JUDGMENT OF THE COURT (Third Chamber)

13 February 2003 *

In Case C-409/00,

Kingdom of Spain, represented by M. López-Monís Gallego, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by D. Triantafyllou and S. Pardo, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of Commission Decision 2001/605/EC of 26 July 2000 on the aid scheme implemented by Spain for the purchase of commercial vehicles under the Cooperation Agreement of 26 February 1997 between the Ministry for Industry and Energy and the Instituto de Crédito Oficial (OJ 2001 L 212, p. 34),

* Language of the case: Spanish.

THE COURT (Third Chamber),

composed of: J.-P. Puissochet (Rapporteur), President of the Chamber, F. Macken and J.N. Cunha Rodrigues, Judges,

Advocate General: S. Alber,

Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 June 2002, at which the Kingdom of Spain was represented by S. Ortiz Vaamonde, acting as Agent, and the Commission was represented by D. Triantafyllou and S. Pardo,

after hearing the Opinion of the Advocate General at the sitting on 10 September 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 November 2000, the Kingdom of Spain sought, under Article 230 EC, the annulment of Commission Decision 2001/605/EC of 26 July 2000 on the aid scheme implemented by Spain for the

purchase of commercial vehicles under the Cooperation Agreement of 26 February 1997 between the Ministry for Industry and Energy and the Instituto de Crédito Oficial (OJ 2001 L 212, p. 34, hereinafter 'the contested decision').

The facts and the contested decision

2 On 26 February 1997 the Spanish Ministry for Industry and Energy and the Instituto de Crédito Oficial ('ICO') concluded a cooperation agreement setting up an aid scheme for the purchase of commercial vehicles ('the Agreement'). The Agreement entered into force retrospectively on 1 January 1997 and came to an end on 31 December 1997.

3 The Agreement succeeded a similar aid scheme, which was the subject of Commission Decision 98/693/EC of 1 July 1998 concerning the Spanish Plan Renove Industrial aid scheme for the purchase of commercial vehicles (August 1994 — December 1996) (OJ 1998 L 329, p. 23). According to Article 2 of that decision, the aid granted in the form of subsidies to natural persons or to small and medium enterprises ('SME') engaged in 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. In Articles 3 and 4 of that decision, the Commission found that 'all other aid granted to natural persons and SMEs constitute[d] State aid within the meaning of Article 92(1) of the Treaty', that it was illegal and incompatible with the common market and that the Kingdom of Spain must accordingly recover it.

4 The Kingdom of Spain brought an action before the Court seeking the annulment of Articles 3 and 4 of Decision 98/693. By judgment of 26 September 2002 in Case C-351/98 *Spain* v *Commission* [2002] ECR I-8031, the Court upheld that action.

5 In the present case, the Agreement is intended to support the renewal of the commercial vehicle fleet in Spain by encouraging natural persons who are self-employed and undertakings which meet the Community definition of SME to acquire new vehicles to replace their old ones.

6 To that end, the Agreement provides that natural persons registered for Spanish commercial tax and SMEs are entitled to a loan for a maximum duration of four years, without a grace period, to cover up to 70% of the eligible costs. The loan is subsidised to a maximum of ESP 85 000 for each ESP 1 000 000 borrowed, or approximately EUR 511 for each EUR 6 010 borrowed. The subsidy equivalent of the measure is thus 8.5%.

7 The grant of such a loan is subject to three cumulative conditions. First, the natural person or SME concerned must purchase a new commercial vehicle or lease it with the intention to purchase. Second, it must present a document issued by the Directorate-General for Traffic to certify that another commercial vehicle has been irrevocably withdrawn for scrapping. The vehicle concerned must have been registered in Spain for at least seven years in the case of tractor units and for ten years in all other cases. Third, the vehicle sent for scrapping must, as a rule, have a load capacity equal to that of the vehicle purchased.

8 In order to facilitate application of the last condition, the Agreement identifies six categories of vehicles: tractor units and lorries with a maximum authorised

weight of 30 tonnes (Category A), lorries with a maximum authorised weight of between 12 and 30 tonnes (Category B), lorries with a maximum authorised weight of between 3.5 and 12 tonnes (Category C), car-based vehicles, vans and lorries with a maximum authorised weight of up to 3.5 tonnes (Category D), buses and coaches (Category E) and trailers and semi-trailers (Category F).

9 As regards the financing and conditions of award of the loans, the Agreement provides that the ICO will open a line of credit of a maximum amount of ESP 35 billion and conclude contracts with public and private financial bodies which will grant subsidised loans to natural persons and SMEs. The difference between the rate of interest applied by the ICO and the rate of interest normally applied to this type of transaction will be compensated up to a maximum of 4.5 percentage points, by the Ministry for Industry and Energy. The total amount of the intervention by the Kingdom of Spain involved is estimated at ESP 3 billion, or approximately EUR 18 million.

