

JUDGMENT OF THE COURT (Sixth Chamber)

19 October 2000 *

In Joined Cases C-15/98 and C-105/99,

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and P.G. Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant in Case C-15/98,

and

Sardegna Lines — Servizi Marittimi della Sardegna SpA, established in Cagliari (Italy), represented by F. Caruso, U. Iaccarino, B. Carnevale and C. Caruso, of the Naples Bar, with an address for service in Brussels at the Chambers of F. Caruso, 2A Rue Van Moer,

applicant in Case C-105/99,

* Language of the case: Italian.

Commission of the European Communities, represented by D. Triantafyllou and S. Dragone, 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, in Cases C-15/98 and C-105/99, of Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia (OJ 1998 L 20, p. 30) and, in Case C-15/98, of the letter of 14 November 1997 by which the Commission notified the Italian Republic of its decision to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) regarding aid to the shipping sector (loans/leases at concessionary conditions for the acquisition, conversion and repair of vessels): amendment of aid scheme under C 23/96 (ex NN 181/95) (OJ 1997 C 386, p. 6),

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet (Rapporteur) and F. Macken, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 27 January 2000,

after hearing the Opinion of the Advocate General at the sitting on 13 April 2000,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 22 January 1998, the Italian Republic brought an action under the first paragraph of Article 173 of the EC Treaty (now, after amendment, the first paragraph of Article 230 EC) for annulment of Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia (OJ 1998 L 20, p. 30) and of the letter of 14 November 1997 by which the Commission notified it of its decision to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) regarding aid to the shipping sector (loans/leases at concessionary conditions for the acquisition, conversion and repair of vessels): amendment of aid scheme under C 23/96 (ex NN 181/95) (OJ 1997 C 386, p. 6; ‘the decision of 14 November 1997’).

- 2 By application lodged at the Registry of the Court of First Instance on 6 April 1998 (Case T-58/98), the company Sardegna Lines — Servizi Marittimi della

Sardegna SpA ('Sardegna Lines') brought an action under the fourth paragraph of Article 173 of the Treaty for annulment of Decision 98/95.

- 3 Having regard to the fact that both applications before the Court of Justice and the Court of First Instance respectively challenged the validity of Decision 98/95, the Court of First Instance (Fifth Chamber, Extended Composition) by order of 16 March 1999 (not published in the ECR) declined jurisdiction in Case T-58/98 *Sardegna Lines v Commission* to enable the Court of Justice to hear and determine the application for annulment of that decision. The case was registered at the Registry of the Court of Justice on 25 March 1999 under number C-105/99.

- 4 In view of the connection between the two cases, the President of the Court decided, by order of 19 October 1999, to join them for the purposes of the oral procedure and the judgment, in accordance with Article 43 of the Rules of Procedure.

Measures adopted by the Region of Sardinia for the benefit of the shipping sector in Sardinia

- 5 By Law No 20 of 15 May 1951 laying down measures for the benefit of shipping companies (*Bollettino Ufficiale della Regione della Sardegna* of 15 October 1952), as amended by Law No 15 of 19 July 1954 (*Bollettino Ufficiale della Regione della Sardegna* of 23 August 1954; 'Law No 20/1951'), the Region of Sardinia established a fund to be used for the grant of loans to shipping companies intending to build, acquire, convert, modify or repair merchant ships.

- 6 Those loans were originally restricted to companies whose head office, domicile for taxation purposes and port of register were situated in Sardinia (Article 2). The loans could not exceed 60% of the cost of the transaction. However, in cases

of building, conversion or repair works in respect of which the applicant had already received aid under national legislation in force, the loans could not exceed 20% of the investment (Article 5).

- 7 Interest, commission and other charges related to the loans and payable by the borrower could not exceed 3.5% of the amount of the loan. That rate rose to 4.5% where parallel aid had been granted under national law (Article 6). The capital was to be repaid in not more than twelve annual payments commencing from the third year after the ship in respect of which the loan had been granted began operating (Article 9).

