further maintains that, whilst it is true that respect for the rights of the defence in any procedure initiated against a person which may result in an act adversely affecting him constitutes a fundamental principle of Community law, nevertheless, in State aid cases it is only the Member State concerned which finds itself in such a situation, and it is therefore only that State which must formally be called upon to express its point of view regarding the comments submitted by interested third parties.

54 Next, the Commission states that, in consequence of that misinterpretation of the import of the contested decision, the Court of First Instance conferred new rights on complainants by taking the view that the Commission is obliged of its own motion to examine the objections which a complainant would certainly have raised had he been given the opportunity of taking cognisance of that information, and that the obligation to state reasons may in certain circumstances require an exchange of views and arguments with the complainant. If the scope of the investigation were to encompass all the hypothetical objections which an 'ideal complainant' would certainly raise, as envisaged by the Court of First Instance, the Commission would be systematically obliged to conduct such an exchange of views and arguments in every case.

55 Lastly, the Commission maintains that, in the present case, the Court of First Instance carried out, in the guise of a review of the statement of reasons provided, what in fact amounted to a review of the error of assessment, thereby treating the purely procedural requirement to state reasons as a matter concerning the substantive legality of the decision. The real criticism levelled by the Court of First Instance at the Commission was that it had committed a manifest error of assessment attributable to the inadequacy of the investigation carried out by that institution.

56 The four intervening Member States put forward, in essence, the same arguments as the Commission. The Federal Republic of Germany observes, however, that, where the Commission decides to close the preliminary review procedure under Article 93(3) and chooses to do so by way of a decision within the meaning of Article 189 of the Treaty, it is not obliged to furnish any statement of reasons, since the preliminary review procedure is not conducted *inter partes* and thus confers no legal protection on complainants.

57 Having regard to those arguments, it is necessary to examine the scope of the obligations incumbent of the Commission when it receives a complaint objecting to national measures such as State aid.

58 As regards, first, the proposition that the Commission is under an obligation in certain circumstances to conduct an exchange of views and arguments with the complainant, flowing, according to the contested judgment, from the Commission's obligation to state reasons for its decisions, it must be stated that there exists no basis for the imposition of such an obligation on the Commission.

59 As the Advocate General notes at point 83 of his Opinion, such an obligation cannot be founded solely on Article 190 of the Treaty. Moreover, as the Commission and the interveners have observed, it follows from the judgments cited in paragraphs 38 and 39 of this judgment that the Commission is not obliged to give the complainants an opportunity to state their views at the stage of the initial review provided for by Article 93(3) of the Treaty. Furthermore, those judgments show that, in the context of an examination under Article 93(2), the Commission is required merely to give notice to the parties concerned to submit their comments. Consequently, as observed by the interveners and by the Advocate General at point 91 of his Opinion, the imposition on the Commission of an obligation requiring it to conduct an exchange of views and arguments with the complainant in the context of the initial review provided for by Article 93(3) of the Treaty could lead to conflict between the procedural regime established by that provision and that laid down by Article 93(2).

60 Next, as regards the statement that the Commission is obliged to examine certain objections of its own motion, it must be stated, contrary to what was held by the Court of First Instance, that the Commission is under no obligation to examine of its own motion objections which the complainant would certainly have raised had it been given the opportunity of taking cognisance of the information obtained by the Commission in the course of its investigation.

61 That criterion, which requires the Commission to place itself in the applicant's shoes, is not an appropriate criterion for defining the scope of the Commission's obligation of investigation.

62 However, this finding does not mean that the Commission is not obliged, where necessary, to extend its investigation of a complaint beyond a mere examination of the facts and points of law brought to its notice by the complainant. The Commission is required, in the interests of sound administration of the fundamental rules of the Treaty relating to State aid, to conduct a diligent and impartial examination of the complaint, which may make it necessary for it to examine matters not expressly raised by the complainant.