10 By letter of 26 February 1997, the Spanish authorities informed the Commission of the Agreement, in accordance with Article 93(3) of the EC Treaty (now Article 88(3) EC).

11 By letter of 3 April 1997, the Commission requested further information from the Spanish authorities, who asked on three occasions for extra time to send the information. However, on expiry of the last time-limit granted by the Commission the Spanish authorities had not sent any further information.

12 By letter of 20 November 1997 the Commission informed the Spanish authorities, first, that as the aid scheme was retroactive it would be treated as

non-notified aid and second, of its decision to open the procedure laid down in Article 93(2) of the Treaty. The Commission published that letter in the *Official Journal of the European Communities* (OJ 1999 C 29, p. 14) and invited interested parties to submit their observations.

13 By letter of 22 February 1999, the Kingdom of Spain submitted its observations to the Commission. No other Member State or third party sent observations. In those circumstances the Commission adopted the contested decision.

14 Having set out the procedure, described the general scheme of the Agreement and summarised the observations made by the Kingdom of Spain, the Commission found in part IV of the grounds for the contested decision that the aid scheme for the purchase of commercial vehicles must be treated as State aid within the meaning of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC).

15 The Commission pointed out, first, that the credits allocated for the financing of the aid scheme came from the budget of the Ministry for Industry and Energy. The financial support at issue was thus granted through State resources.

16 Second, the Agreement favoured certain undertakings. The scope *ratione materiae* of the Agreement was limited to the six categories of commercial vehicles listed in it, and only the natural persons or undertakings who engaged in transport operations either on their own account or for others, by means of a vehicle belonging to one or other of those categories, were entitled to the loans at issue. The aid scheme was therefore selective as to the scope and beneficiaries.

17 Third, the aid scheme introduced a mechanism with an effect equivalent to that of a subsidy, in so far as it had the effect of reducing the costs normally born by the natural persons and SMEs who were the beneficiaries. The aid scheme therefore distorted competition to the detriment of the other economic operators in the sector.

18 Fourth, the aid scheme introduced discrimination as between carriers established in Spain and non-resident carriers, and that discrimination took effect in the road transport sector, which had been opened to intra-Community competition by measures concerning both international transport and cabotage. As a consequence, the Commission found that the aid scheme affected trade between Member States.

19 However, in Article 1 of the contested decision the Commission recognised that when the beneficiary was engaged in a business not in the transport sector and operated on a solely local or regional level and the financial support granted to that beneficiary was confined to the purchase of small commercial vehicles in Category D, which are generally used for short journeys, that support could not be considered to affect trade between Member States. It concluded that financial support of that type was not State aid within the meaning of Article 92(1) of the Treaty.

20 Finally, in relation to financial support other than that described in the preceding paragraph, the Commission stated that it could not be justified on the basis of the *de minimis* rule, under which aid which is small and therefore unlikely to distort competition or to affect trade between Member States does not fall within Article 92(1) of the Treaty. It was clear from the Commission's notice of 1992 on Community guidelines on State aid for small and medium-sized enterprises (OJ 1992 C 213, p. 2, '1992 Guidelines on aid for SMEs'), and the Commission notice on the *de minimis* rule for State aid (OJ 1996 C 68, p. 9, the '*de minimis* notice') that the rule did not apply to the transport sector, on the ground that that

sector is characterised by the presence of a high number of small undertakings and that relatively small sums are thus likely to have repercussions on competition and on trade between Member States. The aid scheme at issue ultimately benefited undertakings effecting transport operations on their own account or for others. It followed that the *de minimis* rule was not applicable.

21 The Commission concluded that the financial aid granted under the Agreement to natural persons registered for Spanish commercial tax or to SMEs, other than the aid referred to in paragraph 19 above, must be considered to be State aid and was thus, in principle, incompatible with the common market.

22 The Commission also stated that the aid was illegal. In particular, it was not possible for it to be covered by the derogation provided for by Article 92(3)(c) of the Treaty, under which aid intended to facilitate the development of certain activities or of certain economic regions, when it does not affect trading conditions to an extent contrary to the common interest, can be considered to be compatible with the common market. The aid scheme at issue did not satisfy the conditions laid down by that provision. It was not intended to facilitate the development of an economic activity and its effect on trade went beyond what was justified by the common interest.