- 8 Law No 20/1951 was amended by Articles 99 and 100 of Regional Law No 11 of 4 June 1988 laying down rules for drawing up the annual budget for the Region of Sardinia (Finance Law 1988, *Supplemento Ordinario, Bollettino Ufficiale della Regione della Sardegna* of 6 June 1988; ‘Law No 11/1988’).

- 9 Article 99 of Law No 11/1988, which replaced Article 2 of Law No 20/1951, provides that any undertaking seeking a loan must fulfil the following conditions:
 - the undertaking should have its head office, administrative headquarters and shipping business and, where applicable, its main stores, depots and accessory equipment in one of the ports of the region;

 - all the vessels owned by the undertaking should be entered in the registry of one of the ports of the region;

- the undertaking should use the ports of the region as the centre of its shipping activities, making them a normal port of call; where regular services are operated, these should terminate or regularly call at one or more of those ports;

- the undertaking should commit itself to carrying out refitting work in the ports of the region, provided that the Sardinian shipyards have the operational capacity and unless there are grounds of *force majeure*, unavoidable chartering requirements or obvious economic or time constraints;

- as regards ships of more than 250 tonnes, the undertaking should establish a special complement, comprising all the seafarer categories needed to crew the vessel properly, using solely crew registered in the general duty roster of the port of registry; it should select from the roster the crew required, whether general or specialised, the only restrictions being those laid down by national regulations on the employment of seafarers.

10 Article 100 of Law No 11/1988 enables the Sardinian authorities to grant a contribution in the form of subsidised interest rates to shipping companies which choose to finance the acquisition of a vessel by means of a lease rather than a loan. The contribution is equal to the difference between the interest actually owed on a loan, corresponding to the annual amortisation rate calculated at the reference interest rate for shipping, and the interest payable on the same loan calculated at a rate of 5%. At the end of the contract, a vessel in respect of which a contribution has been granted may be acquired by the lessee for an amount equal to 1% of the purchase price.

11 Law No 11/1988 was amended by Article 36 of Law No 9 of 15 February 1996 laying down rules for drawing up the annual and long-term budget for the Region

of Sardinia (1996 Finance Law, *Supplemento Ordinario, Bollettino Ufficiale della Regione Autonoma della Sardegna* of 17 February 1996; 'Law No 9/1996').

- 12 Law No 9/1996 laid down in particular that, for the purpose of ensuring that Law No 20/1951 was compatible with Community law and the relevant Community directives, Article 2 of Law No 20/1951 and Article 99 of Law No 11/1988 were repealed. The new law also amended certain detailed financial terms of the loans and leases and gave favourable treatment to transactions intended to introduce innovative and high technology means of transport.

Facts of the case

Case C-15/98

- 13 As the result of a complaint, the Commission learned of the existence of the aid scheme for Sardinian shipowners established by Law No 20/1951, as amended by Law No 11/1988. Although the scheme was set up before the EC Treaty entered into force, the Commission considered that it had been substantially amended after the Treaty's entry into force and therefore regarded it as new aid which had not been notified.
- 14 By letters of 10 September 1993 and 23 November 1993, the Commission asked the Italian authorities to supply information about the scheme in question. The authorities then provided information and attended a meeting with Commission officials in Rome on 18 January 1994. However, after that date, the Italian authorities sent no further replies to the Commission's letters.

- 15 By letter of 24 June 1996, the Commission informed the Italian Government of its decision to initiate the procedure provided for in Article 93(2) of the Treaty and requested it to submit its observations. In that letter the Commission, first, stated that it regarded the aid to Sardinian shipowners as new aid and that, since it had not been notified of the aid, it considered it unlawful. Second, on the basis of the information supplied, the Commission expressed serious doubts as to whether that aid was compatible with the common market.
- 16 The Member States and other interested parties were informed of the initiation of the procedure by a communication from the Commission in the *Official Journal of the European Communities* (OJ 1996 C 368, p. 2).
- 17 The Italian Government, by letter of 31 October 1996, and the Sardinian authorities, by letters of 11 October 1996 and 22 January 1997, submitted their observations. They stated, in particular, that the aid scheme for Sardinian shipowners had, in the meantime, been amended by Regional Law No 9/1996 in order to respond to the objections raised by the Commission. The Sardinian authorities also informed the Commission that the loans granted to undertakings in the shipping sector on the basis of Law No 20/1951, as amended by Law No 11/1988, amounted to the sum of ITL 12 697 450 000.
- 18 On 21 October 1997 the Commission adopted Decision 98/95.
- 19 In that decision, the Commission made, in substance, the following findings:
- since Law No 11/1988 had made substantive amendments to the aid scheme for Sardinian shipowners established in 1951, the amended aid scheme involved new aid which should have been notified to the Commission under Article 93(3) of the Treaty;

