JUDGMENT OF THE COURT (Sixth Chamber)

29 April 2004 *

In Case C-372/97,

Italian Republic, represented by I.M. Braguglia, acting as Agent, assisted by O. Fiumara, avvocato dello Stato, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by P. Nemitz and P. Stancanelli, acting as Agents, assisted by M. Moretto, avvocato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for the partial annulment of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18),

THE COURT (Sixth Chamber),

composed of: V. Skouris, acting for the President of the Sixth Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: S. Alber,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 20 March 2003, during which the Italian Republic was represented by G. Aiello, avvocato dello Stato, and the Commission by V. Di Bucci, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 October 1997, the Italian Republic brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for the partial annulment of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region (OJ 1998 L 66, p. 18, hereinafter 'the contested decision').

Legal background

2 The general provisions on State aid set out in Articles 92 of the EC Treaty (now, after amendment, Article 87 EC), 93 and 94 of the EC Treaty (now Articles 88 EC and 89 EC) apply in the field of transport, subject to the special provisions of Article 77 of the EC Treaty (now Article 73 EC), which state that aids meeting the needs of coordination of transport or representing reimbursement for the discharge of certain obligations inherent in the concept of a public service are compatible with the Treaty.

3 Article 2 of Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway (OJ, English Special Edition 1970 (II), p. 360), as last amended by Council Regulation (EC) No 543/97

of 17 March 1997 (OJ 1997 L 84, p. 6), which is based on Article 75 of the EC Treaty (now, after amendment, Article 71 EC) and Articles 77 and 94 of the Treaty, confirms that Articles 92 to 94 of the Treaty are to apply in the field concerned. The regulation also lays down certain special rules on the aid in question in so far as they relate specifically to activities in that sector. It thus sets out the cases in and conditions on which Member States are entitled to adopt coordination measures or impose obligations inherent in the concept of a public service which involve the granting of State aid pursuant to Article 77 of the Treaty.

4 Regarding the coordination of transport, Article 3(1)(d) of Regulation No 1107/70 authorises, until the entry into force of Community rules on access to the transport market, aid granted in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems, and thus to contribute towards meeting the needs of the transport market more effectively. Article 3(1)(e) of that regulation also authorises, under certain conditions, aids designed to facilitate the development of combined transport.

5 In the course of introducing a common transport policy, the international road haulage market was partially liberalised within the Community by Council Regulation No 1018/68 of 19 July 1968 on the establishment of a Community quota for the carriage of goods by road between Member States (Journal Officiel 1968 L 175, p. 13), which introduced a quota system in 1969. Under that quota system, Community authorisations permitted their holders to carry out transport operations between Member States for a period of one year. That system was kept in force up to 1 January 1993, the date on which this activity was fully liberalised by Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ 1992 L 95, p. 1).

6 Regarding the market for the carriage of goods within a Member State, Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1989 L 390, p. 3) made cabotage, that is to say, the carriage of goods within one Member State by a carrier established in another Member State, subject, with effect from 1 July 1990, to a transitional system in the form of a progressively increasing Community quota. Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ 1993 L 279, p. 1) provided for the continuance of this transitional system until the definitive introduction of the full liberalisation of cabotage activities with effect from 1 July 1998.

Facts

The aid in question

7 On 18 May 1981, the Friuli-Venezia Giulia Region (hereinafter 'the Region') adopted Law No 28 on action to promote and develop transport of concern to the Friuli-Venezia Giulia Region and the carriage of goods by road for hire or reward ('Law No 28/1981'). Articles 4, 7 and 8 of that law provided for certain aid for road haulage contractors established within the Region.

8 The system introduced by Law No 28/1981 was replaced by Regional Law No 4 of 7 January 1985 on action to promote and develop transport of concern to the Friuli-Venezia Giulia Region and the carriage of goods by road for hire or reward

(hereinafter 'Law No 4/1985'). Articles 4 to 6 of that law introduced a system of regional aid that was essentially identical to the system set up by Law No 28/1981.

9 Those laws provided for three measures in favour of road haulage contractors established in the Region:

(a) annual financing, over a maximum period of 10 years, of up to 60% (for individual contractors) and 70% (for cooperatives and groups) of the reference rate laid down by Ministerial Decree, of interest on loans contracted for the purpose of (Articles 4 of Laws No 28/1981 and 4/1985):

— developing the contractor's infrastructure (construction, purchase, expansion, completion and modernisation of premises required for its operations, including those to be used for the warehousing, storage and handling of goods);

— purchasing, developing and renewing fixed and movable equipment, together with internal and road transport vehicles;

(b) financing the cost of leasing, for a period of three or five years, new vehicles, trailers and semi-trailers and their swap bodies, suitable for the operation of road haulage, together with the installations, machinery and equipment for the use, maintenance and repair of vehicles and for the handling of goods, up to the level of 25% (for individual contractors) and 30% (for cooperatives

and groups) of the purchase price of the assets. This aid, laid down in Article 7 of Law No 28/1981 and Article 5 of Law No 4/1985, was reduced, for all recipients, to 20% and then to 15% of the purchase price by subsequent regional laws;

(c) annual financing, for groups and other forms of association, of up to 50% of investment to be used for the construction or purchase of installations and equipment required in pursuing the aims of the group or association, or contributing to the operation and development of service centres for housing, maintenance and repair of vehicles or related facilities and equipment (Article 8 of Law No 28/1981 and Article 6 of Law No 4/1985).

10 According to information sent to the Commission of the European Communities by the Italian authorities on 18 November 1996, the amount of credits earmarked for the aid referred to in Article 4 of Law No 4/1985, for the period from 1985 to 1995, was ITL 13 000 million (EUR 6.7 million), and 155 applications were granted. On average, the level of aid disbursed ranged from 13% to 26% of the cost of the loans and interest. The budget for the period 1981 to 1985 was ITL 930 million (EUR 0.4 million), and 14 applications were granted during this period (section II of the reasons for the contested decision).

11 The budget allocated for the aid covered by Article 5 of Law No 4/1985 amounted to ITL 23 300 million (EUR 11.8 million) for the period from 1985 to 1995, and 1 691 applications were granted, with an average financing rate of around 19%, over that period. In 1993, 83 applications were granted and the level of aid was 10%. From 1981 to 1985, 305 applications were granted and aid amounting to ITL 5 790 million (EUR 2.9 million) was disbursed (section II of the reasons for the contested decision).

12 According to the information sent by the Italian Government to the Commission after the initiation of the administrative procedure, aid granted under Article 6 of Law No 4/1985 was for investment in the combined transport sector, namely the purchase of swap bodies and corresponding attachment devices for inter-modal vehicles and semi-trailers. According to that information, such aid accounted for between 10 and 15% of the total amount of aid allocated (sections II, seventh paragraph, and VIII, seventh and eighth paragraphs, of the reasons for the contested decision).