23 As to the intended use of the aid at issue, the Commission recalled that its information on Community guidelines on State aid for environmental protection (OJ 1994 C 72, p. 3, 'Guidelines on environmental aid') made it clear that State aid could be covered by the derogation provided for in Article 92(3)(c) of the Treaty on the ground that it improved road safety and contributed to the protection of the environment only if the aid was for the additional investment

costs necessary to attain higher standards imposed by law or to satisfy new environmental standards. The aid scheme at issue was only intended to encourage replacement of the fleet of commercial vehicles, without regard to objectives relating to the environment or to road safety.

24 As to the effect of the aid at issue on trade, the Commission held that in a market such as road transport, which was characterised by overcapacity, aid for the purchase of vehicles was generally contrary to the common interest even if its sole aim was to replace the existing means of transport. Moreover, the aid intended to relieve certain undertakings of the costs which they would normally bear in the course of their business was considered to be by its very nature contrary to the common interest. It could not, therefore, come within the scope of the derogation provided for by Article 92(3)(c) of the Treaty.

25 Consequently, the Commission held, in Article 2 of the contested decision, that the aid at issue — with the exception of that referred to in paragraph 19 above — was incompatible with the common market and, in Article 4, that the Kingdom of Spain must recover it without delay.

Forms of order sought

26 The Kingdom of Spain claims that the Court should:

— annul the contested decision;

— order the Commission to pay the costs.

27 The Commission contends that the Court should:

— dismiss the action as unfounded;

— declare the plea for annulment based on the too general nature of the operative part of the contested decision inadmissible, or alternatively as ineffective or unfounded;

— order the Kingdom of Spain to pay the costs.

The application

28 The Kingdom of Spain relies on three pleas in support of its action for annulment.

29 The first plea alleges that the operative part of the contested decision is altogether too general: Article 1 refers to the particular financial aid which cannot be classified as State aid within the meaning of Article 92(1) of the Treaty, but Spanish law does not enable it to be distinguished in any way from the aid held to

be incompatible with the common market in Article 2 of the same decision and which must therefore be recovered.

30 By the second plea, the Kingdom of Spain submits that the Commission has made a manifest error of assessment in finding that the aid at issue fell within the scope of Article 92(1) of the Treaty, although it is not selective in nature and does not involve any distortion of competition.

31 The third plea alleges infringement of Article 92(3)(c) of the Treaty, in that the Commission wrongly held that the aid at issue could not be authorised on the basis of the derogation provided for by that provision.

32 Since the examination of the first plea is only necessary if the second and third pleas are dismissed, judgment must first be given on those pleas.

The second plea: infringement of Article 92(1) of the Treaty

33 The Kingdom of Spain submits by its second plea that the aid at issue does not constitute State aid within the meaning of Article 92(1) of the Treaty. The plea consists of two parts: first, the aid is not by nature selective and second, it is not of such a nature as to distort or threaten to distort competition and has no effect on trade between Member States.

The first part, alleging that the Commission wrongly held that the aid issue was by nature selective

Parties' arguments

34 First, the Kingdom of Spain takes issue with the Commission's finding that the legal structure of the Agreement favoured certain categories of natural or legal persons.

35 The Agreement covers in a general manner all the potential beneficiaries. It is true that the very existence of the conditions set out in paragraph 7 above has the consequence that a natural or legal person who does not satisfy them cannot, as a result, be eligible for a loan; however, that fact, which only requires the beneficiaries to be in an objectively identical position, does not involve any selectivity prohibited by Article 92(1) of the Treaty.

36 The Kingdom of Spain does not deny that the Agreement expressly excludes large undertakings from its scope, but observes that the aid scheme at issue is part of the system of support for the protection of the environment, road safety and renewal of vehicles on the road. The exclusion of large undertakings, which replace their vehicles more regularly and without any need for aid for that purpose, is required by the general scheme, in accordance with 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). In those circumstances, the Commission should have held that there was no selectivity.

37 Second, the Commission wrongly found that the Agreement was selective on the ground that it only concerned certain categories of commercial vehicles. The Agreement identifies the six categories of vehicles listed in paragraph 8 above solely for the purpose of enabling beneficiaries to ensure that they satisfy the condition of equivalent loading capacity, and the competent authorities to check compliance with that condition. In any event, the categories cover all commercial vehicles.

38 Third, the Kingdom of Spain claims that the Commission made a manifest error of assessment in finding that if the scheme was not selective *de jure* it was so *de facto*. From the judgment in Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 28, it is to be inferred by analogy that the fact that the aid at issue actually benefited certain undertakings does not justify the conclusion that there is State aid. That inference is in accordance with the Commission's practice, as stated, *inter alia*, in its Notice on monitoring of State aid and reduction of labour costs (OJ 1997 C 1, p. 10).