- the aid constituted State aid for the purposes of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC) since ‘the beneficiary companies are relieved of a financial burden which they would normally bear (normal commercial interest rates and other charges on loans/leases)’, ‘the burden is borne by State resources (the Sardinian authorities)’, ‘the aid is selective (being reserved to the shipping sector)’ and ‘the aid affects trade between Member States’. On the last point, the decision found that more than 90% of goods traded between the Member States and Sardinia are transported by sea and that 65% of tourist traffic (passengers and vehicles) between the Community and Sardinia is handled by shipping companies;

- the aid scheme does not fall within the exceptions laid down in Article 92(3) of the Treaty since it breaches the fundamental rights of freedom of establishment (Article 52 of the EC Treaty (now, after amendment, Article 43 EC)) and non-discrimination on grounds of nationality (Articles 6 and 48(2) of the EC Treaty (now, after amendment, Articles 12 EC and 39(2) EC));

the breach of the principle of freedom of establishment lies in the exclusion from the aid scheme of companies which are established in Sardinia but whose head office is elsewhere or whose ships are registered elsewhere. The obligation, in the case of ships of more than 250 tonnes, to employ a minimum contingent of seafarers who are registered in the general duty roster of the Sardinian port of registry of the vessel constitutes, for its part, a breach of the principle of non-discrimination.

- in any event, the aid scheme does not fulfil the conditions set out in Article 92(3)(a) and (c) of the Treaty:

first, although Sardinia is eligible for regional aid under Article 92(3)(a) of the Treaty, the aid in question was not granted under an aid scheme designed

to promote regional development, since it was limited to shipping companies. Furthermore, Article 92(3)(c) does not apply to aid which breaches Community guidelines on aid to specific sensitive sectors such as maritime transport;

- second, as regards the exceptions laid down in Article 92(3)(c) of the Treaty, the aid scheme does not comply with the requirement for transparency for the purposes of applying Community legislation on aid to shipbuilding (Council Regulation (EC) No 3094/95 of 22 December 1995 (OJ 1995 L 332, p. 1), as amended by Council Regulation (EC) No 1904/96 of 27 September 1996 (OJ 1996 L 251, p. 5). The requirement was imposed by the 1989 Community guidelines on State aid to shipping companies (SEC(89) 921 final, of 3 August 1989) and the 1997 guidelines on State aid to maritime transport (OJ 1997 C 205, p. 5). As far as aid for the leasing of ships is concerned, such aid constitutes operating aid of a type which is not allowed by the guidelines;

- during the administrative procedure, the Italian Government did not dispute either the characterisation of the aid to Sardinian shipowners as new aid or the alleged breach of the fundamental principles of freedom of establishment and non-discrimination on grounds of nationality;

- Decision 98/95 does not cover recent amendments to the aid scheme, in particular those made by Law No 9/1996, which are to be the subject of a separate examination.

²⁰ The Commission consequently found that the loans/leases totalling ITL 12 697 450 000 granted to companies in the shipping sector under Regional Law No 20/1951, as amended by Regional Law No 11/1988, contain elements which constitute State aid and which are unlawful and incompatible with the Treaty (Article 1 of Decision 98/95). It also ordered the Italian Republic to recover from each beneficiary of a loan/lease an amount corresponding to the

difference between, on the one hand, the total of interest and/or other charges which the beneficiary in question would have paid for the loan/lease under normal market conditions and, on the other hand, the sum of the interest and/or the other charges actually paid by the beneficiary for that loan/lease (Article 2 of Decision 98/95).

