1. In stating that the Commission shall be informed of plans to grant new or alter existing aid 'in sufficient time to enable it to submit its comments', the draftsmen of the Treaty have sought to provide this institution with sufficient time for consideration and investigation to form a *prima facie* opinion on the partial or complete conformity with the Treaty of the plans which have been notified to it.

2. In the absence of any Regulation specifying this period, the Member States cannot unilaterally terminate it, but the Commission would not act with proper diligence if it omitted to define its attitude within a reasonable period, guided by Articles 173 and 175, which provide for a period of two months.

3. When this period has expired, the Member State concerned may implement the plan, but the requirements of legal certainty involve that prior notice should be given to the Commission. The aid thereupon comes under the system of existing aid.

4. The objective pursued by Article 93 (3), which is to prevent the implementation of aid contrary to the Treaty, implies that this prohibition is effective during the whole of the preliminary period.

5. The third sentence of paragraph 3 of Article 93 must be interpreted as meaning that if the Commission, during the preliminary examination of aid which has been notified to it, arrives at the conclusion that there is no need to initiate the contentious procedure, it is not bound to issue a decision within the meaning of Article 189.

6. The prohibition upon the Member State concerned putting its proposed measures into effect extends to all aid which is granted without being notified; in the event of notification, it operates during the preliminary period, and where the Commission sets in motion the contentious procedure, up to the final decision. As regards the whole of this period it confers rights on individuals which the national courts are bound to safeguard.

7. While the direct effect of the last sentence of Article 93 requires national courts to apply this provision without any possibility of its being excluded by rules of national law of any kind whatsoever, it is for the internal legal system of every Member State to determine the legal procedure leading to this result.

In Case 120/73

Reference to the Court under Article 177 of the EEC Treaty by the Verwaltungsgericht (Administrative Court) of Frankfurt-on-Main for a preliminary ruling in the action pending before that court between

GEBR. LORENZ, GMBH, 675 Kaiserslautern, Denisstraße,

and

FEDERAL REPUBLIC OF GERMANY, represented by the Bundesamt für gewerbliche Wirtschaft (Federal office for trade), 6 Frankfurt-on-Main, Bockenheimer Landstraße 38,

and

LAND RHEINLAND/PFALZ, represented by the Minister for Economics and Transport, 65 Mainz,

intervening party,

on the interpretation of Article 93 (3) of the Treaty,

THE COURT

composed of: R. Lecourt, President, A. M. Donner, M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh, A. J. Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts of the case, the matter referred and the observations submitted under Article 20 of the Statute of the Court of Justice are described in the report for the hearing as follows:

During 1968, a draft law providing for grants to be made available to support investment in certain regions was drawn up by the Government of the Federal Republic of Germany as part of a general scheme of aid for regional economic development.

In accordance with Article 93 (3), first sentence, of the Treaty, the Commission was notified of the draft law by note verbale dated 22 April 1969. Other plans included in the same programme had already been notified previously (20 February 1969), or were so during the next few months (9 June and 19 September 1969). In the course of the parliamentary procedure for adoption of the draft, additional information — mainly concerned with some amendments adopted at the second reading — was given to the Commission on 20 June 1969 in the multilateral consultations arranged by the latter. After being approved by the Bundestag and the Bundesrat, the draft became the Investment Allowance Law of 18 August 1969 (Investitionszulagegesetz, BGBl I, 1211), which came into force on 22 August 1969.

The Commission's staff did not complete its report for the Commission on the set of plans notified between February and September 1969, until 18 December 1969. The Commission took the view that the proposed aid scheme was not compatible with the common market, and accordingly initiated the procedure under Article 93 (2) of the Treaty on 13 January 1970.

The plaintiff in the main action, a transport undertaking, wished to construct a warehouse and applied to the defendant in the main action for a certificate confirming the value to the economy of its planned investment, which was necessary in order to obtain a grant. When the application was rejected, the plaintiff commenced an action in the Verwaltungsgericht of Frankfurt-on-Main to obtain the certificate refused.

