

JUDGMENT OF THE COURT (Sixth Chamber)

12 October 2000 *

In Case C-480/98,

Kingdom of Spain, represented by R. Silva de Lapuerta, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard Emmanuel Servais,

applicant,

v

Commission of the European Communities, represented by G. Rozet, Legal Adviser, and R. Vidal Puig, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Spanish.

APPLICATION for annulment of Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (OJ 1999 L 198, p. 15),

THE COURT (Sixth Chamber),

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

Advocate General: J. Mischo,
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 13 April 2000,

after hearing the Opinion of the Advocate General at the sitting on 8 June 2000,

gives the following

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Judgment

1 By application lodged at the Court Registry on 28 December 1998, the Kingdom of Spain applied under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for annulment of Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and their successors (OJ 1999 L 198, p. 15; 'the contested Decision').

Background and facts

2 The Magefesa group is a very well-known Spanish manufacturer. The undertakings in the group, and their successor undertakings, manufacture household goods, such as pressure cookers, pans and stainless steel cutlery.

3 Until 1983 the Magefesa group had a large share of the Spanish market but at that time it began to experience financial difficulties. From 1984 it was organised into a complex network consisting of two holdings (the Magefesa holding, which included the parent company, Magefesa, and the industrial companies Cunosa, Migsa, Indosa, Udala and Las Mimosas, and the Licasa holding, which included the companies Licasa Patrimonial, Gursa, Albersa and Licasa Industrial) and a commercial group (Agrupación de Empresas Magefesa, which included several of the companies mentioned above: Magefesa, Cunosa, Migsa, Indosa and Gursa).

4 By the end of 1985 the Magefesa group was on the brink of insolvency and, to prevent it from ceasing to trade, a private consultancy firm (Gestiber) was appointed to manage the group. Gestiber put forward an action plan which, among other things, provided for a reduction in the workforce and for securing

aid from central government and from the governments of the autonomous regions where the group's various factories were situated: the Basque Country, Cantabria and Andalusia. The Governments of those three autonomous regions themselves formed three intermediary companies (Ficodesa, Gemacasa and Manufacturas Damma, respectively), which were made responsible for monitoring the way in which the aid was used and for ensuring that the undertakings in the Magefesa group continued to operate by preventing creditors from executing their debts on those undertakings' financial reserves and stock.

- 5 In 1987, the Commission received a complaint that State aid had been granted to the Magefesa group. It opened the procedure laid down in Article 93(2) of the EC Treaty (now Article 88(2) EC) and, by Commission Decision 91/1/EEC of 20 December 1989 concerning aids in Spain which the central and several autonomous governments have granted to Magefesa, producer of domestic articles of stainless steel, and small electric appliances (OJ 1991 L 5, p. 18), it identified the following aid as illegal and incompatible with the common market:

- loan guarantees amounting to ESP 1.58 thousand million;

- a loan of ESP 2.085 thousand million at other than market conditions;

- non-refundable subsidies amounting to ESP 1.095 thousand million;

- an interest subsidy estimated at ESP 9 million.

- 6 By the same decision, the Spanish authorities were requested, in particular, to withdraw the loan guarantees, to convert the soft-loan into a normal loan and to recover the non-refundable subsidies.

- 7 In 1997, the Commission received seven complaints about the advantages which the undertakings in the Magefesa group had gained as a result of their failure to repay the aid declared incompatible in 1989 and to comply with their financial and fiscal obligations. It decided to open the procedure laid down in Article 93(2) of the Treaty in respect of the aid granted to those undertakings or their successors since 1989 (see Commission Notice 97/C 330/02 — OJ 1997 C 330, p. 2).