- 21 In addition, by the decision of 14 November 1997, the Commission initiated the procedure provided for in Article 93(2) of the Treaty in respect of the aid scheme for Sardinian shipowners, as amended by Law No 9/1996. The Commission gave notice of that decision in the *Official Journal of the European Communities* (OJ 1997 C 386, p. 6).

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- 22 In July 1992, Sardegna Lines received financing amounting to ITL 9 600 000 000 under Law No 20/1951 as amended by Law No 11/1988 for the purchase of a ship named the *Moby Dream* intended for passenger transport and costing ITL 16 000 000 000.
- 23 That financing, which represented 60% of the cost of the investment, took the form of a loan at a rate of 3.5% repayable in 12 equal annual instalments commencing in the third year following the ship's actual entry into service.

Admissibility of the application

Admissibility of the Italian Republic's application

- 24 The Commission raises a plea of inadmissibility in respect of the application brought by the Italian Government in its entirety. It contends that an application should normally seek the annulment of a single act. It is true that the Court has accepted that, in certain exceptional cases, one application may seek the annulment of several decisions. That is the case when the decisions at issue are parallel in terms of time, procedure and subject-matter (Case 1/54 *France v High Authority* [1954] ECR 1), or when one of the decisions is a necessary consequence of the other (Joined Cases 25/65 and 26/65 *Simet and Feram v High Authority* [1967] ECR 33), or when the contested decisions are part of a complex administrative procedure (Joined Cases 12/64 and 29/64 *Ley v Commission* [1965] ECR 107). However, the two decisions contested by the Italian Government do not fall within either of those exceptions.
- 25 The Commission also contends that the Italian Republic's application at no point distinguishes between the pleas relied on in respect of Decision 98/95 and those relied on as regards the decision of 14 November 1997. As those decisions concern two substantially different aid schemes, the pleas cannot be the same and the failure to distinguish between them should also result in the application being inadmissible in its entirety.
- 26 In the alternative, the Commission contends that the Italian Republic's application is partially inadmissible in so far as it relates to the decision of 14 November 1997, since its pleadings refer solely to Decision 98/95.

- 27 For its part, the Italian Republic claims that the aid to Sardinian shipowners should have been the subject of a single procedure and that the fact that it was not vitiates both Decision 98/95, which concluded the first procedure, and the decision of 14 November 1997, which opened the second procedure. In addition, both decisions, which concern the same aid scheme, contain similar objections to the scheme. That is the reason why the application for annulment of the decision of 14 November 1997 was not founded on specific pleas. The Italian Republic points out, however, that its application is seeking, principally, annulment of Decision 98/95 and that all the pleas it raises are related to that decision.
- 28 The Court would point out, first, that, even supposing that an application may seek annulment of several acts only if those acts are sufficiently connected and that Decision 98/95 and the decision of 14 November 1997 do not fulfil that condition, the lack of connection can result in the application being inadmissible only in so far as it seeks annulment of the second decision referred to.
- 29 Second, under Article 19 of the EC Statute of the Court of Justice and Article 38(1) of the Rules of Procedure, the application must contain, *inter alia*, a brief summary of the pleas in law on which it is based. As the Commission noted in its defence and as the Italian Republic itself admitted in its reply, all the pleas in law and arguments raised by the applicant relate in fact only to Decision 98/95.
- 30 It follows that the Italian Republic's application is, in any event, inadmissible in so far as it seeks annulment of the decision of 14 November 1997.