39 Finally, in assessing the aid at issue account should be taken of the notion of 'specific subsidy' adopted by the Agreement on Subsidies and Countervailing Measures ('the Agreement on subsidies' in Annex 1A to the Agreement establishing the World Trade Organisation, approved on behalf of the Community, as regards matters within its competence, by Council Decision 94/800/EC of 22 December 1994 (OJ 1994 L 336, p. 1)). Article 2(1)(b) of the Agreement on subsidies states that 'where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions... specificity shall not exist'. The term 'objective criteria' is to be read, in accordance with footnote 2 to the Agreement, as meaning 'objective criteria or conditions which are neutral, which do not favour

certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise'. In the light of those provisions, it must be recognised that the aid at issue is not specific and as a consequence falls outside the definition of State aid within the meaning of Article 92(1) of the Treaty.

40 The Commission replies that the aid is by nature selective.

41 First, as regards the general structure of the Agreement, the Commission submits in the first place that the Kingdom of Spain's argument based on the horizontal conditions of application and objectives of the aid scheme at issue cannot be entertained. It is clear from the Court's case-law that such conditions are one of the characteristic elements of an aid scheme as opposed to individual aid. The argument would thus have the consequence, if accepted, that all aid schemes would automatically be excluded from the scope of Article 92(1) of the Treaty.

42 In the second place the justification based on the existence of a system of charges in the general interest excluding large undertakings on the grounds of economic rationality cannot succeed. Firstly, that justification might be admissible in the context of schemes in the general interest, such as a tax or social security scheme, but not in the context of an aid scheme, even if it pursues legitimate aims. On that point, the Commission refers to Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 79, Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraph 20, Case C-75/97 *Belgium* v *Commission* (cited above), paragraph 25, and Case T-55/99 *CETM* v *Commission* [2000] ECR II-3207, paragraph 53. Secondly, even if that justification was admissible, the Kingdom of Spain has not produced evidence of the existence of such a system of charges in

the general interest. Thirdly, if it were sufficient, in order to demonstrate that the aid scheme at issue pursues general aims, to establish, by that fact alone, the existence of a system of charges in the general interest likely to fall outside the definition of State aid, the Kingdom of Spain has not shown how the exclusion of large undertakings, required for the system to operate, can be considered not to be selective.

43 Next, the Commission contends that the argument that measures which benefit certain undertakings more than others are not necessarily selective within the meaning of Article 92(1) of the Treaty should also be dismissed. It is taken from the specific area of measures to support employment and cannot reasonably be transposed to the present case. On the contrary, the position of the Court on export aid (Joined Cases 6/69 and 11/69 *Commission* v *France* [1969] ECR 523, paragraph 21, and Case 57/86 *Greece* v *Commission* [1988] ECR 2855, paragraph 8) should be applied by analogy so as to hold that an aid scheme which may benefit all natural persons and SMEs using commercial vehicles to the exclusion of natural persons and SMEs who do not use such vehicles may constitute State aid. That approach is in accordance with the position taken in the 1996 Information from the Commission — Community guidelines on State aid for small and medium-sized enterprises (OJ 1996 C 213, p. 4, '1996 Guidelines for aid to SMEs').

44 Finally, the Commission states that there is no need to assess the lawfulness of the aid at issue in the light of the Agreement on subsidies, which does not have the same purpose as Article 92(1) of the Treaty.

Findings of the Court

45 Article 92(1) of the Treaty defines State aid generally incompatible with the common market as being 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, in so far as it affects trade between Member States.

46 It must be noted at the outset that that provision does not distinguish between the causes or the objectives of State aid, but defines them in relation to their effects (Case C-56/93 *Belgium* v *Commission*, paragraph 79, Case C-241/94 *France* v *Commission*, paragraph 20, and Case C-75/97 *Belgium* v *Commission*, paragraph 25).

47 It follows that the application of Article 92(1) of the Treaty only requires it to be determined whether under a particular statutory scheme a State measure is such as to favour 'certain undertakings or the production of certain goods' over others which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question (Case C-143/99 *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 41; see also to that effect Case C-200/97 *Ecotrade* [1998] ECR I-7907, paragraph 41, and Case C-75/97 *Belgium* v *Commission*, cited above, paragraph 26). If so, the measure satisfies the condition of selectivity which defines State aid as laid down by that provision.

48 The fact that the number of undertakings able to claim entitlement under the measure at issue is very large, or that they belong to different sectors of activity, is not sufficient to call into question its selective nature and therefore, to rule out its classification as State aid (Case C-75/97 *Belgium* v *Commission*, paragraph 32 and *Adria-Wien Pipeline and Wietersdorfer & Peggauer Zementwerke*, paragraph 48).