The administrative procedure and the contested decision

13 Having learned of the existence of Law No 4/1985, the Commission, by letter of 29 September 1995, asked the Italian authorities to send it all the legislation, documents, information and data necessary to assess whether the system of aid introduced by that law was compatible with the common market.

14 By letter of 14 February 1997, the Commission informed the Italian Government of its decision to initiate the procedure laid down in Article 93(2) of the Treaty in respect of the system of aid for commercial road haulage companies introduced by Law No 28/1981 and Law No 4/1985 (OJ 1997 C 98, p. 16). It asked the Italian authorities and interested third parties to submit their comments and furnish all documents, information and data required in order to examine the compatibility of the aid in question with the common market. On 3 April 1997, the Commission received the Italian Government's comments, to which the supplementary report by the Region (hereinafter 'the supplementary report') was annexed.

15 On 30 July 1997, the Commission closed the procedure provided for in Article 93(2) of the Treaty by adopting the contested decision.

16 Section VI of the reasons for the contested decision states that, since the aid in question seeks to improve the competitive position of commercial road haulage companies in the Region, by reducing their normal business running costs, whereas such costs have to be borne in full by their competitors outside the Region, it benefited those companies and that specific activity in such a way that it was liable to produce a distortion of competition.

17 First, the Commission makes a distinction, in section VII, third to eleventh paragraphs, of the reasons for the contested decision, between the road haulage market at local, regional and national level, on the one hand, and the international road haulage market, on the other. It points out that the former was not open to Community competition until Regulation No 4059/89 entered into force on 1 July 1990. Consequently, the aid granted before that date to carriers operating exclusively at local, regional or national level could not affect intra-Community trade and therefore did not constitute State aid for the purposes of Article 92(1) of the Treaty. However, the aid granted to those carriers after that date is State aid for the purposes of that provision, since it was liable to affect trade between Member States.

18 With regard to the international road haulage market, the Commission states, in section III, fourth paragraph, of the reasons for the contested decision, that it has been open to intra-Community competition since 1969, when Regulation No 1018/68 entered into force. It infers from this, in section VII, last paragraph, of those reasons, that the aid provided for by Laws Nos 28/1981 and 4/1985 had

strengthened the financial position and hence the scope of commercial haulage companies in the Region vis-à-vis their competitors since 1969 for companies engaged in international transport and was accordingly capable of affecting trade between Member States. The aid in question therefore constitutes State aid for the purposes of Article 92(1) of the Treaty and the local or limited nature of the competition represented by the regional hauliers cannot preclude the application of that provision.

19 Next, in examining whether the aid thus characterised as State aid qualifies for a derogation, the Commission considers, in section VIII, ninth paragraph, of the reasons for the contested decision, that the aid for financing equipment designed for combined transport can benefit from the exemption provided for in Article 3(1)(e) of Regulation (EEC) No 1107/70. As regards the other aid in question, it does not qualify for the derogation provided for by Article 3(1)(d) since there is no excess capacity and no reorganisation plan for the sector.

20 According to the contested decision, the derogations provided for in Article 92(3)(a) and (c) of the Treaty for aid to promote the economic development of certain areas do not apply, firstly, because there is no regional development plan affecting all sectors of the Region's economy and, secondly, because not all the territory of the Region is in areas qualifying for the exemptions.

21 With regard to the derogations provided for in Article 92(3)(c) of the Treaty for sector-based aid, they do not apply to the aid in question since it is not accompanied by any action aimed at an objective of common interest, such as a restructuring plan for the sector. Moreover, aid for leasing transactions relating to

the acquisition of new vehicles is operating aid (section VIII, 13th paragraph, of the reasons for the contested decision).

22 Finally, section VIII, last paragraph, of the reasons for the contested decision states that aid granted under Laws Nos 28/1981 and 4/1985 to commercial road haulage companies in the Region engaged in local, regional or national transport operations from 1 July 1990 onwards, as well as to those engaged in international transport operations, is incompatible with the common market within the meaning of Article 92 of the Treaty. The Commission therefore concludes, in section IX of those reasons, that, since the Italian Government implemented the aid scheme in question without having fulfilled the obligation of notification, the scheme should be regarded as illegal and recovery of the aid in question should be regarded as necessary in order to restore the fair conditions of competition which existed before that aid was granted.

23 The operative part of the contested decision is worded as follows:

'Article 1

Subsidies granted under Laws No 28/1981 and No 4/1985 of the Friuli-Venezia Giulia Region (hereinafter referred to as "the subsidies") up to 1 July 1990 to companies exclusively engaged in transport operations at local, regional or national level do not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

The subsidies not covered by Article 1 of this Decision constitute aid within the meaning of Article 92(1) of the Treaty and are illegal since they were introduced in breach of Article 93(3).

Article 3

The subsidies for financing equipment specifically adapted for, and used solely for, combined transport constitute aid within the meaning of Article 92(1) of the Treaty but are compatible with the common market by virtue of Article 3(1)(e) of Regulation (EEC) No 1107/70.

Article 4

The subsidies granted from 1 July 1990 onwards to companies engaged in transport operations at a local, regional or national level and to companies engaged in transport operations at an international level are incompatible with the common market since they do not fulfil any of the conditions for derogation provided for in Article 92(2) and (3) of the Treaty, or the conditions provided for in Regulation (EEC) No 1107/70.

Article 5

Italy shall abolish and recover the aid referred to in Article 4. The aid shall be reimbursed in accordance with the provisions of domestic law, together with interest, calculated by applying the reference rates used for assessment of regional aid, as from the date on which the aid was granted and ending on the date on which it is actually repaid.

...

Article 7

This Decision is addressed to the Italian Republic.'

24 Following the adoption of the contested decision, the Region, which had suspended granting of the aid in question from 1 January 1996 onwards, abolished the system of aid provided for by Law No 4/1985 and took the steps necessary to recover the aid already disbursed.

Procedure

25 In addition to the present action brought by the Italian Republic, certain road haulage companies which had received aid from the Region (hereinafter 'the recipient undertakings') also brought actions, by applications lodged at the Registry of the Court of First Instance of the European Communities between 2 December 1997 and 26 January 1998, registered under numbers T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98, for the partial annulment of the contested decision. By order of the President of the First Chamber (Extended Composition) of 16 June 1998, those cases were joined for the purposes of the written procedure, the oral procedure and the judgment.

26 By order of the President of the Fourth Chamber (Extended Composition) of 29 September 1998, the Italian Republic was granted leave to intervene in support of the forms of order sought by the recipient undertakings.

27 By order of 24 November 1998, the Court of Justice stayed proceedings in the present case pending delivery of the judgment of the Court of First Instance in the joined cases mentioned in paragraph 25 of this judgment.