- 8 At the time when the complaints were received, some of the undertakings in the group had been declared insolvent (Magefesa, Indosa, Cunosa), while others were inactive (Migsa, Gursa). Similarly, as regards the interposed companies, Ficodesa had been declared insolvent, while Gemacasa and Manufacturas Damma were inactive. The commercial group, Agrupación de Empresas Magefesa, had been dissolved. In addition, Indosa's receiver had formed the company CMD (Compañía de Menaje Doméstico) in order to sell the products manufactured by Indosa, the only manufacturing company of the group still operating. Finally, former employees of three of the other manufacturing undertakings (Cunosa, Migsa and Gursa) had created, respectively, the companies LCC, Idisur and Vitrinor.

- 9 At the conclusion of the procedure, the contested Decision was adopted by the Commission on 14 October 1998, was notified to the Spanish Government on 29 October 1998 and was published on 30 July 1999. It declared illegal and incompatible with the common market aid in the form of persistent non-payment of taxes and social security contributions:

— by Indosa and Cunosa, until they were declared insolvent;

— by Migsa and Gursa, until they ceased to operate;

— by Indosa, after it was declared insolvent and until May 1997.

- 10 By the same decision, the Spanish authorities were asked to take the necessary measures to recover the aid from the beneficiaries. The decision specified that the amounts to be recovered should include the interest which accrued between the granting of the aid and the date of its actual repayment.
- 11 It is against that decision that the Kingdom of Spain has brought an action for annulment.

The submissions relied upon

- 12 In support of its application, the Kingdom of Spain has advanced four submissions alleging, respectively, a breach of Article 92(1) of the EC Treaty (now, after amendment, Article 87(1) EC), an infringement of the principle of legal certainty, a failure to state the grounds on which the contested Decision is based and, finally, the impossibility of recovering interest.

The submission that Article 92(1) of the Treaty has been infringed

- 13 The Kingdom of Spain claims that the Commission misapplied Article 92(1) of the Treaty in deciding that the non-payment by Indosa, Cunosa, Migsa and Gursa of certain sums to Spanish Social Security and the Spanish Treasury constituted aid which was incompatible with the common market. It submits that that situation comes about as a result of the general law applying to any undertaking subject to a court-supervised recovery scheme or which has contracted debts towards those bodies, since neither public nor private creditors are obliged to apply for such an undertaking to be declared insolvent or to be wound up. In addition, no assistance was given to the undertakings Indosa, Cunosa, Migsa and Gursa through State resources, inasmuch as there was no remission of their debts and the relevant authorities used all available legal remedies to recover the money they were owed.
- 14 The Commission contends that, on the contrary, it is not Spanish legislation which is at issue in this case but rather the systematic non-payment of certain debts by undertakings in the Magefesa group. The Commission maintains that the Spanish authorities did not use all the available legal remedies to secure payment of those debts.
- 15 Under Article 92(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.
- 16 According to settled case-law, Article 92(1) of the Treaty does not distinguish between measures of State intervention by reference to their causes or aims but

defines them in relation to their effects (see, *inter alia*, Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 27; and Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20).

- 17 The mere fact that the national legislative provisions relied on by the Spanish Government are applicable to any enterprise subject to a court-supervised recovery scheme, or which has contracted debts to Social Security and the Treasury, is not therefore sufficient to enable the measures taken by the authorities concerned with regard to the undertakings in question automatically to escape being categorised as aid within the meaning of Article 92 of the Treaty.
- 18 It is true, as the Court held in paragraph 36 of its judgment in Case C-200/97 *Ecotrade v Altiforni e Ferriere di Servola* [1998] ECR I-7907 in relation to the Italian special administration procedure for large companies in difficulties, that the possible loss of tax revenue for the State as a result of the application to an undertaking of legislation on court-supervised recovery schemes and insolvency does not in itself justify treating that legislation as aid. Such a consequence is an inherent feature of any statutory system laying down a framework for relations between an insolvent undertaking and the general body of its creditors, and the existence of an additional financial burden borne directly or indirectly by the public authorities as a means of granting a particular advantage to the undertakings concerned may not automatically be inferred from it (see, to that effect, Joined Cases C-72/91 and C-73/91 *Sloman Neptun v Bodo Ziesemer* [1993] ECR I-887, paragraph 21).
- 19 Nevertheless, such an advantage may arise as a result of certain measures being taken or even, as the Commission submits, as a result of the relevant authorities not taking measures in a particular set of circumstances.
- 20 It is apparent from the documents before the Court that, notwithstanding the Spanish Government's assertions that the authorities used all available legal