The admissibility of Sardegna Lines' application

- 31 The Commission does not dispute Sardegna Lines' submission that Decision 98/95 is of direct and individual concern to it and that its application is therefore admissible. Although the decision is addressed to the Italian Republic, it has a significant effect on Sardegna Lines in its capacity as a Sardinian shipbuilder which has benefited from the aid scheme called into question by the Commission, since it will have to pay back the aid granted. The Court has, moreover, already accepted that an application made by an undertaking placed in a similar situation is admissible (Joined Cases C-324/90 and C-342/90 *Germany and Pleuger Worthington v Commission* [1994] ECR I-1173).
- 32 It is settled case-law that persons other than those to whom a decision is addressed may claim to be individually concerned only if the decision affects them by reason of certain attributes peculiar to them or by reason of circumstances in which they are differentiated from all other persons and if, by virtue of those factors, it distinguishes them individually in the same way as the person addressed (Case 25/62 *Plaumann v Commission* [1963] ECR 197, Case C-321/95 P *Greenpeace Council and Others v Commission* [1998] ECR I-1651, paragraphs 7 and 28).
- 33 The Court has thus held that an undertaking cannot, in principle, contest a Commission decision prohibiting a sectoral aid scheme if it is concerned by that decision solely by virtue of belonging to the sector in question and being a potential beneficiary of the scheme. Such a decision is, *vis-à-vis* the undertaking should it seek to contest the decision, a measure of general application covering situations which are determined objectively and entails legal effects for a class of persons envisaged in a general and abstract manner (Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others v Commission* [1988] ECR 219, paragraph 15; and Case C-6/92 *Federmineraria and Others v Commission* [1993] ECR I-6357, paragraph 14).
- 34 However, Sardegna Lines is in a different position. It is concerned by Decision 98/95 not only by virtue of being an undertaking in the shipping sector in

Sardinia and a potential beneficiary of the aid scheme for Sardinian shipowners but also by virtue of being an actual beneficiary of individual aid granted under that scheme, the recovery of which has been ordered by the Commission.

35 It follows that Sardegna Lines is individually concerned by Decision 98/95.

36 Furthermore, in so far as Article 2 of Decision 98/95 obliges the Italian Republic to recover from each beneficiary of a loan/lease the element of aid contained therein, Sardegna Lines must be regarded as directly concerned by this decision.

37 Consequently, Sardegna Lines' application is admissible.

Substance

Pleas in law advanced by the applicants

38 The Italian Republic alleges, first, that the Commission conducted two separate procedures in respect of the aid scheme for Sardinian shipowners instead of a single procedure and that it altered the subject-matter of the procedure which resulted in the adoption of Decision 98/95. It disputes, secondly, the finding in

that decision that the scheme is incompatible with the common market on account of infringement of Articles 6, 48(2) and 52 of the Treaty and denies in any case that the Commission has power to declare during an investigation into State aid that such infringement has occurred.

- 39 Sardegna Lines, for its part, alleges that the Commission was in breach of Council Directive 90/684/EEC of 21 December 1990 on aid to shipbuilding (OJ 1990 L 380, p. 27). It also submits that Decision 98/95 infringes Article 92(1) of the Treaty.
- 40 As for the remainder of the applications, the Italian Republic and Sardegna Lines have advanced the same pleas. These allege respectively (i) that the characterisation of the aid to Sardinian shipowners as new aid is wrong, (ii) that, from the point of view of Article 92(1) of the Treaty, the statement of reasons for Decision 98/95 is inadequate, (iii) that Article 92(3)(a) and (c) of the Treaty has been infringed and that, as regards that provision, the decision fails to provide sufficient reasons, and (iv) that the obligation imposed by Decision 98/95 to recover the aid is unlawful.

The lack of a single administrative procedure (Case C-15/98)

- 41 The Italian Republic claims that the amendments made in 1988 and 1996 to the aid scheme for Sardinian shipowners did not have a substantial effect on the scheme and that there is therefore no justification for the scheme being made the subject of two separate administrative procedures (see, to that effect, Joined Cases 91/83 and 127/83 *Heineken Brouwerijen v Inspecteurs der Vennootschapsbelasting, Amsterdam and Utrecht* [1984] ECR 3435). If Law No 9/1996 had been taken into account, however, the Commission would have been able to adopt a definitive position in respect of the aid scheme and might have reached a different conclusion.