28 By judgment of 15 June 2000 in Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to T-607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta and Others* v *Commission* [2000] ECR II-2319, the Court of First Instance annulled Article 2 of the contested decision, in so far as it declares illegal the aid granted after 1 July 1990 to undertakings engaged exclusively in local, regional or national transport, and Article 5 of that decision, in so far as it requires the Italian Republic to recover that aid. The Court of First Instance dismissed the remainder of the action brought by the recipient undertakings.

29 By application lodged at the Registry of the Court of Justice on 3 August 2000, the Italian Republic brought an appeal against that judgment of the Court of First Instance, registered under number C-298/00 P.

Subject-matter of the action

30 The Italian Republic claims that the Court should annul Articles 2 and 5 of the contested decision or, in the alternative, annul Article 5 of that decision in so far as it requires that Member State to recover the aid in dispute, together with interest. It also claims that the Commission should be ordered to pay the costs.

31 In support of its action, the Italian Republic puts forward four pleas for annulment, alleging, in the first place, infringement of Article 92(1) of the Treaty, in the second place, infringement of Article 92(3)(c) of the Treaty and Article 3(1)(d) of Regulation No 1107/70, in the third place, infringement of Article 93 of the Treaty and, in the fourth place, breach of the principles of proportionality and the protection of legitimate expectations and of the obligation to state reasons.

32 The Commission contends that the Court should dismiss the application and order the Italian Republic to pay the costs. However, following delivery of the judgment in *Alzetta and Others* v *Commission*, cited above, the Commission accepted the interpretation of the Court of First Instance regarding the aid granted after 1 July 1990 to undertakings engaged exclusively in local, regional or national transport and, accordingly, withdrew its ground of defence concerning that aid.

33 Article 92(2) of the Rules of Procedure of the Court of Justice states:

'The Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case, and shall give its decision in accordance with Article 91(3) and (4) of these Rules.'

34 In that regard, as the Court has already observed in paragraph 28 of this judgment, the judgment in *Alzetta and Others* v *Commission*, cited above, which was delivered after the present action was brought, annulled Articles 2 and 5 of the contested decision in so far as they concern aid to undertakings engaged in local, regional or national road transport.

35 Moreover, during the proceedings on the appeal against the judgment in *Alzetta and Others* v *Commission*, the Commission raised no objection to the annulment by the Court of First Instance of Articles 2 and 5 of the contested decision in so far as that annulment relates to aid to undertakings engaged in local, regional or national road transport. In its judgment delivered today in Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, the Court of Justice dismissed all the objections raised both by the Italian Republic and by the Commission to the aforementioned judgment of the Court of First Instance.

36 Furthermore, the authority *erga omnes* exerted by an annulling judgment of the Community judicature (see, *inter alia*, judgments in Case 1/54 *France* v *High Authority* [1954 to 1956] ECR 1, at page 17; Case 2/54 *Italy* v *High Authority* [1954 to 1956] ECR 37, at page 55; and in Case 3/54 *ASSIDER* v *High Authority* [1954 to 1956] ECR 63) attaches to both the operative part and the *ratio decidendi* of the judgment (see Case C-310/97 P *Commission* v *AssiDomänKraft Products and Others* [1999] ECR I-5363, paragraph 54).

37 In those circumstances, it necessarily follows from the judgment in *Alzetta and Others* v *Commission* and from the dismissal of the appeal against it by the judgment delivered today in *Italy* v *Commission* that the present action has become devoid of purpose as regards the claim for the annulment of Articles 2 and 5 of the contested decision in so far as they concern aid to undertakings engaged in transport at a local, regional or national level.

38 Consequently, it is for the Court to determine whether the contested decision is compatible with the principles of Community law invoked by the Italian Republic solely in so far as it declares illegal aid granted under Laws Nos 28/1981 and 4/1985 to undertakings engaged in international road transport operations (hereinafter 'the aid in dispute').

The action

The first plea in law

Error in law concerning the interpretation of Article 92(1) of the Treaty

— Arguments of the parties

39 By the first part of the first plea in law, the Italian Republic submits that, so far as the application of Article 92(1) of the Treaty to the aid in dispute is concerned, the Commission merely mentions the simple possibility that trade between Member States may be affected by such aid and does not demonstrate the existence of a real, concrete risk of distortion of competition.

— Findings of the Court

40 As a preliminary point, it must be noted that Article 92(1) of the Treaty defines the aid regulated by it as being 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, in so far as it affects trade between Member States.

41 In that regard, the procedural rules laid down by the Treaty vary depending on whether the aid is existing aid or new aid.

42 With regard to existing aid, under the provisions of Article 93(1) and (2) of the Treaty and in accordance with the principle of legal certainty, if, in the course of its constant review of such aid, after giving notice to the parties concerned to submit their comments, the Commission finds that that aid is not compatible with the common market having regard to Article 92 of the Treaty, or that such aid is being misused, it is to decide that the State concerned must abolish or alter such aid within a period of time to be determined by the Commission. Such aid may therefore be lawfully put into effect as long as the Commission has not found it to be incompatible (see Case C-47/91 *Italy* v *Commission* [1992] ECR I-4145, paragraphs 23 and 25, and Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 20).

43 With regard to new aid, Article 93(3) of the Treaty provides that the Commission is to be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. It must then undertake an initial examination of the planned aid. If, following that examination, it considers that any such plan is not compatible with the common market, it must without delay initiate the procedure provided for in paragraph 2 of that article. In such circumstances, the Member State concerned must not put its proposed measures into effect until the procedure has resulted in a final decision. New aid is therefore subject to a precautionary review by the Commission and may not, in principle, be put into effect until such time as the latter has declared it compatible with the Treaty.

44 In its assessment both of existing aid, pursuant to Article 93(1) and (2) of the Treaty, and of new aid which must be notified to it before being implemented, pursuant to Article 93(3) of the Treaty, the Commission is required, not to establish that such aid has a real effect on trade between Member States and that

competition is actually being distorted, but only to examine whether that aid is liable to affect such trade and distort competition.

45 The same applies where new aid has been granted without having been notified to the Commission beforehand. If, on the other hand, the Commission were required in its decision to demonstrate the real effect of aid which has already been granted, that would ultimately favour those Member States which grant aid in breach of the duty to notify laid down in Article 93(3) of the Treaty, to the detriment of those which do notify aid at the planning stage (see Case C-301/87 *France* v *Commission* [1990] ECR I-307, '*Boussac Saint Frères*', paragraphs 32 and 33).

46 The restrictive interpretation of Article 92(1) of the Treaty proposed by the Italian Republic, to the effect that the Commission is required to establish that the aid in dispute is in fact having a real effect on intra-Community trade and competition, must therefore be ruled out and the first part of the first plea in law must accordingly be rejected.

Effect of the aid in dispute on intra-Community trade and competition

— Arguments of the parties

47 By the second part of the first plea in law, the Italian Republic maintains, in the first place, that the very low total amount of the aid in dispute, which should

logically be treated in the same way as '*de minimis*' aid, which is exempted from the obligation of notification, proves that it cannot affect intra-Community trade and competition.