Considering that the action raised questions concerning the interpretation of Community law, the court, by an order dated 19 March 1973, referred the following questions for a preliminary ruling:

(a) Has the third sentence of Article 93 (3) of the EEC Treaty to be interpreted as meaning that the Commission has in any case to reach a final decision, i.e. even when the proposed national law has been held by the Commission to be compatible with Article 92 of the EEC Treaty?

(b) If the Commission does not 'without delay initiate the procedure' in accordance with the second sentence of Article 93 (3) of the EEC Treaty, after being informed by the Member State in accordance with the first sentence of Article 93 (3) of the EEC Treaty, does this have the consequence in law that the prohibition contained in the third sentence of Article 93 (3) of the EEC Treaty ceases to apply and the system of aid may be introduced?

(c) Does the prohibition contained in this provision still apply if the procedure in accordance with the second sentence of Article 93 (3) of the EEC Treaty, in spite of the Commission having been informed by the Member State in sufficient time, is not initiated until after the system of aid has come into effect?

(d) If question (b) is answered in the negative and question (c) in the affirmative, is the making of a 'final decision' a precondition of the validity of the proposed national law, and must a national law enacted contrary to this provision be regarded as invalid or inapplicable until the decision has been reached?

(e) Are the words 'Member State' in the third sentence of Article 93 (3) EEC Treaty to be interpreted as meaning that failure to observe this provision infringes the direct rights of private parties, or must the national court, in the circumstances of question (d), of its own motion take account of the invalidity of the law in its decision?

As to the first question, the national court favours a reply in the affirmative, particularly in view of the requirements of legal certainty and the principle which holds that all legal procedure must terminate in a decision.

As to the second, the Verwaltungsgericht is far from certain that the Commission's failure to speak or act can be construed as an indication of approval. In such a case Member States should make a formal complaint and commence proceedings for failure to act, in accordance with Article 175, first and second paragraphs. Any other course would entail an interpretation by Member States of the words 'without delay', which might then be given different meanings by different Member States.

As regards the third and fourth questions, the court is of the opinion that if a national legislator has not waited for a decision from the Commission on the provisions planned, he takes the risk of having either to repeal it or to see it annulled by the courts, since otherwise the third sentence of Article 93 (3) would be deprived of any real effect. According to the court making the reference, the restriction imposed by the third sentence of Article 93 (3) must therefore amount to a formal condition of validity, applicable in particular to any law whereby the system of aid is introduced.

In respect of the last question, the Frankfurt Verwaltungsgericht considers that even if the third sentence of Article 93 (3) is not direct in its effect, the national court is competent to hold that a breach of the Treaty has occurred and to attach to it the legal consequence of nullity, by reason precisely of the fact that this Community provision is by nature a formal condition of validity for national laws.

The order of 19 March 1973 making the reference was registered at the Court Registry on 12 April 1973.

After hearing the preliminary report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to dispense with a preliminary inquiry.

Written observations were submitted by the Commission, and by the Governments of the Federal Republic of Germany and the United Kingdom.

Oral observations were heard from the Commission, represented by its agent, Mr Karpenstein, the German Government, represented by Mr Seidel, Regierungsdirektor, and the United Kingdom, represented by Mr G. Slynn, Junior Counsel to the Treasury, at the hearing on 10 October 1973.

The Advocate-General delivered his opinion at the hearing on 7 November 1973.

II — Observations submitted under Article 20 of the Statute of the Court of Justice

A — *Observations of the Commission*

The Commission observes that in relation to State aid the Treaty draws a distinction between existing aid and new aid. If aid is already being given, then a procedure initiated by the Commission under Article 93 (2) cannot of itself affect the internal validity of the national law in question. The same would be true of a decision by the Court of Justice under Articles 169 and 170 of the Treaty, that the State concerned has failed to fulfil an obligation. According to Article 171, the Member State must take the necessary measures to comply with the judgment of the Court of Justice.

As regards new aid, on the other hand, since the requirements of maintaining certainty and confidence in the law are not involved, the scheme of Article 93 (3) is more exacting. A double obligation is imposed on Member States: they must inform the Commission of the proposed aid scheme in sufficient time to enable it to submit its comments, and must not put the proposed measures into effect until the Commission has given its opinion. This second obligation raises the following questions: when does it arise, how long does it subsist and what are the consequences, for the validity or applicability of a national aid scheme, of its infringement?