63 As regards the Commission's obligation to state reasons, it is settled case-law that the statement of reasons required by Article 190 of the Treaty must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent Community court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. 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 (see, in particular, Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19, Case C-350/88 *Delacre and Others* v *Commission* [1990] ECR I-395, paragraphs 15 and 16, and Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 86).

64 As regards, more particularly, a Commission decision finding that no State aid as alleged by a complainant exists, the Commission must at least, contrary to the submission of the German Government, provide the complainant with an adequate

explanation of the reasons for which the facts and points of law put forward in the complaint have failed to demonstrate the existence of State aid. The Commission is not required, however, to define its position on matters which are manifestly irrelevant or insignificant or plainly of secondary importance.

65 It is in the light of those findings regarding the scope of the Commission's obligations in investigating the case and in stating reasons for the contested decision that the Court must appraise the arguments of the Commission and of the interveners to the effect that the Court of First Instance treated the purely procedural requirement to state reasons as a matter concerning the substantive legality of the decision and that, on the basis of an alleged insufficiency of reasoning, it was in fact criticising the Commission for having committed a manifest error of assessment attributable to the inadequacy of the investigation carried out by that institution.

66 As pointed out in paragraph 19 of this judgment, the Court of First Instance examined the pleas alleging infringement of Article 190 of the Treaty and manifest error of assessment together.

67 It must, however, be remembered that these are distinct pleas, each of which may be raised in proceedings under Article 173 of the Treaty. The first, alleging absence of reasons or inadequacy of the reasons stated, goes to an issue of infringement of essential procedural requirements within the meaning of that article and, involving a matter of public policy, must be raised by the Community judicature of its own motion (see, in particular, Case C-166/95 P *Commission* v *Daffix* [1997] ECR I-983, paragraph 24). By contrast, the second, which goes to the substantive legality of the contested decision, is concerned with infringement of a rule of law relating to the application of the Treaty within the meaning of Article 173, and can be examined by the Community judicature only if it is raised by the applicant.

68 It should also be noted that, as the Advocate General found at point 52 of his Opinion, although the Court of First Instance examined those two pleas together,

it ultimately based its annulment of the Commission's decision solely on infringement of Article 190 of the Treaty. However, certain of the criticisms of that decision which were upheld in the contested judgment cannot be based on a breach of the obligation to provide a statement of reasons.

69 Thus, as regards the placing of premises at Sécuripost's disposal by the post office, the Court of First Instance held, in paragraph 65 of the contested judgment, that the Commission should have compared the rents actually paid by Sécuripost with those payable by its competitors for comparable premises. With regard to the maintenance of Sécuripost's vehicles by the 'Service National des Ateliers et Garages des PTT' (national workshops and garages department of the post office, hereinafter 'SNAG'), the Court of First Instance held, in paragraph 69 of its judgment, that the Commission should have compared the rates actually charged by SNAG with those charged by private garages.

70 Similarly, in paragraph 72 of the contested judgment, the Court of First Instance found that the fact that the loan of FF 15 000 000 constituted a commercial transaction was not in itself sufficient to show that it did not amount to State aid, since such a transaction may be effected at a rate which represents a special advantage. The Commission should therefore have considered whether the rate charged was in line with the market rate.

71 Furthermore, as regards the complainants' objection that the rates charged by Sécuripost to the post office were appreciably higher than those normally charged in the sector concerned, the Court of First Instance noted, in paragraphs 74 and 75 of the contested judgment, that the Commission's comparison of the prices charged for the provision of services to the post office and to Casino shops had been based solely on information relating to 1993. That comparison had omitted to take into consideration the differences in the prices charged between 1987 and 1992, despite a steady fall in the rates charged by Sécuripost to the post office between 1987 and 1993, in accordance, in particular, with the framework agreement between the post office and Sécuripost of 30 September 1987, thus further magnifying the differences cited by the complainants. It followed, according to the Court of First Instance, that the Commission should have examined the rates charged by Sécuripost to the post office and to other customers in the years prior to 1993.