48 In the second place, the Italian Republic points out that almost all the recipients of the aid in dispute carry out their transport operations within the Region. The Commission failed to establish, in particular, that certain Community undertakings suffered harm caused by that aid. It merely found that, since 1 July 1990, the undertakings of the Region have, in principle, been in competition with any other Italian or Community haulier engaging in cabotage in Italy, without even demonstrating that hauliers of other Member States did actually have access to the Italian market, since any such demonstration would presuppose, at the very least, that the Community quota was not exhausted. However, that quota would have been exhausted and, consequently, any effect on competition in international road haulage would have been out of the question.

49 In the third place, with regard to the 'compensatory' function of the aid in a situation of objective competitive disadvantage, the Italian Republic argues that, because of its geographical situation, the Region had, first and foremost, to defend its small share of the international market from Austrian, Croatian and Slovenian hauliers who, at least until 1994 in the case of the Republic of Austria, belonged to non-Community countries and therefore benefited from State measures and advantages which were unlikely to be eliminated by means of bilateral agreements.

50 In that regard, the Commission maintains that the road haulage market is characterised by the existence of numerous small-sized undertakings and that State intervention, even on an insignificant scale, in favour of some of them is bound to have significant repercussions for the others and to affect intra-Community trade as well as competition. Moreover, referring to section VII,

eighth paragraph, of the reasons for the contested decision, it adds that, in most cases, even though a vehicle was purchased for use exclusively in local transport, it may nevertheless be used to provide international transport services.

51 The Commission adds that the circumstance of holding an extremely limited share of the national market or having an insignificant involvement in intra-Community trade is not sufficient to prove that there is no effect on the latter and no impact on competition at Community level. What is important, however, is the fact that the undertakings in receipt of the aid in dispute and those established in other Member States which do not receive that aid are in a position to provide the same services.

— Findings of the Court

52 In that regard, when financial aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade the latter must be regarded as affected by that aid (see Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11, and Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 40).

53 With regard to the Italian Government's first argument, concerning the relatively small amount of aid or the relatively small size of the undertaking which receives it, it must be pointed out that such circumstances do not as such exclude the possibility that intra-Community trade might be affected (see Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, '*Tubemeuse*', paragraph 43; Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, cited above, paragraph 42, and Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 81).

54 Aid of a relatively small amount is liable to affect competition and trade between Member States where there is strong competition in the sector in which the undertakings which receive it operate (see Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24; Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 27, and Case C-351/98 *Spain* v *Commission* [2002] ECR I-8031, paragraph 63).

55 In this case, with regard to the international road haulage market, which was opened up to Community competition from 1969 onwards, the share of operations carried out by hauliers of the Region as compared with the total volume of haulage carried out in Italy was 16% in tonnes per kilometre in 1993. Those hauliers are in competition with other Italian undertakings engaging in the same activity.

56 Moreover, the Commission rightly found that the aid in dispute reduced the normal business costs of the road haulage sector in the Region in such as way as to engender a distortion of competition (section VI, last paragraph, of the reasons for the contested decision). It therefore concluded that, '[w]here the position of companies in a particular sector involved in trade between Member States is strengthened, this trade must be considered to be affected within the meaning of Article 92(1) of the Treaty' (section VII, last paragraph, of those reasons).

57 Furthermore, it is clear that, where a sector has a large number of small companies, aid potentially available to all or a very large number of undertakings in that sector can, even if individual amounts are small, have an impact on competition and trade between Member States (see, to that effect, the judgment in Case C-351/98 *Spain* v *Commission*, cited above, paragraph 64). In that regard, the figures communicated to the Commission by the Italian Government confirm that more than 80% of the recipients of the aid in dispute are small undertakings.

58 In addition, the Commission notice of 6 March 1996 on the *de minimis* rule for State aid (OJ 1996 C 68, p. 9), which was replaced by Information from the Commission of 23 July 1996 — Community guidelines on State aid for small and medium-sized enterprises (OJ 1996 C 213, p. 4), excludes transport from its scope.

59 In the light of those considerations, the Italian Government's first argument, concerning the small amount of the aid in dispute, must be rejected.

60 With regard to the Italian Government's second argument, which claims, first, that the majority of the undertakings in receipt of that aid operate exclusively at a local level, it must be recalled that the condition for the application of Article 92 (1) of the Treaty, namely that the aid must be capable of affecting trade between Member States, does not depend on the local or regional character of the transport services supplied or on the scale of the field of activity concerned (see *Altmark Trans and Regierungspräsidium Magdeburg*, cited above, paragraph 82).

61 In this case, the Commission was therefore right to find, in section VII, 10th paragraph, of the reasons for the contested decision, that the limited nature of the competition represented by the Region's hauliers in the international road haulage sector cannot preclude the application of Article 92(1) of the Treaty.

62 Secondly, as the Court has already pointed out in paragraphs 44 to 46 of this judgment, it is sufficient that the Commission establish that the aid in dispute may affect trade between Member States and threatens to distort competition, and it is not necessary to establish that certain Community undertakings have suffered harm as a result of the grant of that aid. The Italian Republic's argument on this point must therefore be rejected.

63 Finally, with regard to the setting of quotas for Community authorisations, it must be pointed out that, under the relevant provisions of Regulation No 1018/68, those authorisations, which were issued in the name of the haulier and valid for use for only one vehicle, were granted, under national quotas, for a period of one year in the case of international road haulage, and that the holders of such authorisations were entitled, during that period of validity, to transport goods without limitation, with one vehicle, between Member States of their choice.

64 Consequently, the quota systems in force from 1969 to 1993 on the international road haulage market served to establish a situation of effective competition within the limit of the quotas laid down, which could be affected by the grant of the aid in dispute.

65 Even assuming that the Community quota had been exhausted, that factor would not necessarily lead to the conclusion that the aid in question had no effect on intra-Community trade and competition. In view of the free choice given by the quota systems to holders of Community authorisations as regards the Member States between which they may provide international road haulage services, exhaustion of those quotas would in any event not furnish any information as to the use made of them, in particular in the case of international road haulage from or to Italy or, more specifically, the Region.

66 Since the mainly local nature of the operations engaged in by most of the recipients of the aid in dispute and the existence of quota systems were not such as to preclude that aid from affecting trade between Member States, the second argument put forward by the Italian Republic in support of the second part of the first plea in law must be rejected.

67 With regard to the third argument, based on the alleged compensatory function of the aid in dispute in a situation of objective competitive disadvantage, it is sufficient to recall that, according to settled case-law, the fact that a Member State seeks to approximate, by unilateral measures, the conditions of competition in a particular sector of the economy to those prevailing in other Member States cannot deprive the measures in question of their character as aid (see Joined Cases 6/69 and 11/69 *Commission* v *France* [1969] ECR 523, paragraphs 20 and 21, and Case C-6/97 *Italy* v *Commission* [1999] ECR I-2981, paragraph 21).