As to the first point, the Commission is of the opinion that the obligation to refrain from putting the measures into effect cannot depend solely on the Commission's initiation of the procedure set out in Article 93 (2). This obligation exists already as a corollary of the obligation to inform the Commission, so that the Member State concerned is already bound by the restrictive obligation during the period allowed for the Commission's scrutiny. The final sentence of Article 93 (3) merely serves to extend that obligation.

As regards the duration of the restriction, the Commission states that in practice it observes the theory maintained by the majority of writers, that this restriction exists only for what is a reasonable period for consideration after the Commission has been duly informed. In a draft regulation submitted to the Council on 18 April 1966 on the application of Article 93, the Commission envisaged a period the normal duration of which would be 8 weeks, and which would not in any case exceed 16 weeks, at the end of which Member States might, in the absence of any express decision, proceed to put the aid scheme into effect.

However, it is conceded by the Commission that since the draft was not adopted by the Council, the suggestion above is open to the criticism, already expressed by the court referring the questions, that it lacks precision, contrary to the requirement of legal certainty. For this reason it sees no grounds for objection if the Commission's constant practice of expressing an opinion even when it did not consider any objection need be made to the plans of which it was informed, should be interpreted as founding a legal obligation. Such a duty could be supported by the sanction of proceedings for failure to fulfil an obligation. However, this kind of notification would not have to be couched in the form of a formal decision within the meaning of Article 189; moreover, it could not have the effect of excluding a subsequent review, this time under paragraphs 1 and 2 of Article 93. On the other hand, the Commission concedes that, once a reasonable period has elapsed, the restriction ceases to apply and it is not necessary to await any decision which might be given outside that period. The third sentence of Article 93 (3) applies only to the procedure mentioned in Article 93 (2).

Thus, the prohibition against putting the aid scheme into effect, which applies as soon as notification has been given, ceases either when the Commission communicates its opinion that the scheme is compatible with the common market, or when a reasonable period for consideration has elapsed. It is, on the other hand, extended if the Article 93 (2) procedure is initiated before the time for consideration has passed. Finally, if this procedure is not commenced until after the period for consideration has elapsed, it ought to be treated as a procedure against an aid scheme already existing, and as such be effective only as to the future.

As regards the consequences of a breach of the prohibition against putting the aid scheme into effect, the Commission cites the judgments of the Court of 15 July 1964 (Case 6/64, *Costa-Enel,* Rec. 1964, p. 1141) and 19 June 1973 (Case 77/72 *Capolongo,* not reported) as recognizing the direct of the final sentence of Article 93 (3).

But this direct effect cannot be limited exclusively to cases where the Commission has initiated a procedure within the meaning of the second sentence of Article 93 (3). Direct effect should also attach to the restrictive obligation during the time for consideration, running from notification of the aid scheme. Failure to observe this restriction does not necessarily invalidate the national measure which has been put into effect. All that is required is that the national courts declare it not to be applicable for as long as the restrictive obligation subsists.

The replies suggested by the Commission to the questions referred are as follows: as to the first question, the Commission considers what it ought, in every instance, to express its opinion of the aid scheme. This obligation, which, however, does not necessitate a formal decision, derives from general principles of legal certainty rather than from the third sentence of Article 93 (3).

The second question should be answered in the affirmative. If the Commission fails, within a reasonable time, to initiate the procedure under

Article 93 (3), second sentence, then the prohibition against implementation lapses.

The Commission observes that in the present dispute it considers the purposes of the law of 18 August 1969, taken as a whole, to be acceptable. It wishes merely to amend it in certain respects and to restrict its scope. That is why the Commission informed the Federal Government that it regarded the German regional economic subsidies as aid already in existence, so that the procedure initiated on 13 January 1970 did not prevent that law from being put into effect pending a final decision.

The reply to the third question depends on when the procedure was initiated. Initiation of the procedure, if done during the normal period for which the restriction applies, causes the period to be extended, according to the third sentence of Article 93 (3). Outside that initial period no restriction would be in force, therefore the procedure would be one taken against an existing aid, which could only have effect *ex nunc*.