- 42 The Commission contends, on the contrary, that Article 93(2) of the Treaty obliged it to open a new procedure in respect of the aid scheme as amended by Law No 9/1996. Moreover, if it were required to take into account amendments made to aid schemes in the course of an administrative procedure, Member States would be in a position to delay the adoption of a final decision *ad infinitum*.
- 43 In that regard, it should be pointed out that, when the Commission has initiated the procedure provided for in Article 93(2) of the Treaty in respect of an aid scheme which has already been implemented, it cannot be required to extend that procedure when the Member State concerned modifies the scheme in question. If the opposite were the case, the State would in fact be able to draw out the procedure for as long as it pleased, and thus postpone the adoption of a final decision.
- 44 That conclusion is not at variance with the *Heineken Brouwerijen* judgment, cited above, in which the Court held that the obligation laid down in the first sentence of Article 93(3) of the Treaty to inform the Commission of any plans to grant or alter aid does not apply solely to an initial plan but also covers subsequent alterations to that plan; such information may be supplied to the Commission in the course of the consultations which take place following the initial notification. The *Heineken Brouwerijen* judgment is concerned with alterations that may affect an aid plan in the course of its adoption and the decision in that case is not, therefore, applicable to a situation in which the aid scheme was already operational when the Commission learned about it.
- 45 In addition, even supposing that, as the Italian Republic claims, Law No 9/1996 did in fact ensure that the aid scheme for Sardinian shipowners complied with Community law, the Commission's taking account of that law would in any event have been of no consequence as regards its assessment of aid granted under the scheme as it previously stood.

- 46 The Italian Republic's plea based on the absence of a single administrative procedure must, therefore, be rejected.

Alteration of the subject-matter of the procedure (Case C-15/98)

- 47 The Italian Republic claims, however, that the Commission, in deciding not to take Law No 9/1996 into account in Decision 98/95, substantially altered the subject-matter of the procedure initiated in 1996. While the latter was initially concerned with an aid scheme allegedly in force, the decision which concluded the procedure related to a scheme which was no longer applicable. The Commission's power of review could be exercised only in respect of an aid scheme which was still applicable. When a scheme has come to an end, the power of review should no longer relate to the scheme itself but to aid which has in fact been granted on the basis of the scheme.
- 48 The Italian Republic submits that the Commission, however, proceeded exactly on that basis in the present case when, having initiated the procedure in respect of the aid scheme as it stood following Law No 11/1988, it held in Decision 98/95 that loans/leases amounting to ITL 12 697 450 000 granted to Sardinian shipping companies were incompatible with the common market. However, to avoid a breach of the *audi alteram partem* rule, the Italian Government and the parties concerned should have been notified that the subject-matter of the procedure had been altered in order to enable them to submit relevant observations and defend their interests.
- 49 The Commission challenges, in the first place, the Italian Republic's premiss that its power of review may not be exercised in respect of an aid scheme which has ceased to be applicable. It is common ground that the Commission is entitled, with a view to restoring the *status quo ante*, to require the recovery of aid granted under any scheme in breach of the Treaty (Case C-280/95 *Commission v Italy* [1998] ECR I-259).

- 50 In second place, the Commission refutes the allegation that it altered the subject matter of the procedure. It observes that, by its very heading, the 1996 communication informing interested parties of the initiation of the procedure in respect of the contested aid scheme was directed at aid which the Sardinian authorities had granted to Sardinian shipowners. The communication further stated that the Italian Republic was obliged to restore the *status quo ante* by recovering unlawfully granted aid. There could therefore be no doubt that the procedure did not concern a scheme in the abstract but was concerned with actual aid granted in disregard of Community law.
- 51 The Court observes, first, that, in the case of an aid scheme, the Commission may confine itself to examining the general characteristics of the scheme in question without being required to examine each particular case in which it applies (see, to that effect, Case 248/84 *Germany v Commission* [1987] ECR 4013, at paragraph 18; and Case C-75/97 *Belgium v Commission* [1999] ECR I-3671, paragraph 48). That power is not impaired by the fact that the aid scheme in question has ceased to apply. In that case as well, the Commission must be entitled to assess the compatibility of the scheme with Community law on the basis of its general characteristics.
- 52 Secondly, contrary to the allegations of the Italian Republic, the Commission did not alter the subject-matter of the procedure which was throughout concerned with the aid scheme for Sardinian shipowners established by Law No 20/1951, as amended by Law No 11/1988. Thus, the Commission states in Part VII of Decision 98/95 that, the aid scheme in question is unlawful and incompatible with the common market and it is in light of that finding that the operative part of the decision must be read (see, to that effect, Case C-404/97 *Commission v Portugal* [2000] ECR I-4897, paragraph 41).
- 53 The Italian Republic's plea alleging that the subject-matter of the procedure was altered must therefore be rejected.