68 It follows, without even needing to consider whether the Italian Republic has demonstrated that the situation of Austrian, Croatian and Slovenian road hauliers placed road hauliers established in the Region at a competitive disadvantage, that this third argument must be rejected and, accordingly, that the second part of the first plea in law cannot be upheld.

The obligation to state reasons

69 With regard to the third part of the first plea in law, which is based on the Commission's obligation to state reasons, it is settled law that the statement of reasons required by Article 190 of the EC Treaty (now Article 253 EC) must be appropriate to the nature of the measure in question and must show clearly and unequivocally the reasoning of the institution which adopted the measure so as to inform the persons concerned of the justification for the measure adopted and to enable the Court to exercise its powers of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (judgment in Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwaren fabriek* v *Commission* [1985] ECR 809, paragraph 19).

70 In that regard, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons for a measure meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, inter alia, judgments in Case C-114/00 *Spain* v *Commission* [2002] ECR I-7657, paragraphs 62 and 63, and Case C-301/96 *Germany* v *Commission* [2003] ECR I-9919, paragraph 87).

71 Nevertheless, with regard, more specifically, to a decision on State aids, the Court has held that, even if in certain cases the very circumstances in which the aid is granted are sufficient to show that the aid is capable of affecting trade between Member States and of distorting or threatening to distort competition, the Commission must at least set out those circumstances in the statement of reasons for its decision (judgments in *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission*, cited above, 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 Case C-409/00 *Spain* v *Commission* [2003] ECR I-1487, paragraph 74).

72 In this case, it is apparent from the foregoing considerations that the Commission set out clearly, in the contested decision, the circumstances in which the aid in dispute was granted and specified the reasons why it is such as to affect trade between Member States and to distort or threaten to distort competition. It also refuted the objections which had been raised by the Italian Government during the administrative procedure. In those circumstances, the third part of the first plea in law cannot be upheld.

73 On all those grounds, the first plea in law put forward by the Italian Republic in support of its action, alleging infringement of Article 92(1) of the Treaty and an inadequate statement of the reasons for the contested decision, must be rejected.

The second plea in law

74 By its second plea in law, the Italian Republic complains, firstly, that the Commission ruled out application of the derogations referred to in Articles 3(1)(d) of Regulation No 1107/70 and 92(3)(c) of the Treaty to this case and, secondly, that it failed to state reasons for the contested decision in that regard.

Article 3(1)(d) of Regulation No 1107/70

— Arguments of the parties

75 With regard to the first part of the second plea in law, relating to Article 3(1)(d) of Regulation No 1107/70, the Italian Republic maintains that, notwithstanding the Commission's finding that, contrary to that provision, the subsidies for leasing are 'difficult to reconcile' with the common market, 'notably because [they] involve ... an increase in capacity', the Region had explained that the leasing aid for new vehicles had been granted temporarily in the light of the structural difficulties arising from over-use of technical and human resources, together with a potential adverse impact on safety.

76 The Commission contends that granting the derogation in question is precluded by non-fulfilment of the two conditions for the application of Article 3(1)(d) of Regulation No 1107/70, namely, that aid must be granted as part of a reorganisation plan for the sector and that there must be excess capacity which

needs to be eliminated. In its view, the Italian authorities themselves confirmed, in point 2.4, first and second paragraphs, of the supplementary report that '... there is no structural over-capacity in the road haulage industry [in the Region]' or, therefore, any reorganisation plan for the sector, as referred to in the aforementioned provision. As to the argument that the aid intended to renew the Region's vehicle fleet was necessary for reasons of environmental protection and safety, the Commission points out that, in section VIII, sixth paragraph, of the contested decision, it explained that '... subsidies for vehicle leasing constitute aid of a type which is difficult to reconcile with the common market, notably because it involves an increase in capacity, which is contrary to the spirit of Article 3(1)(d) of Regulation (EEC) No 1107/70' and that the Italian Republic has not put forward any argument demonstrating an alleged error of assessment in that regard.

— Findings of the Court

77 Article 3(1)(d) of Regulation No 1107/70 covers only aid granted in order to eliminate, as part of a reorganisation plan, excess capacity causing serious structural problems. In this case, there is nothing in the file which gives grounds for assuming the existence of such excess capacity. On the contrary, it is apparent from section VIII, third paragraph, of the reasons for the contested decision that, in their comments on the initiation of the procedure, the Italian authorities pointed out that 'there [was] no problem of excess capacity in the haulage sector [in the Region] but rather an under-capacity in vehicle fleets of about 20% as compared to real needs — in other words, an excessive workload [was] being placed on existing equipment and personnel in the Region ...'.

78 It is also clear that the aid schemes in question make no reference whatsoever to the need to avoid an increase in capacity in the transport sector in the Region and

do not lay down any conditions in order to avoid such an increase. Consequently, the first part of the second plea in law cannot be upheld.

Article 92(3)(c) of the Treaty

— Arguments of the parties

79 With regard to the second part of the second plea in law, relating to Article 92(3)(c) of the Treaty, the Italian Republic maintains that, contrary to what the Commission contends, namely that the exemption referred to in that article cannot apply to the scheme in question since the latter consists of measures which are not accompanied by any action aimed at an objective of common interest, the aid in dispute was presented as resources intended to facilitate a genuine restructuring designed to improve the quality of services. It was therefore possible to regard that aid as being intended to promote the development of certain economic activities within the meaning of that article.

80 In order to refute the allegation that it infringed Article 92(3)(c) of the Treaty, the Commission points out that, in point 2.4, second paragraph, of the supplementary report, the Italian authorities did not provide any concrete evidence of a specific, detailed plan for the restructuring of the sector concerned, but instead made general references to a future process of restructuring and rationalisation to be implemented through new legislative aid measures. In the contested decision, it took the view that aid for leasing new vehicles is comparable to operating aid or aid which is intended to relieve an undertaking of expenses it would normally have to bear in its day-to-day management or its usual activities. In principle, such aid distorts the conditions of competition in the sectors for the benefit of which it

is granted, yet without being capable, by itself, of achieving any of the aims laid down in Article 92(3), and is therefore not covered by that provision.

— Findings of the Court

81 A Member State which seeks to be allowed to grant aid by way of derogation from the Treaty rules has a duty to collaborate with the Commission. In pursuance of that duty, it must in particular provide all the information to enable the Commission to verify that the conditions for the derogation sought are fulfilled (see Case C-364/90 *Italy* v *Commission* [1993] ECR I-2097, paragraph 20).