49 In the present case, it is clear in the first place from the file that the structure of the aid scheme set up by the Agreement, in so far as it is intended to favour, and does in fact favour, natural persons and SMEs carrying on transport operations on their own account or for another, is by nature selective. The argument relied on by the Kingdom of Spain, that the Agreement is governed by objective criteria of horizontal application, is irrelevant: it can only serve to show that the aid at issue falls within an aid scheme and is not individual aid.

50 Second, the Agreement expressly excludes large undertakings, even if they had purchased or were likely to purchase a new commercial vehicle during the period of application of the aid scheme and therefore contributed, in the same way as natural persons and SMEs, to the aim of renewing vehicles on the road.

51 The Kingdom of Spain submits, however, that that exclusion must be seen as precisely the consequence of the system of charges in the general interest of which the aid at issue forms part.

52 The Court has consistently held that the definition of State aid does not include national measures introducing a differentiation between undertakings when that differentiation arises from the nature and structure of the system of charges of which they form part. Where that is the case, the measure at issue cannot, as a rule, be considered to be selective, even if it gives an advantage to the undertakings who are able to benefit from it (see, to that effect, Joined Cases C-72/91 and C-73/91 *Sloman Neptun* [1993] ECR I-887, paragraph 21).

53 However, in the present case, the Kingdom of Spain has not produced any evidence of the existence of a system of charges in the general interest. At best, it has set out the grounds of general interest to which it is the aim or effect of the aid

scheme at issue to contribute, that is, the protection of the environment and road safety.

54 Those grounds, however legitimate, and supposing them to be established, are ineffective at the stage of the assessment of a national measure with regard to Article 92(1) of the Treaty, as was noted at paragraph 46 above.

55 In any event, the charges concerned in the present case arise as a result of the need of undertakings to replace their commercial vehicles. Therefore, the aid at issue consists of a reduction of the charges which, in normal commercial circumstances, come out of the budgets of those undertakings (*Spain* v *Commission*, paragraph 43). It follows that they cannot be considered to be part of the nature and general scheme of any system of charges in the general interest and that therefore the Commission rightly held that they were by nature selective.

56 Moreover, the fact that the contested aid might not be considered to be a 'specific subsidy' under the Agreement on subsidies cannot cut down the scope of the definition of aid in Article 92(1) of the Treaty (*Spain* v *Commission*, paragraph 44).

57 As a consequence, and without there being any need to examine the other arguments raised by the Kingdom of Spain, the first part of the second plea must be dismissed.

The second part, alleging that the Commission wrongly held that the aid at issue affected competition and trade between Member States and was in any event discriminatory

Arguments of the parties

58 As regards the alleged effect of the aid at issue on competition and on trade between Member States, the Kingdom of Spain argues that the Commission disregarded the provisions of the Treaty applicable to State aid by refusing to apply the *de minimis* rule. Even if the natural and legal persons eligible for the aid at issue belonged, as the Commission claims, to the transport sector, the aid is less than the EUR 100 000 threshold per three years below which Article 92(1) of the Treaty is not applicable. That should have led the Commission to conclude that the aid at issue does not constitute State aid within the meaning of that provision.

59 The Commission replies that it would have been unlawful to apply the *de minimis* rule. In any case the aid at issue distorts competition.

60 The Commission argues that the beneficiaries of the aid scheme belong to the transport sector, and that the Kingdom of Spain does not deny that that sector is excluded from the scope of the *de minimis* rule but simply asks that the rule be applied in this case by way of exception.

61 The Commission submits that the express wording of the notice on the *de minimis* rule, and the fact that the rule that it articulates, as a derogation from Article 92(1) of the Treaty, must be strictly interpreted, means that there can be no exception. The Court of First Instance confirmed that interpretation at

paragraph 130 of the judgment in *CETM* v *Commission*. The Commission also relies on the legal effect of the notices and guidelines that it has drawn up on State aid. Such acts are binding, primarily on the Commission itself, as it is clear in particular from Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 34 to 36, and Case T-149/95 *Ducros* v *Commission* [1997] ECR II-2031, paragraph 61. Consequently, the Kingdom of Spain has no basis for asking the Commission to derogate, in favour of the aid at issue, from the conditions of application of the *de minimis* rule.

62 The Commission points out again that the sector of road transport for goods is characterised by strong competition between numerous SMEs. The Court has held that in such a situation relatively small amounts of aid are liable to affect competition (Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 27), taking account in particular of their cumulative effect. It follows that Article 92(1) of the Treaty always applies to such aid, even when it is of an amount such that the *de minimis* rule generally should be applied to it (Case T-214/95 *Vlaamse Gewest* v *Commission* [1998] ECR II-717, paragraph 46).

63 In any event, the Commission contends that the aid for the purchase of commercial vehicles, by the simple fact that it is mainly granted to SMEs operating in a sector of activity which Community provisions have made open to competition distorts or threatens to distort competition, to the detriment of undertakings established in other Member States.