remedies to secure payment of the debts owed by the undertakings in the Magefesa group, the undertakings in question were able for several years to continue trading without complying with their tax and social security obligations. Although some of them were eventually declared insolvent on the application of private creditors rather than the public authorities, one of them, Indosa, was authorised, apparently free of any conditions, without any opposition from its creditors and without any intervention by the courts, to continue trading after it had been declared insolvent and, as a result, incurred further debts of which only a tiny fraction have been paid off.

- 21 In those circumstances, the Commission was justified in deciding that, in the particular circumstances of the case, the non-payment of taxes and social security contributions by Indosa, Cunosa, Migsa and Gursa during the periods mentioned in the contested Decision, constituted illegal aid which was incompatible with the common market within the meaning of Article 92(1) of the Treaty.

- 22 It follows that the first submission must be rejected.

The submission that the principle of legal certainty has been infringed

- 23 The Spanish Government submits that, in the present case, the Commission infringed the principle of legal certainty by declaring that aid, the amount of which was not known by the Commission, was illegal and obliging the Spanish Government to recover the aid without quantifying the sum repayment of which was supposed to be secured.

- 24 The Commission contends, on the contrary, that the contested Decision does not leave any room for doubt either as to the measures which constituted the aid in

question or as to the period in which those measures were taken. It maintains, however, that it is not obliged to determine the amount of aid to be repaid where its calculation requires factors laid down by national legislation to be taken into account.

- 25 In that regard, it should be observed that no provision of Community law requires the Commission, when ordering the recovery of aid declared incompatible with the common market, to fix the exact amount of the aid to be recovered. It is sufficient for the Commission's decision to include information enabling the recipient to work out himself, without overmuch difficulty, that amount (see, to that effect, Case 102/87 *France v Commission* [1988] ECR 4067, paragraph 33).
- 26 The Commission may, therefore, legitimately confine itself to declaring that there is an obligation to repay the aid in question and leave it to the national authorities to calculate the exact amount of aid to be repaid where, as in the present case, that calculation requires tax and social security systems, the detailed rules of which are laid down in the applicable national legislative provisions, to be taken into account.
- 27 The second submission must therefore be rejected.

The submission that the contested Decision does not state sufficient grounds

- 28 The Spanish Government considers that the Commission has not, in the contested Decision, given any reasons explaining how the failure of four undertakings, two

of which are subject to court-supervised recovery schemes and two of which are inactive, to pay certain unspecified sums to the Treasury and Social Security affects trade between Member States, distorts competition and constitutes public aid incompatible with the common market.

- 29 The Commission contends that, even if the contested Decision includes an incomplete estimate of the amount of aid granted, it makes clear that the sums due in each case are very large and are therefore clearly capable of affecting competition.
- 30 In that regard, it is apparent from the contested Decision that the Commission, in Part VII of the grounds of the decision headed 'Legal Assessment', carried out an analysis of the effect of the operations of the Magefesa group undertakings on the market in household goods and on trade between Member States in that market. With that end in view, the Commission specifically explained the actual position concerning the recovery of aid declared incompatible by Decision 91/1 and the frequency with which new aid was granted after that decision, as well as the reasons why the later aid did not fall within the exceptions laid down by the Treaty and by the Commission Notice 94/C 368/05 entitled 'Community Guidelines on State Aid for Rescuing and Restructuring Firms in Difficulty' (OJ 1994 C 368, p. 12). In doing so, the Commission provided adequate grounds for its decision declaring the aid in question to be illegal and incompatible with the common market.
- 31 It follows that the third submission must be rejected.