82 Economic assessments in connection with the application of Article 92(3) of the Treaty must be made in a Community context, which means that the Commission must examine the impact of aid on competition and intra-Community trade. During that examination, the Commission must weigh the beneficial effects of the aid against its adverse effects on trading conditions and on the maintenance of undistorted competition (see *Philip Morris* v *Commission*, cited above, paragraphs 24 and 26, and Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, cited above, paragraph 51).

83 In the application of Article 92(3) of the Treaty, the Commission has a wide discretion the exercise of which involves economic and social assessments which must be made in a Community context (see, inter alia, 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 (see Case C-351/98 *Spain* v *Commission*, cited above, paragraph 74, and Case C-114/00 *Spain* v *Commission*, cited above, paragraph 93).

84 In this case, the file shows that, contrary to the claims of the Italian Republic, the Region did not provide, in the course of the administrative procedure, any definite evidence of a specific, detailed plan for the restructuring of the road haulage sector. On the contrary, it is apparent from point 2.4, second paragraph, of the supplementary report that, in the short term, no restructuring plan was necessary and the Region merely referred to possible measures to rationalise the sector through, inter alia, measures designed to encourage mergers and incentives for, in particular, combined transport, soon to be adopted by the Regional authority.

85 In those circumstances, the Commission, without exceeding the limits of its discretion, was fully entitled to take the view that it did not have information at its disposal enabling it to establish that the aid in dispute supported an action in the common interest, such as a restructuring plan.

86 Moreover, since the replacement of old vehicles represents a cost which all road transport undertakings normally have to bear in order to be able to continue to offer their services on the market on competitive terms, the Commission was also fully entitled to find, in section VIII, 13th paragraph, of the reasons for the contested decision, that the leasing aid granted in order to finance such replacement, which artificially strengthened the financial position of the recipient undertakings to the detriment of competing undertakings, was operating aid which, in principle, is not covered by Article 92(3) of the Treaty. In those circumstances, the second part of the second plea in law cannot be upheld.

Failure to state reasons for the contested decision

87 With regard to the third part of the second plea in law, alleging failure to state reasons for the contested decision, reference should be made to the principles reiterated in paragraphs 69 and 70 of this judgment. In that regard, it is apparent from the contested decision that the Commission clearly set out the reasons why the aid in dispute did not qualify for the derogations provided for in Articles 92(3)(c) of the Treaty and 3(1)(d) of Regulation No 1107/70 and, consequently, the third part of the second plea in law cannot be upheld.

88 In the light of the foregoing considerations, the second plea in law put forward by the Italian Republic in support of its action must be rejected.

The third plea in law

Arguments of the parties

89 By its third plea in law, the Italian Republic argues that, since the international road transport market had not been opened up to Community competition and the grant of the aid in dispute could not affect intra-Community trade, that aid must be classified as existing aid and, consequently, is not subject to Article 93(3) of the Treaty.

90 The Italian Republic claims that, since the aid in dispute qualifies as existing aid, the Commission should have subjected it to the procedure referred to in Article 93 (1) and (2) of the Treaty, which means that the Commission is entitled only to require the abolition or alteration of such aid within a period of time to be determined by it. However, having deemed the aid in question to be new aid which, as such, is subject to the procedure referred to in Article 93(3) of the Treaty, and having therefore taken the view that it was illegal and, at the same time, incompatible with the common market, while explicitly laying down an obligation to refund it to the State, the Commission committed a serious infringement of essential procedural requirements which affects the validity of the contested decision, at least in so far as it orders the recovery of the aid in dispute.

91 By contrast, the Commission contends that existing aid includes only, on the one hand, aid which predates either the entry into force of the EC Treaty or the accession of new Member States to the Communities and, on the other hand, aid which has been duly authorised, either explicitly or implicitly, by the Commission. However, the aid in dispute does not fall into either of those categories.

92 In the first place, in the Commission's view, what is important is the fact that, at a given time, the measures in question may have appeared as aid, since all the conditions for the application of Article 92(1) of the Treaty are then fulfilled.

93 In the second place, the progressive opening up, through the introduction of a quota system, of a market previously closed to Community competition shows, by its very nature, the existence at Community level of at least potential harm to trade, which is sufficient in itself for the particular condition laid down in Article 92(1) of the Treaty to be regarded as fulfilled. The fact that the quota is

applied and may be used, even to the point of exhaustion, as the Italian Republic maintains, is certainly proof that effective competition existed. The Commission adds that the number of Community authorisations provided for was already 5 268 in 1985, and was 65 936 in 1992, of which 7 770 were allocated to the aforementioned Member State.

Findings of the Court

94 In the present case, as the Court has already noted in paragraph 5 of this judgment, the international road transport sector was opened up to competition by Regulation No 1018/68 from 1969 onwards and has been fully liberalised since 1 January 1993.

95 As the Court has also held in paragraphs 52 to 68 of this judgment, the aid in dispute strengthened the financial position and hence the scope of commercial haulage companies in the Region vis-à-vis their competitors and was accordingly capable of affecting trade between Member States.

96 Having been instituted in 1981 and 1985, that aid therefore fell, at the time of its introduction, within the scope of Article 92(1) of the Treaty.

97 It follows that it had to be regarded as new systems of aid which were subject, as such, to the obligation of notification laid down in Article 93(3) of the Treaty.

98 Consequently, the third plea in law, alleging misclassification of the aid in dispute as new aid, must be rejected.

The fourth plea in law

Breach of the principle of proportionality

— Arguments of the parties

99 By the first part of its fourth plea in law, the Italian Republic submits that, since the aid in dispute had an insignificant effect on the position of the recipient undertakings and since, therefore, the Commission has no interest in restoring the previously existing situation, the contested decision, in so far as it imposes an obligation to recover that aid, infringes the principle of proportionality. Repayment of the aid would also place a very heavy burden on the recipient undertakings, probably causing many of them to disappear from the market and so giving rise to a serious employment and social crisis, making such recovery impossible in practice. Moreover, the contested decision fails to state the reasons on which it is based in this respect.

100 By contrast, the Commission observes, in the first place, that the recovery of State aid granted illegally, in order to restore the *status quo ante*, cannot, in principle, be

regarded as a measure disproportionate to the objective of the Treaty in regard to aid. It contends in this regard that the probable disappearance from the market of undertakings in receipt of illegal aid as a result of complying with the obligation to repay it does not constitute a ground of justification for the non-recovery of that aid (see Case 52/84 *Commission* v *Belgium* [1986] ECR 89, paragraph 14).

101 In the second place, with regard to the fear of a serious social crisis, although insuperable difficulties may prevent a Member State from complying with its obligations under Community law, the Court has consistently held that mere apprehension of such difficulties cannot justify a failure by a Member State to apply Community law correctly (see Case C-280/95 *Commission* v *Italy* [1998] ECR I-259, paragraph 16).