64 As regards the alleged discriminatory character of the aid at issue, the Kingdom of Spain maintains that the Agreement does not introduce any differentiation as between Spanish nationals and nationals of other Member States. First, eligibility under the Agreement does not depend on the purchaser of the commercial vehicle either having Spanish nationality or being established in Spain. Next, the second condition set out at paragraph 7 above, according to which the beneficiary of the

aid must present a document to certify that a commercial vehicle registered in Spain for at least seven years in the case of a tractor unit and for at least ten years in all other cases has been irrevocably withdrawn from circulation, does not constitute discrimination against nationals of Member States other than Spain. Since it is not necessary for the purchaser of the new vehicle to be also the owner of the vehicle replaced, the purchaser has the possibility of concluding a contract with a third party, the owner of the vehicle duly registered in Spain, in order to benefit from the Agreement. Finally, the requirement of registration in Spain applies to vehicles made in Spain and imported vehicles alike.

65 In short, if in practice few nationals of Member States other than Spain prove to have obtained the aid at issue, that is explained by factual circumstances independent of the aid scheme, for example the fact that those nationals prefer to apply for aid or financing in their own Member State.

66 The Commission replies that the arguments relied on in that regard by the Kingdom of Spain are invalid or at least unfounded, on the ground that the condition of registration in Spain itself constitutes prohibited discrimination.

Findings of the Court

67 A distinction must be made at the outset between the aid granted to natural or legal persons operating transport on their own account ('non-professional transport companies') and the aid granted to natural or legal persons doing so for others ('professional transport companies'). It is clear from the different

situations of those two categories of beneficiaries that they do not belong to the same sector and do not operate in the same market (Case C-351/98 *Spain* v *Commission*, paragraph 48).

68 As regards first the aid at issue granted to non-professional transport companies, it is clear from the judgment referred to in the previous paragraph that while the Commission was entitled to examine the effect on the transport sector of the grant of such aid, it could not simply treat non-professional transport companies as if they were professional transport companies (*Spain* v *Commission*, paragraph 49).

69 The Commission is of course entitled to take the view, in the notices and guidelines that it draws up in accordance with the Treaty and in the exercise of its discretion in evaluating the potential economic effects of aid measures, that other than in certain sectors where competitive conditions are of a particular kind, aid below certain amounts does not affect trade and is therefore not caught by Articles 92 and 93 of the Treaty. However, those notices and guidelines apply primarily to the Commission itself (*Spain* v *Commission*, paragraphs 52 and 53).

70 Whilst the transport sector is expressly excluded by the *de minimis* notice and the guidelines on aid to SMEs of 1992 and 1996 from the scope of the *de minimis* rule, that exception must be subject to strict interpretation. Therefore, it cannot be extended to non-professional transport companies.

71 It follows that the Commission was not entitled to refuse to consider whether the aid at issue fell within the *de minimis* rule in so far as it was granted to non-professional transport companies (see, to that effect, *Spain* v *Commission*, paragraph 50).

72 It is clear from the documents before the Court that the aid at issue was on each occasion of a maximum amount of EUR 511 for EUR 6 010 borrowed. Although certain non-professional transport companies might have been able during the year that the Agreement was in force to obtain several support measures, with the consequence that the total amount of aid received by them was greater than EUR 100 000, it is impossible to preclude a priori application of the *de minimis* rule to that category of undertakings.

73 In those circumstances, Articles 2 and 4 of the contested decision must be annulled in so far as they relate to aid granted to non-professional transport companies of amounts below the *de minimis* threshold laid down in the Commission's notices and guidelines in force at the time when the aid was granted.

74 Second, as regards aid which may have been granted to non-professional transport companies for an amount greater than the *de minimis* threshold, in certain cases the very circumstances in which aid is granted may show that it is liable to affect trade between Member States and to distort or threaten to distort competition. In such cases, the Commission must set out those circumstances in the statement of reasons for its decision (see Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 24, Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others* v *Commission* [1996] ECR I-5151, paragraph 52, and Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855, paragraph 66).

75 The contested decision contains an assessment of the effect of the aid at issue on the transport sector. At paragraphs 24 and 25 of the statement of reasons for the contested decision the Commission observed, without being contradicted on that point by the Kingdom of Spain, that the aid was likely to help the beneficiaries compete with large undertakings established in Spain. The Commission also

stated that the liberalisation of road transport had led to intra-Community competition in the international transport and cabotage sector. Those reasons are sufficient to describe the real or potential effect of the aid on competition and its effect on trade between Member States (*Spain* v *Commission*, paragraph 58).