As to the fifth question, the Commission considers that both the normal restriction during the examination period and the extended restriction provided for in the third sentence of Article 93 (3) are of direct effect. Failure to observe this restriction would not, however, result in nullity. The national courts could declare the scheme not to be applicable until the Commission's final decision.

B — Observations of the UK Government

The opinion of the United Kingdom Government is that Article 93 (3) introduces a restrictive condition only where the Commission, after being informed in sufficient time for it to submit its comments, has formed the view that the plans are incompatible with the common market and when it has without delay initiated the procedure referred to in Article 93 (2).

It is evident from the general scheme of Article 93 that Member States are free to exercise their own judgment in implementing and applying their existing systems of aid, subject to the requirement of compatibility with the common market expressed in Article 92 and that of scrutiny by the Commission expressed in Article 93, particularly in paragraph 2.

As regards the control exercisable over new plans for granting aid under Article 93 (3), the United Kingdom Government observes, firstly, that there is no definite requirement that the Commission must give its approval or authorization expressly. The absence of authorization does not prevent a system of aid from being introduced or altered. On the other hand, there is no obligation on the part of the Commission to make comments at the stage referred to in the first sentence of Article 93 (3). The Commission can only initiate the procedure under Article 93 (3), second sentence, if it is of the opinion that the plans are incompatible with the common market. The third sentence of Article 93 (3) relates exclusively to the procedure above, under Article 93 (2).

The only duty laid upon Member States, then, is to notify proposed measures for granting aid and to suspend those measures, if the Commission considers them to be incompatible with the common market and initiates without delay the procedure under Article 93 (2).

The United Kingdom Government contests the argument put forward by the court making the reference whereby Article 93 (3) is held to imply that the Commission must initiate the procedure not only where the aid proposed is held to be incompatible, but equally where it is to be allowed as compatible with the Treaty. For a Member State, while awaiting such a decision, to find itself bound to refrain from implementing its proposals, would amount to an undesirable and unnecessary infringement of the Member State's liberty, making it wait upon the Commission's pleasure. The possibility of commencing an action for failure of the Commission to fulfil its obligations in no way reduces the unreasonableness of this restriction. Where there is delay in reaching a decision by the Commission due to the complexity of the proposals submitted, it is only right that the Member State should be allowed to implement the plans, subject always to the permanent restriction contained in Article 93 (1) and (2).

Even if it is conceded, contrary to the opinion of the United Kingdom Government, that the Commission is bound, under the terms of Article 93 (3), in every instance to make a final decision, the fact that Article 93 contains no general prohibition against granting aid makes it clear that failure on the part of the Commission to take action within a reasonable period of time or before the date on which the plans are due for implementation constitutes tacit approval or waiver of the requirement of awaiting a final decision, as is evident from the opinion of Mr Advocate-General Lagrange on Article 102 in *Costa v Enel,* (Case 6/64, Rec.1964, p. 1185). The existence of the procedure for failure to fulfil an obligation does not affect the argument.

In answer to the first question, the United Kingdom Government submits that the Commission is not required by Article 93 (3) to reach a final decision in every case, even where it considers the proposals to be compatible with the common market.

The second question should, in the opinion of the United Kingdom Government, be answered in the affirmative. Failure on the part of the Commission to respond after a reasonable period has elapsed since notification renders the prohibition contained in Article 93 (3) ineffective. Any action taken subsequently by the Commission must be taken under Article 93 (2).

The third question should be answered in the negative since any procedure initiated by the Commission outside the period allowed is out of time.

The fourth and fifth questions do not arise if the submissions of the United Kingdom Government on the first, second and third questions are correct. No reply need therefore be framed.

C — *Observations of the German Government*

On an overall analysis of the Treaty provisions applicable in respect of aid, the German Government observes that the prohibition in Article 92 (1) does not apply to all grants of aid but only to those which affect trade between Member States and distort competition. That is why the prohibition is addressed solely to Member States and has no direct effect. The importance attached to safeguarding the interests of Member States is also evident from the power conferred on the Council by Article 93 (2), third indent, to grant exemptions in exceptional circumstances.