102 In the third place, the Commission maintains that it is not required to put forward precise grounds to justify the exercise of its power to order the repayment of illegal aid. However, it contends that the contested decision does make clear that it considered that recovery of the aid in dispute was necessary in order to restore the fair conditions of competition which existed before that aid was granted.

— Findings of the Court

103 It should first be recalled that abolishing unlawful aid by means of recovery is the logical consequence of a finding that it is unlawful. Consequently, the recovery of State aid unlawfully granted, for the purpose of restoring the previously existing situation, cannot in principle be regarded as disproportionate to the objectives of

the Treaty in regard to State aids (see *Tubemeuse*, cited above, paragraph 66, and Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 47).

104 By repaying the aid, the recipient forfeits the advantage which it had enjoyed over its competitors on the market, and the situation prior to payment of the aid is restored (see Case C-350/93 *Commission* v *Italy* [1995] ECR I-699, paragraph 22). It also follows from that function of repayment of aid that, as a general rule, save in exceptional circumstances, the Commission will not exceed the bounds of its discretion, recognised by the case-law of the Court, if it asks the Member State to recover the sums granted by way of unlawful aid since it is only restoring the previous situation (see Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 66, and Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 99).

105 In this case, since the Italian Republic merely claims that repayment of the aid in dispute would place a very heavy burden on the recipient undertakings, liable to cause many of them to disappear from the market and so giving rise to a serious employment and social crisis, it is sufficient to point out, in accordance with the case-law of the Court, that apprehension of internal difficulties cannot justify a failure by a Member State to comply with its obligations under Community law (see, inter alia, Case C-404/97 *Commission* v *Portugal* [2000] ECR I-4897, paragraph 52, Case C-310/99 *Italy* v *Commission*, paragraph 105, and Case C-404/00 *Commission* v *Spain* [2003] ECR I-6695, paragraph 55).

106 Consequently, there is no evidence that the Italian Republic was faced with exceptional circumstances making repayment impossible and, accordingly, the first part of the fourth plea in law cannot be upheld.

Breach of the principle of the protection of legitimate expectations

— Arguments of the parties

107 By the second part of its fourth plea in law, the Italian Republic maintains that, since the recipient undertakings relied on the lawfulness of aid instituted and paid out over many years, the contested decision is contrary to the principle of the protection of legitimate expectations in that it requires the recovery of the aid granted from 1 July 1990 onwards.

108 The Commission replies that, contrary to what the Italian Republic claims, where subsidies constitute aid within the meaning of Article 92(1) of the Treaty and are illegal, in so far as they were put into effect in infringement of Article 93(3) of the Treaty, the alleged breach of the principle of the protection of legitimate expectations vis-à-vis the recipient undertakings is irrelevant since there was no objective reason to consider that, in 1981 and 1985, the Commission had no objection to the aid instituted by Laws Nos 28/1981 and 4/1985.

109 The Commission further contends that, if the Italian authorities had the slightest doubt as to the nature of the measures in question, they could and should have notified the plans without delay. In actual fact, it is clear from the considerations of fact and of law which led to the adoption of the contested decision that, in 1981 and 1985, there was no objective reason to consider that the Commission had no objection to those measures. The fact that, after being informed of the existence of Laws Nos 28/1981 and 4/1985 and after initiating the procedure laid down in Article 93(2) of the Treaty, it reached the conclusion that the measures granted up to 1 July 1990 to road transport undertakings operating exclusively at local, regional or national level did not constitute State aid, cannot have given rise, either on the part of the recipient undertakings or on the part of the Region, to any expectations as to the lawfulness of the aid paid out after 1 July 1990.

— Findings of the Court

110 As to the principle of legitimate expectations, it must be pointed out that, by a communication published in the *Official Journal of the European Communities* (OJ 1983 C 318, p. 3), the Commission informed potential recipients of State aid of the risk attaching to any aid granted to them illegally, in that they might have to refund the aid (Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraph 15, and Case C-310/99 *Italy* v *Commission*, cited above, paragraph 102).

111 It is true that a recipient of unlawfully granted aid is not precluded from relying on exceptional circumstances on the basis of which it had legitimately assumed the aid to be lawful and thus declining to refund that aid. If such a case is brought before a national court, it is for that court to assess the material circumstances, if necessary after obtaining a preliminary ruling on interpretation from the Court of Justice (see Case C-5/89 *Commission* v *Germany*, cited above, paragraph 16, and Case C-310/99 *Italy* v *Commission*, cited above, paragraph 103).

112 However, a Member State whose authorities have granted aid contrary to the procedural rules laid down in Article 93 of the Treaty may not plead the legitimate expectations of recipients in order to justify a failure to comply with the obligation to take the steps necessary to implement a Commission decision instructing it to recover the aid. If it could do so, Articles 92 and 93 of the Treaty would be deprived of all practical force, since national authorities would thus be able to rely on their own unlawful conduct in order to render decisions taken by the Commission under those provisions of the Treaty ineffectual (see Case C-5/89 *Commission* v *Germany*, paragraph 17, and Case C-310/99 *Italy* v *Commission*, paragraph 104).

113 In this case, it is not disputed, firstly, that, contrary to the obligations imposed on Member States by Article 93(3) of the Treaty, the aid in dispute was granted without having been notified beforehand.

114 Secondly, as the Court has already held in paragraph 54 of this judgment, aid, even that which is relatively modest in terms of individual amounts, which is nevertheless potentially available to all or a very large proportion of the undertakings in the sector, is capable of having an impact on competition and trade between Member States. Unless it is accepted that there are exceptional circumstances which may preclude the repayment of such aid, the fact that the recipients are small undertakings carrying out operations of limited scale is irrelevant.

115 Finally, the Italian Republic submits that, since the recipient undertakings had relied on the lawfulness of aid instituted and paid out over many years, that long period had given rise to legitimate expectations on the part of those recipients as to the validity of such aid.

116 In that regard, it is important to recall that the fundamental requirement of legal certainty has the effect of preventing the Commission from indefinitely delaying the exercise of its powers (see Case 52/69 *Geigy* v *Commission* [1972] ECR 787, paragraphs 20 and 21, and Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano* v *Commission* [2002] ECR I-7869, paragraph 140).

117 Admittedly, a delay by the Commission in deciding that aid is unlawful and that it must be abolished and recovered by a Member State may, in certain circumstances, establish a legitimate expectation on the recipients' part so as to

prevent the Commission from requiring that Member State to order the refund of that aid (see Case 223/85 *RSV* v *Commission* [1987] ECR 4617, paragraph 17). Nevertheless, the facts of the case giving rise to that judgment were exceptional and bear no resemblance to those in the present case. The measure at issue in that judgment concerned a sector which had for some years been receiving State aid approved by the Commission and its object was to meet the additional costs of an operation which had already received authorised aid (see Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraph 44).

118 In any event, as the Advocate General pointed out in point 77 of his Opinion, in the case of State aid that has not been notified, such a delay may be imputed to the Commission only from the time when it learnt of the existence of the aid incompatible with the common market.