76 Third, as regards the aid granted to professional transport companies in an amount less than the *de minimis* threshold, it must be recalled that when aid is granted to entities operating in a sector to which the *de minimis* rule does not apply, and when that sector is characterised by strong competition, aid of relatively little importance can affect competition and trade between Member States (Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24, *Italy* v *Commission*, paragraph 27, and *Spain* v *Commission*, paragraph 63).

77 The Commission has pointed out in this case, without being contradicted by the Kingdom of Spain, that there is necessarily strong competition in a sector which has overcapacity, such as the transport sector. Unless it appears that certain operators in the sector have adopted anti-competitive behaviour, which neither party submits is true in this case, those grounds are sufficient to establish first, that the aid at issue falls within the scope of Article 92(1) of the Treaty and, second, that it distorts or threatens to distort competition and affect trade between Member States within the meaning of that provision.

78 Finally, where the aid granted to professional transport companies exceeds the *de minimis* threshold, the grounds of the contested decision set out at paragraph 75 above are *a fortiori* applicable to them.

79 As there is no need to rule on the other arguments put forward by the Kingdom of Spain, it follows from the above that the second part of the second plea must be upheld in so far as the amount of the aid at issue granted to non-professional transport companies was less than the *de minimis* threshold, and must be rejected for the rest.

The third plea, alleging, first, infringement of Article 92(3)(c) of the Treaty, and second, insufficient and inconsistent reasoning of the contested decision

Arguments of the parties

80 The Kingdom of Spain submits that if the aid at issue constituted State aid, the Commission should have authorised it on the basis of the derogation laid down in Article 92(3)(c) of the Treaty on the ground that it is justified by objectives relating to the protection of the environment and improvement of road safety.

81 The Commission made several errors in the assessment and classification of the aid scheme at issue.

82 It wrongly refused to accept that the Agreement had a definite impact on the protection of the environment and on road safety. By the very fact that it aims to renew the Spanish fleet of commercial vehicles, in principle without altering capacity, the aid scheme enables the average age of those vehicles to be lowered, and as a consequence the level of emission of gaseous pollutants (CO_2 and NO_2) to be reduced. For the same reasons the aid scheme guarantees improved road safety.

83 Several legal consequences follow from that incorrect assessment.

84 First, as regards the protection of the environment, the Commission disregarded Article 92(3)(c) of the Treaty, founding its argument on the Guidelines for environmental aid in order to refuse authorisation for the aid at issue, in so far as it constituted investment aid. The relevant provisions of those guidelines, which state that investment aid is only permissible for the purpose of Article 92(3)(c) if it is strictly limited to the additional costs necessary to attain higher standards than those imposed by law or to satisfy new obligatory standards in environmental matters, are to be regarded as a body of rules indicative of the practice that the Commission intends to follow and applicable without prejudice to the provision. As a consequence, the Guidelines for environmental aid cannot have the effect of confining the scope of that provision solely to the cases they envisage. It is clear that the aid at issue should have been authorised as investment aid even though it did not satisfy all the criteria specifically laid down by the Guidelines.

85 It follows that the Commission wrongly found that the aid at issue was unlawful.

86 If the aid was not investment aid but operating aid, the Commission wrongly held that it was in any event excluded from the scope of Article 92(3)(c) of the Treaty. It is clear from the case-law of the Court of First Instance that such aid may in certain circumstances fall within that provision (Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraph 48, and Case T-67/94 *Ladbroke Racing* v *Commission* [1998] ECR II-1, paragraphs 123 to 165). In addition, it is clear from several notices on State aid that operating aid may come within the scope of the provision. In Decision 2000/410/EC of 22 December 1999 on the aid scheme which France is planning to implement in favour of the French port sector (OJ 2000 L 155, p. 52), the Commission concluded that the operating aid was lawful, having regard to a range of factors, including the limited economic impact of the aid at issue, the fact that the beneficiaries were SMEs and the absence of objections by interested third parties. The same circumstances could be observed in this case. The Commission should therefore have accepted the validity of the aid at issue.

87 Second, as regards road safety, the Kingdom of Spain argues that the Commission's reasoning is also vitiated by a manifest error. In any event, the statement of reasons is defective. It follows that even if the aid could not be justified on the ground of protection of the environment it should at least have been authorised on the ground of its contribution to road safety.

88 Finally, the Kingdom of Spain submits that the contested decision is vitiated by contradictory or inadequate reasoning. The Commission classifies the aid at issue first as investment aid (paragraph 35 of the contested decision) and then as operating aid (paragraph 38 of the contested decision).