The German Government submits that the answer to the first question should be in the negative. According to Article 93 (3), the control exercised over aid schemes makes use of a twofold procedure. The compulsory notification by a Member State of its proposals to grant aid is to enable the Commission to give its opinion, either that there is no objection to the introduction of the proposed scheme, or that since some objections do appear a formal scrutiny has been commenced. The latter indicates that the notification procedure has given way to the investigation procedure. During the notification procedure no step may be taken towards implementing the proposals for aid, since the first sentence of Article 93 (3) states that notification must allow the Commission time to make its comments. It would in any event be contrary to logic and the system of preventive control for a Member State to be able to adopt during the initial period measures which might later be prohibited under the investigation procedure.

Neither the wording nor the purpose of Article 93 (3) requires the Commission to give a final decision at the end of the notification procedure. Since the prohibition in Article 92 does not have direct effect, it would be sufficient for the Commission to make known by informal means that it has no objection to the proposed aid. Even where the Commission terminates the notification procedure by initiating the investigatory procedure mentioned in the second sentence of Article 93 (3), a formal decision would not be necessary, since it would be incompatible with the purely informative nature of the initial procedure to appeal against any such decision.

This interpretation, confirmed by the practice followed by the Commission, accords with the draft regulation submitted to the Council by the Commission in 1966, on the application of some of the provisions in Article 93. Indeed Article 1 allows Member States to implement the plans notified as soon as the Commission shows, expressly or by lapse of a certain period, that it has no objection to make.

The requirements of legal certainty mentioned by the court of reference in support of the requirement of a final decision, would be as well assured, as regards matters affecting only Member States and institutions, by certifying as to compatibility or by notification that a formal inquiry had been initiated.

As to the consequences of the Commission's failure to act after the necessary period for reaching an opinion on the aid proposals notified has elapsed (question two), the opinion of the German Government is that the restriction based on the first sentence of Article 93 (3) subsists only for a certain period which varies according to the particular case and that when that period has elapsed the aid plan, if properly notified, may be implemented.

This was the result envisaged by the Commission in its draft regulation on the application of some of the provisions in Article 93. Moreover, the same view was maintained by Mr Advocate-General Mayras in Case No 70/72 *(Commission v Federal Republic of Germany)*. The period within which the Commission must make known any objections must be gauged, in each case, in the light of the urgency of the aid proposed and the needs of the Commission regarding information.

If the Commission has given a favourable opinion, any subsequent reservations it may have only entitle it to initiate a procedure under Article 93 (2), which does not have suspensory effect. If the Commission has allowed the period for consideration to elapse, the position is no different. It might be different in the event of the procedure having been initiated after the consideration period but prior to the implementing of the proposals. But that is not the case before the Court.

To the third question, the German Government would reply that a procedure initiated against a system of aid introduced after expiry of the consideration period could only be based on Article 93 (2) and thus be effective only as to the future.

As to the fourth question, the German Government considers that infringement of the prohibition contained in Article 93 (3), last sentence, cannot have the consequence of invalidating the national law in question but can make it inapplicable while no final decision has been given by the Commission. It is evident from the reasoning of the Court in Case 34/67 (Judgment of 4 April 1968, *Lück*, Rec. 1968, p. 370) that where Community regulations having direct effect are concerned, the national courts may adopt measures which guarantee the precedence of Community law, without necessarily having to declare the national law void.

Furthermore, the national law adopted in breach of the prohibition expressed in the last sentence of Article 93 (3) is not deprived of effect permanently, but only subject to the final decision of the Commission on its compatibility with the common market.

In reply to the fifth question, the German Government is wholly in accord with the Judgment of the Court of Justice given on 15 July 1964 (Case 6/64 *Costa v Enel,* Rec. 1964, p. 1162), which states that the third sentence of Article 93 (3) confers direct rights on private parties. The inapplicability of the law in question, given the precedence of Community law, must be automatically considered.

The report for the hearing reproduced above was followed by oral proceedings.

Grounds of judgment

1 By order dated 19 March 1973 filed at the Registry on 12 April 1973, the Verwaltungsgericht, Frankfurt-on-Main, referred several questions, under Article 177 of the EEC Treaty, relating to the interpretation of Article 93 (3) of the Treaty establishing the European Economic Community.