The submission that it was impossible to require the payment of interest

- 32 The Spanish Government claims that, in the context of the obligation to recover the disputed aid, undertakings subject to a court-supervised recovery scheme cannot be required to pay interest. According to the case-law of the Court of Justice, the recovery of illegal aid should be carried out in accordance with national procedural rules. Under the Spanish Commercial Code, debts of undertakings undergoing a court-supervised recovery cannot bear interest.
- 33 The Commission notes that the Spanish Commercial Code does not prevent either the payment of interest in the case of Migsa and Gursa, which were not declared insolvent, or the payment of interest which fell due before Indosa and Cunosa were declared insolvent. It also points out that the Commercial Code does not prevent the payment of interest incurred on taxes and social security contributions due after Indosa was declared insolvent, in so far as those taxes and contributions were owed by Indosa as a result of its continued trading. In any event, the Commission submits that the obligation to recover the illegal aid is a substantive, rather than a procedural, matter and that, in accordance with Community law, repaying the disputed amounts, including interest, constitutes the only appropriate means of removing the distortion resulting from the aid.
- 34 In that regard, the Court must reiterate that, although the recovery of unlawfully granted aid, intended to re-establish the previously existing situation, must in principle take place in accordance with the relevant procedural provisions of national law, those provisions are to be applied in such a way that the recovery required by Community law is not rendered practically impossible (see, *inter alia*, Case 142/87 *Belgium v Commission* [1990] ECR I-959, 'Tubemeuse', paragraph 61).
- 35 According to the relevant case-law, the objective of re-establishing the previously existing situation is attained once the aid in question, increased where

appropriate by default interest, has been repaid by the recipient, which thereby forfeits the advantage which it enjoyed over its competitors (see Case C-348/93 *Commission v. Italy* [1995] ECR I-673, paragraphs 26 and 27). On that point, it should be noted that the absence of any claim to interest on the unlawfully granted sums at the time of their recovery amounted to maintaining incidental financial advantages, consisting of the grant of an interest-free loan, for the undertaking concerned.

- 36 However, the national legislation applicable in the present case provides that the debts of undertakings which have been declared insolvent cease to produce interest with effect from the date of the relevant declaration. Such a rule, justified by the common interest of all the creditors in not burdening the insolvent undertaking's assets with new debts likely to worsen the situation, applies to all creditors alike, private or public, in all procedures of this kind.
- 37 Taking account of the legislation's objective, the absence of any discrimination in its application and the fact that it applies only to interest falling due after the declaration of insolvency on aid unlawfully received before that declaration, the legislation cannot be regarded as rendering the recovery of aid required by Community law virtually impossible.
- 38 In those circumstances, although the Commission was justified in including in the contested Decision the requirement that the amounts to be recovered should include interest due in respect of the period from the date on which the aid was granted until the actual date of repayment, it was wrong, having regard to the relevant Spanish legislation, not to exclude from that requirement interest falling due after Indosa and Cunosa were declared insolvent on aid unlawfully received before that declaration.

39 Therefore, the contested Decision must be annulled in so far as it includes in the amount of aid to be recovered interest falling due after Indosa and Cunosa were declared insolvent on aid unlawfully received before that declaration. The remainder of the action must be dismissed.

Costs

40 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 failed in the majority of its submissions, it must be ordered to pay, in addition to its own costs, three quarters of the Commission's costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that Commission Decision 1999/509/EC of 14 October 1998 concerning aid granted by Spain to companies in the Magefesa group and

their successors is annulled in so far as it includes in the amount of aid to be recovered interest falling due after Indosa and Cunosa were declared insolvent on aid unlawfully received before that declaration;

2. Dismisses the remainder of the application;
3. Orders the Kingdom of Spain to pay, in addition to its own costs, three quarters of the costs of the Commission of the European Communities.

Gulmann

Skouris

Puissochet

Delivered in open court in Luxembourg on 12 October 2000.

R. Grass

C. Gulmann

Registrar

President of the Sixth Chamber