89 The Commission replies that, contrary to the Kingdom of Spain's submission, the purpose of the aid scheme is not to improve protection of the environment or road safety. On the contrary, it is granted on the basis of the total value of the vehicle, without reference to excess costs relating to environmental or safety matters. At most it can be conceded that it has an incidental beneficial effect on those two areas.

90 Such an effect is not sufficient to bring the aid at issue within the scope of Article 92(3)(c) of the Treaty. The Guidelines for environmental aid, which should be considered to be applicable to road safety by analogy, require, on the contrary, that the aid at issue be specifically intended for environmental protection. In addition, those guidelines provide that the aid must be limited to offsetting the excess costs strictly imposed on the undertakings concerned, which is clearly not the case in these proceedings. Furthermore, it is essential for the aid to be compatible with the common interest, whereas in this case certain factors such as overcapacity in the road transport sector indicate that for the aid scheme to be valid its aim ought to have been to reduce existing capacity rather than merely maintaining it.

91 Next, the Commission argues that the aid at issue cannot be classified as investment aid. First, it does not have the ad hoc nature inherent in that category of aid. Second, it concerns charges attributable to undertakings in respect of their usual commercial activity. It follows that it must be classified as operating aid. The Commission refers on that point in particular to Joined Cases 62/87 and 72/87 *Exécutif régional wallon* v *Commission* [1988] ECR 1573, paragraphs 31 to 34.

92 Finally, the Commission submits that the statement of reasons for the contested decision is adequate in law and is not vitiated by contradictory reasoning.

Findings of the Court

93 In the application of Article 92(3)(c) of the Treaty the Commission has a wide discretion, the exercise of which involves complex economic and social assessments which must be made in a Community context (see, for example, Case 310/85 *Deufil* v *Commission* [1987] ECR 901, paragraph 18). Judicial review of the manner in which that discretion is exercised is confined to establishing that the rules of procedure and the rules relating to the duty to give reasons have been complied with and to verifying the accuracy of the facts relied on and that there has been no error of law, manifest error of assessment in regard to the facts or misuse of powers (*Spain* v *Commission*, paragraph 74).

94 Articles 92(3)(c) and 93 of the Treaty expressly state that the Commission 'may' consider aid covered by the first of those two provisions to be compatible with the common market. Accordingly, whilst the Commission must always determine whether State aid subject to review by it is compatible with the common market, even if that aid has not been notified to it (see Case C-301/87 *France* v *Commission* (the '*Boussac Saint Frères*' case) [1990] ECR I-307, paragraphs 15 to 24), it is not bound to declare such aid compatible with the common market.

95 However, as stated at paragraph 69 of the present judgment, the Commission is bound, first, by the guidelines and notices that it issues in the area of supervision of State aid where they do not depart from the rules in the Treaty and are accepted by the Member States. Secondly, under Article 253 EC, the Commission must give reasons for its decisions, including decisions refusing to declare aid compatible with the common market under Article 92(3)(c) of the Treaty (*Spain* v *Commission*, paragraph 76).

96 It is clear from the Guidelines on environmental aid that it is essential that aid be classified as either aid for investment or operating aid. Different legal rules apply to each of those classifications (*Spain* v *Commission*, paragraphs 77 to 80).

97 Examination of the contested decision in the present case does not reveal clearly whether the Commission considered the aid in question to be investment aid or operating aid. Thus, paragraph 35 of the grounds for the contested decision implies that the aid is for investment, whilst paragraph 38 gives the impression that it is operating aid.

98 The statement of reasons required by Article 253 EC must explain clearly and unambiguously the reasoning followed by the Community authority which has adopted the contested act, so as to enable interested parties to take cognisance of the justifications for the measure for the purpose of defending their rights and to enable the courts to exercise their powers of review (*Spain* v *Commission*, paragraph 82).

99 The contested decision is therefore vitiated by a defect in the statement of reasons concerning the incompatibility of the aid scheme provided for in the Agreement with the criteria laid down in the Guidelines on environmental aid.

100 Having regard to the findings at paragraphs 79 and 99 of this judgment, and without it being necessary to examine the first plea in law relied on by the Kingdom of Spain, the action must therefore be upheld and Articles 2 and 4 of the contested decision must be annulled.

Costs

101 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Kingdom of Spain has applied for costs and the Commission has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Annuls Articles 2 and 4 of Commission Decision 2001/605/EC of 26 July 2000 on the aid scheme implemented by Spain for the purchase of commercial vehicles under the Cooperation Agreement of 26 February 1997 between the Ministry for Industry and Energy and the Instituto de Crédito Oficial;**

2. Orders the Commission of the European Communities to pay the costs.

Puissochet Macken Cunha Rodrigues

Delivered in open court in Luxembourg on 13 February 2003.

R. Grass

Registrar

J.-P. Puissochet

President of the Third Chamber