These questions concern the methods of prior control of State aid and, in particular, the effects of delay on the part of the Commission in defining its attitude with regard to proposals which are notified to it, or in setting in motion the procedure for ascertaining their incompatibility with the common market, or of failure so to intervene.

2 Article 93 provides procedure enabling the Commission to discover State aid incompatible, having regard to Article 92 of the Treaty, with the common market, and to provide for its abolition or to prevent its implementation.

Paragraph 1, concerning existing aid, enables the Commission, after giving notice to the parties to submit their comments as described in paragraph 2, to require the Member State concerned to abolish it or alter it within a period of time to be determined by the Commission.

Paragraph 3 institutes prior control of plans to grant new or alter existing aid and provides that 'the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision'.

3 In stating that the Commission shall be informed of plans to grant new or alter existing aid 'in sufficient time to enable it to submit its comments', the draftsmen of the Treaty have sought to provide this institution with sufficient time for consideration and investigation to form a *prima facie* opinion on the partial or complete conformity with the Treaty of the plans which have been notified to it.

It is only after being put in a position to form this opinion that the Commission is bound, if it considers the plan incompatible with the common market, to initiate without delay the contentious procedure, provided for in Article 93 (2), by giving notice to the Member State to submit its comments.

4 According to the last sentence of Article 93 the Member State shall not put its proposed measures into effect until this procedure has resulted in a final decision.

The objective pursued by Article 93 (3), which is to prevent the implementation of aid contrary to the Treaty, implies that this prohibition is effective during the whole of the preliminary period.

While this period must allow the Commission sufficient time, this latter must, however, act diligently and take account of the interest of Member States of being informed of the position quickly in spheres where the necessity to intervene can be of an urgent nature by reason of the effect that these Member States expect from the proposed measures of encouragement.

In the absence of any Regulation specifying this period, the Member States cannot unilaterally terminate this preliminary period which is necessary for the Commission to fulfil its role.

The latter, however, could not be regarded as acting with proper diligence if it omitted to define its attitude within a reasonable period.

It is appropriate in this respect to be guided by Articles 173 and 175 of the Treaty which, in dealing with comparable situations, provide for a period of two months.

When this period has expired, the Member State concerned may implement the plan, but the requirements of legal certainty involve that prior notice should be given to the Commission.

5 On the other hand although it is in the interests of good administration for the Commission, when, at the end of the preliminary examination, it considers that the aid conforms with the Treaty, to inform the State concerned, it is not however bound to take a decision thereon within the meaning of Article 189 of the Treaty, since Article 93 requires such a step only at the end of the contentious procedure.

It is not possible to conclude that the measure of aid is compatible with the Treaty from the fact that the Commission did not consider itself obliged to initiate the contentious investigation procedure within the reasonable period referred to above.

Article 93 (1) requires the Commission, in cooperation with Member States, to keep under constant review all existing systems of aid.

Aid implemented, during the Commission's silence, after a period necessary for its preliminary examination, is thus subject, as an existing aid, to the provisions of Article 93 (1) and (2).

6 In the first place, therefore, it is proper to reply to the questions put that Article 93 (3) of the Treaty must be interpreted as meaning that if the Commission, during the preliminary period, arrives at the conclusion that there is no need to initiate the contentious procedure, it is not bound to issue a decision within the meaning of Article 189.

This same provision implies, moreover, that, if the Commission, after having been informed by a Member State of a plan to grant or alter aid, fails to initiate the contentious procedure, this State may, at the expiration of a period sufficient to enable a preliminary examination of the plan, grant the proposed aid, provided that it has given prior notice to the Commission, and this aid will then come under the system of existing aids.

In view of the answers given to questions (a), (b) and (c), question (d) does not arise.

7 The third question asks whether the term 'Member State' in Article 93 (3) of the Treaty must be interpreted as meaning that the individual has a direct right in the non-infringement of this provision or whether it, at the very least, requires the national court of its own motion to take account of the invalidity of a law which grants aid in contravention of the prohibition on implementation laid down in Article 93 (3).