Inadequacy of the statement of reasons in respect of the conditions for application of Article 92(1) of the Treaty: infringement of that provision

54 The Italian Republic submits, first, that Decision 98/95 in no way states why the aid scheme for Sardinian shipowners is liable to distort or threaten to distort competition.

55 As regards the condition relating to the effect on trade between Member States, Decision 98/95 is confined to stating that over 90% of goods transported between Member States and Sardinia are transported by sea and that 65% of tourist traffic (passengers and vehicles) between the Community and Sardinia is handled by shipping companies. First, these high percentages are merely the natural consequence of Sardinia being an island. Second, they do not necessarily entail any effect on trade between Member States in so far as traffic to and from small islands may well depend entirely on maritime transport without such trade being affected. Lastly, the volume of trade between Sardinia and the other Member States is, in any event, minimal since 89% of the goods and 97% of the passengers coming from, or going to, the island travel through Italian ports.

56 The Italian Republic accordingly concludes that Decision 98/95 does not contain a sufficient statement of reasons regarding the application of Article 92(1) of the Treaty.

57 Sardegna Lines claims, first, that the Commission infringed Article 92(1).

- 58 In that regard, it submits that, contrary to the requirements of case-law, the decision does not give any information about the market under consideration, the share of the undertakings concerned in that market, their exports or the patterns of trade between Member States.
- 59 That fact is particularly serious since the market concerned is not the market in goods or tourist services but the market in transport to and from Sardinia. Under Article 6(2) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7), island cabotage in the Mediterranean was not liberalised until 1 January 1999. Until that time there was therefore no risk that the aid scheme for Sardinian shipowners would distort or threaten to distort competition between Italian traders nor that it would affect trade between Member States.
- 60 Relying on the same arguments, Sardegna Lines also claims that the Commission has not in that regard given an adequate statement of reasons in Decision 98/95.
- 61 The Commission contends, first, that aid is granted selectively to Sardinian shipping companies and that it therefore necessarily distorts competition. It also asserts that Sardinia is one of the three biggest islands in the Mediterranean, that by sea it is just as accessible from France and Spain as from Italy, that France and Spain also have shipping companies and that, consequently, there is no doubt that there is an effect on trade between those Member States.
- 62 Lastly, according to the Commission, Regulation No 3577/92 is irrelevant in the present case. By definition, it does not cover maritime transport between Member States while the condition in Article 92(1) of the Treaty relating to the effect on

trade is of relevance only to such transport. The Sardinian companies benefiting from the aid could also run services on the shipping routes between Sardinia and France or Spain. Furthermore, Regulation No 3577/92 does not preclude competition between undertakings in the maritime transport market between Sardinia and the Italian peninsula. Accordingly, even before 1 January 1999, non-Italian companies were entitled to operate maritime cabotage services in Italy by registering their vessels in Italy, although they did not benefit from the aid scheme for Sardinian shipowners. In any event, the scheme continued to have an effect after 1 January 1999.

- 63 As a preliminary point, it should be observed that Sardegna Lines, although referring to infringement of Article 92(1) of the Treaty, also alleges that the Commission did not in Decision 98/95 provide an adequate statement of reasons in respect of that provision.
- 64 It must also be borne in mind that Article 92(1) of the Treaty provides that 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 is, in so far as it affects trade between Member States, incompatible with the common market.
- 65 Furthermore, it is settled case-law that the statement of reasons required by Article 190 of the EC Treaty (now Article 253 EC) 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 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 requirement to state reasons must be evaluated according to 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, Case C-367/95 P *Commission v Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).