72 It follows that, as regards the matters referred to in paragraphs 69 to 71 of this judgment, the Court of First Instance failed to draw the necessary distinction between the requirement to state reasons and the substantive legality of the decision. On the basis of an alleged insufficiency of reasoning, it criticised the Commission for a manifest error of assessment attributable to the inadequacy of the investigation carried out by that institution.

73 Be that as it may, the Court of First Instance did not, as regards the other complaints, err in law in finding that the contested decision was vitiated by insufficient reasoning.

74 First, the Court of First Instance found, in paragraph 62 of the contested judgment, that the decision at issue was vitiated by insufficient reasoning concerning the complainants' objection that the Commission had failed to examine the specific advantage, criticised in their complaint, arising from the fact that the officials seconded to Sécuripost by the post office might at any time be reassigned to the department originally employing them if staff reductions proved necessary in the undertaking to which they were seconded, without that undertaking having to pay in such circumstances any compensation whatever for redundancy or dismissal. In the proceedings before the Court of First Instance, the Commission had merely contended in that regard that non-payment of compensation for redundancy or dismissal was no more than a secondary aspect of an objection raised in the various complaints, regarding the total or partial payment by the State of the remuneration of the staff of Sécuripost.

75 The Court of First Instance was correct in finding that the reasoning contained in the contested decision was inadequate in that regard, since the Commission had not responded to that objection. That objection, which had been expressly raised in the complaint, could not be regarded as a secondary aspect of the objection concerning the total or partial payment by the State of the remuneration of the staff of Sécuripost. Even if the remuneration of all the staff seconded by the post office had been paid by Sécuripost, the latter would still have enjoyed the potential benefit of not having to pay any compensation in the event of their redundancy or dismissal.

76 Next, in paragraph 63 of its judgment, the Court of First Instance found that the reasons given in the contested decision were inadequate with regard to the complainants' objection concerning the fact that Sécuripost made no contribution to unemployment insurance funds in respect of officials on secondment. According to the contested judgment, the Commission answered that objection by stating that 'on the other hand, no contributions need to be made to unemployment insurance funds in respect of the employment of officials on secondment, since their employment is guaranteed by their status as officials'.

77 On that point too, the Court of First Instance correctly held that the reasons given in the contested decision were inadequate. As the Court of First Instance observed, the Commission expressly acknowledged in the contested decision that no contributions to unemployment insurance funds had been paid, but its explanation as to why it concluded that this did not constitute State aid within the meaning of Article 92 of the Treaty is so deficient that the reasons given in the contested decision must be regarded as inadequate.

78 Having regard to the foregoing, the pleas put forward by the Commission in support of its appeal must be upheld in part. However, like the Court of First Instance, this Court has also found deficiencies in the reasons on which the contested decision is based. Those deficiencies are in themselves sufficient to justify annulment of the decision. Consequently, the appeal must be dismissed in its entirety.

Costs

79 In accordance with the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where an appeal is unfounded, the Court is to make a decision as to costs. Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings, and under Article 69(3), where each party succeeds on some or fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

80 In the present case, the Commission has been unsuccessful, but the complainants, who were the applicants in the proceedings at first instance, have not taken part in the appeal procedure and have not therefore applied for costs. In those circumstances, the Commission and the French Republic must be ordered, pursuant to Article 69(3) of the Rules of Procedure, to bear their own costs. The Federal Republic of Germany, the Kingdom of Spain and the Kingdom of the Netherlands must also be ordered to bear their own costs, in accordance with Article 69(4) of the Rules of Procedure.

On those grounds,

THE COURT

hereby:

1. Dismisses the appeal;

2. Orders the Commission of the European Communities, the Federal Republic of Germany, the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands to bear their own costs.

Rodríguez Iglesias Gulmann Ragnemalm

Wathelet Mancini Moitinho de Almeida

Kapteyn Murray Edward

Puissochet Hirsch

Jann Sevón

Delivered in open court in Luxembourg on 2 April 1998.

R. Grass

Registrar

G. C. Rodríguez Iglesias

President