8 It has already been decided in the judgment of 15 July 1964 (Case 6/64, Rec. 1964, p. 1141), that the prohibition on implementation referred to in the last sentence of Article 93 (3) has a direct effect and gives rise to rights in favour of individuals, which national courts are bound to safeguard.

The immediately applicable nature of this prohibition extends to the whole of the period to which it applies.

Thus the direct effect of the prohibition extends to all aid which has been implemented without being notified and, in the event of notification, operates during the preliminary period, and where the Commission sets in motion the contentious procedure, up to the final decision.

9 As regards the second part of this question, while the direct effect of the prohibition in question requires national courts to apply it without any possibility of its being excluded by rules of national law of any kind whatsoever, it is for the internal legal system of every Member State to determine the legal procedure leading to this result.

Costs

10 The costs of the Governments of the Federal Republic of Germany and of the United Kingdom, as well as those of the Commission of the European Communities, which have submitted observations to the Court, are not recoverable, and as these proceedings are, in so far as the parties to the main action are concerned, a step in the action pending before a national court, the decision on costs is a matter for that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the observations of the Government of the Federal Republic of Germany, the Government of the United Kingdom and the Commission;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Articles 92, 93, 173, 175 and 177;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community, especially Article 20;

Having regard to the Rules of Procedure of the Court of Justice of the European Communities;

THE COURT,

in answer to the questions referred to it by the Verwaltungsgericht, Frankfurt-on-Main by order of that court dated 19 March 1973 hereby rules:

1. The third sentence of paragraph 3 of Article 93 must be interpreted as meaning that if the Commission, during the preliminary examination of aid which has been notified to it, arrives at the conclusion that there is no need to initiate the contentious procedure, it is not bound to issue a decision within the meaning of Article 189.

2. If the Commission, after having been informed by a Member State of a plan to grant or alter aid, fails to initiate the contentious procedure provided for in Article 93 (2), by giving notice to the Member State concerned to submit its comments, the latter may, at the expiration of a period sufficient to enable the aid to undergo a preliminary investigation, grant the proposed aid, provided that it has given prior notice to the Commission, and this aid will then come under the system of existing aids.

3. The direct effect of the prohibition on the Member State concerned from putting its proposed measures into effect extends to all aid which is granted without being notified and, in the event of notification, is granted during the preliminary period, and up to the final decision where the Commission sets in motion the contentious procedure. As regards the whole of this period it confers rights on the individual which the national courts are bound to safeguard.

4. While the direct effect of the last sentence of Article 93 compels national courts to apply this provision without it being possible to object on the grounds of rules of national law, whatever they may be,

it is for the internal legal system of every Member State to determine the legal procedure leading to this result.

Lecourt Donner Sørensen Monaco Mertens de Wilmars

Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 11 December 1973.

A. Van Houtte
Registrar

R. Lecourt
President

OPINION OF MR ADVOCATE-GENERAL REISCHL DELIVERED ON 7 NOVEMBER 1973[1]

Mr President,

Members of the Court,

Today, I have the honour for the first time — as required by Article 166 of the EEC Treaty — 'with complete impartiality and independence, to make, in open court, reasoned submissions'...

They concern four references (119/73, 120/73, 121/73 and 141/73) from the Frankfurt Verwaltungsgericht, made by orders dated 19 March and 28 May 1973 and joined, for the purpose of having common oral proceedings, by an order of this Court of 18 September 1973.

To enable the proceedings to be more easily followed, I should like, by way of introduction to say this,

In the course of 1968 the Government of the Federal Republic of Germany drew up, as part of a programme for regional development, a draft law providing for investment grants and the modification of tax and premiums legislation. Its principal effect was to grant an investment subsidy of 10 % from taxation sources for construction or purchasing costs, to taxpayers in areas along the East-West border, Federal Development regions or Federal improvement areas, who construct or improve business premises or plant after 31 December 1968. The Commission of the European Communities was informed of the proposals in accordance with Article 93 (3) of the EEC Treaty, by means of a note verbale from the Permanent Representative of the Federal Republic of Germany dated 22 April 1969, after the draft law had had its first reading in the Bundestag. The communication was accompanied by the draft law and included an explanation that the draft was only a part of a wide

1 — Translated from the German.