119 In this case, it is common ground that the Commission did not learn of the aid in dispute until September 1995. In view, firstly, of the fact that the aid had not been authorised by the Commission and, secondly, of the fact that the Commission was not aware of the complex situation in which that aid had been granted, it was therefore necessary, before reaching a decision, to carry out an investigation. In those circumstances, the time which elapsed between September 1995 and the date of adoption of the contested decision, namely 30 July 1997, is reasonable. Moreover, the Italian Republic has put forward no evidence that the Commission delayed that procedure.

120 Consequently, the contested decision cannot, either in so far as it requires the repayment of the aid in dispute or in so far as it orders the payment of interest, be regarded as infringing the legitimate expectations of the undertakings in receipt of that aid and, accordingly, the second part of the fourth plea in law cannot be upheld.

Extent of the obligation to recover the aid in dispute

— Arguments of the parties

121 By the third part of its fourth plea in law, the Italian Republic maintains, with regard to the date from which the contested decision imposes the obligation to recover the aid granted in the international transport sector, that Article 4 of the contested decision, to which Article 5 refers in providing for recovery of the aid incompatible with the Treaty, unequivocally finds such incompatibility as regards the aid paid out from 1 July 1990 onwards and therefore does not have to be interpreted in the light of the reasons for that decision.

122 The Commission, on the other hand, contends that the operative part of an act is indissociably linked to the statement of reasons on which it is based and when it is interpreted account must therefore be taken of the reasons that led to its adoption. In this case, the statement of reasons makes it clear that the date of 1 July 1990 applies only to the aid granted to undertakings engaged in local, regional or national road haulage operations, to the exclusion of undertakings operating in the international road haulage sector.

123 Moreover, in the Commission's view, it is not necessary either to resort to the statement of reasons in order to interpret Article 4 of the contested decision correctly, but it is sufficient to view that article within the context of the operative part as a whole, of which it forms part, and to read it in the light of the articles which precede it.

— Findings of the Court

124 In this case, Article 4 of the contested decision is worded equivocally as regards the requirement to recover the aid in dispute, which could refer either to all the aid granted to undertakings engaging in international haulage since that aid was introduced or only to the aid granted from 1 July 1990 onwards.

125 In that regard, it must be pointed out that, according to settled case-law, the operative part of an act is indissociably linked to the statement of reasons for it, so that, when it has to be interpreted, account must be taken of the reasons which led to its adoption (see Case C-355/95 P *TWD* v *Commission* [1997] ECR I-2549, paragraph 21, and Case C-404/97 *Commission* v *Portugal*, cited above, paragraph 41).

126 It is clear from the reasons for the contested decision that, firstly, in section VII, third paragraph, of those reasons the Commission distinguished between undertakings exclusively engaged in transport operations at a local, regional or national level and those engaged in international transport and that, secondly, in section VII, fifth to seventh paragraphs, it identified the date of 1 July 1990 as being relevant solely as regards the subsidies granted to the former. Moreover, in section VII, 11th paragraph, the Commission considered that the aid in dispute had strengthened the financial position of commercial haulage companies in the region vis-à-vis their competitors since 1 July 1990 for undertakings engaged in local, regional or national transport and since 1969 for undertakings engaged in international transport and was therefore capable of affecting trade between Member States.

127 Accordingly, as is also clear from section VIII, last paragraph, of the reasons for the contested decision, Article 4 of that decision must be interpreted as meaning

that the aid granted pursuant to Laws Nos 28/1981 and 4/1985 to undertakings engaged in local, regional or national transport operations from 1 July 1990 as well as that granted to undertakings engaged in international transport operations are incompatible with the common market.

128 That interpretation also follows from a reading of the operative part of the contested decision, which, taken as a whole, contains no ambiguity. Article 2 of that operative part, read in conjunction with Article 1, declares the aid granted under the systems of aid instituted by Laws Nos 28/1981 and 4/1985 to undertakings engaged in international transport and, with effect from 1 July 1990, to undertakings engaged in local, regional or national transport illegal on the ground that it had not been notified to the Commission as required by Article 93(3) of the Treaty. Article 3 of that operative part finds that the aid for combined transport is compatible with the common market because it qualifies for a derogation under Article 3(1)(e) of Regulation No 1107/70. With regard to Article 4 of the same operative part, it determines which of the illegal aid referred to in Article 2 is incompatible with the common market on the ground that it does not fulfil the conditions for a derogation. Within the scheme of the operative part, it is therefore that illegal aid which was not declared compatible with the common market by Article 3 of that operative part, namely, so far as the international transport sector is concerned, the aid granted since it was introduced by Laws Nos 28/1981 and 4/1985. Consequently, the third part of the fourth plea in law cannot succeed.

The obligation to state reasons

129 As regards the fourth part of the fourth plea in law, relating to the alleged failure to state reasons for the contested decision, it is sufficient to point out that the Court has held that, in the matter of State aid, where, contrary to the provisions of Article 93(3) of the Treaty, the proposed aid has already been granted, the

Commission, which has the power to require the national authorities to order its repayment, is not obliged to provide specific reasons in order to justify the exercise of that power (see Joined Cases C-278/92 to C-280/92 *Spain* v *Commission*, paragraph 78, and Case C-75/97 *Belgium* v *Commission*, paragraph 82). Nevertheless, it is established that, in sections VI to VIII of the reasons for the contested decision, the Commission made clear the reasons which led it to decide to require the repayment of the aid in dispute. It must therefore be held that that decision is not vitiated in that regard by any failure to state reasons and, accordingly, the fourth part of the fourth plea cannot be upheld.

130 It follows that the fourth plea in law must also be rejected.

Costs

131 Under Article 69(6) of the Rules of Procedure, where a case does not proceed to judgment the costs are to be in the discretion of the Court. Under Article 69(2) of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

132 In this instance, the Italian Republic had lodged its application and reply in the present case, claiming that the Court should annul, inter alia, Articles 2 and 5 of the contested decision, concerning the aid granted to road haulage undertakings engaged in local, regional and national transport, before that part of the action became devoid of purpose. In so far as the action still has a purpose, the Italian Republic has failed in its pleas. In the light of those considerations, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that there is no need to rule on the claims in the application seeking the annulment of Articles 2 and 5 of Commission Decision 98/182/EC of 30 July 1997 concerning aid granted by the Friuli-Venezia Giulia Region (Italy) to road haulage companies in the Region in so far as those articles declare the aid granted after 1 July 1990 to undertakings engaged exclusively in local, regional or national transport illegal;**

2. **Dismisses the remainder of the application;**

3. **Orders the Italian Republic and the Commission of the European Communities to pay their own costs.**

Skouris Cunha Rodrigues Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 29 April 2004.

R. Grass V. Skouris

Registrar President of the Sixth Chamber