- 66 As regards more particularly a decision concerning State aid, the Court has held that although 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 reasons for its decision (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek v Commission* [1985] ECR 809, at paragraph 24; and Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others v Commission* [1996] ECR I-5151, at paragraph 52).
- 67 In the present case, as the Italian Republic has pointed out, Decision 98/95 does not contain any reasons explaining why the aid to Sardinian shipowners adversely affected competition. The mere statement that the aid is selective and restricted to the shipping sector in Sardinia is not a statement of reasons. Moreover, those aspects of the decision are connected less with the condition relating to the distortion of competition than to the condition of specificity which constitutes one of the other characteristics of the concept of State aid (see *Belgium v Commission*, cited above, at paragraph 26).
- 68 As regards the condition relating to the effect on trade between Member States, the Commission stated in Decision 98/95 that the aid to the Sardinian shipowners had an effect on trade between Member States in so far as over 90% of goods are transported between the Member States and Sardinia by sea and 65% of tourist

traffic (passengers and vehicles) between the Community and Sardinia is handled by shipping companies.

- 69 It is true that the Commission thereby emphasised the importance of maritime transport to trade between Sardinia and the rest of the Community. It did not, however, provide the least information concerning competition between the Sardinian shipping companies and those established in Member States other than Italy. The Commission thus failed to take into account, in that respect, the fact that, until 1 January 1999, island cabotage in the Mediterranean was excluded from the liberalisation of maritime transport services within Member States.
- 70 Whilst the Commission pointed out at the hearing that a number of factors tended to show that that situation was not liable to preclude an effect on trade in maritime transport services between Sardinia and Member States other than the Italian Republic, in particular the Kingdom of Spain and the French Republic, that reasoning is not found in Decision 98/95.
- 71 The Commission also contended before the Court that the aid scheme for Sardinian shipowners had all the more effect on trade between Member States since several of the additional conditions adopted in Law No 11/1988 were in breach of the fundamental principles of freedom of establishment and the prohibition on any discrimination on grounds of nationality.
- 72 However, it should be noted that, in Parts I and VI of Decision 98/95, the Commission takes those alleged breaches into account only for the purpose of rejecting any possibility that the exceptions in Article 92(2) and (3) of the Treaty may apply.

- 73 Accordingly, the plea alleging that Decision 98/95 lacks an adequate statement of reasons in respect of the conditions for application of Article 92(1) of the Treaty must be accepted.
- 74 Consequently, Decision 98/95 must be annulled without there being any need to examine the other pleas in law put forward by the Italian Republic and Sardegna Lines.

Costs

- 75 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. Under Article 69(3), the Court may order that the costs be shared or that the parties bear their own costs if the parties are successful on some heads and unsuccessful on others, or where the circumstances are exceptional.
- 76 In the present case, the Italian Republic's application in respect of the decision of 14 November 1997 has been dismissed as inadmissible. By contrast, the applications made by the Italian Republic and Sardegna Lines in respect of Decision 98/95 have been upheld.
- 77 Consequently, in Case C-15/98 the Italian Republic and the Commission must be ordered to bear their own costs. However, in Case C-105/99 the Commission must be ordered to pay the costs in their entirety.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Dismisses as inadmissible the Italian Republic's application in respect of the letter of 14 November 1997 by which the Commission notified the Italian Republic of its decision to initiate the procedure provided for in Article 93(2) of the EC Treaty (now Article 88(2) EC) regarding aid to the shipping sector (loans/leases at concessionary conditions for the acquisition, conversion and repair of vessels): amendment of aid scheme under C 23/96 (ex NN 181/95);**

2. **Annuls Commission Decision 98/95/EC of 21 October 1997 concerning aid granted by the Region of Sardinia (Italy) to shipping companies in Sardinia;**

3. **In Case C-15/98, orders the Italian Republic and the Commission of the European Communities to bear their own costs;**

4. In Case C-105/99, orders the Commission of the European Communities to pay the costs.

Gulmann

Puissochet

Macken

Delivered in open court in Luxembourg on 19 October 2000.

R. Grass

C. Gulmann

Registrar

President of the Sixth Chamber