JUDGMENT OF THE COURT

30 September 2003 *

In Case C-301/96,

Federal Republic of Germany, represented by W.-D. Plessing and T. Oppermann, acting as Agents, with an address for service in Germany,

applicant,

v

Commission of the European Communities, represented by K.-D. Borchardt, acting as Agent, and M. Núñez-Müller, Rechtsanwalt, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by J.E. Collins, acting as Agent, with an address for service in Luxembourg,

intervener,

APPLICATION for partial annulment of Commission Decision 96/666/EC of 26 June 1996 concerning aid granted by Germany to the Volkswagen Group in Mosel and Chemnitz (OJ 1996 L 308, p. 46),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, P. Jann, V. Skouris, F. Macken (Rapporteur), S. von Bahr and J.N. Cunha Rodrigues, 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 26 February 2002, at which the Federal Republic of Germany was represented by T. Oppermann and W.-D. Plessing, acting as Agents, and the Commission by K.-D. Borchardt and M. Núñez-Müller,

after hearing the Opinion of the Advocate General at the sitting on 28 May 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 16 September 1996, the Federal Republic of Germany brought an action under Article 173 of the EC Treaty (now, after amendment, Article 230 EC) for partial annulment of Commission Decision 96/666/EC of 26 June 1996 concerning aid granted by Germany to the Volkswagen Group in Mosel and Chemnitz (OJ 1996 L 308, p. 46, 'the contested decision').

Legal background

2 By letter of 31 December 1988, the Commission informed the Member States that it had laid down the conditions for implementing a general Community framework on State aid to the motor vehicle industry ('the Community framework'), based on Article 93(1) of the EEC Treaty (subsequently Article 93(1) of the EC Treaty, now Article 88(1) EC), reproduced in a document

attached to the letter, and asked Member States to inform it of their acceptance of that framework within one month.

3 The Community framework was published in Notice 89/C 123/03 (OJ 1989 C 123, p. 3). Point 2.5 of the notice provided that it was to enter into force on 1 January 1989 and was to be valid for two years.

4 According to the fourth paragraph of Point 1 of the notice, the objective of the framework is in particular to impose stricter discipline on the granting of aid in the motor vehicle industry, in order to ensure that the competitiveness of the Community industry is not distorted by unfair competition. The Commission states that it can operate an effective policy only if it is able to take a position on individual cases before aid is granted.

5 Under the first paragraph of Point 2.2 of the Community framework:

'All aid measures to be granted by public authorities within the scope of an approved aid scheme to (an) undertaking(s) operating in the motor vehicle sector as defined above, where the cost of the project to be aided exceeds ECU 12 million are subject to prior notification on the basis of Article 93(3) of the EEC Treaty. As regards aid to be granted outside the scope of an approved aid scheme, any such project, whatever its cost and aid intensity, is of course subject without exception to the obligation of notification pursuant to Article 93(3) of the EEC Treaty. Where aid is not directly linked to a particular project, all proposed aid must be notified, even if paid under schemes already approved by the Commission. Member States shall inform the Commission, in sufficient time to enable it to submit its comments, of any plan to grant or alter aid.'

6 The second indent of the third paragraph of Point 3 of the Community framework, on guidelines for the assessment of aid cases, states as follows:

'— Regional Aid

... The Commission acknowledges the valuable contribution to regional development which can be made by the implantation of new motor vehicle and component production facilities and/or the expansion of such existing activities in disadvantaged regions. For this reason the Commission has a generally positive attitude towards investment aid granted in order to help overcome structural handicaps in disadvantaged parts of the Community.

That aid is usually granted automatically in accordance with modalities previously approved by the Commission. By requiring prior notification of such aids in future, the Commission should give itself an opportunity to assess the regional development benefits (i.e. the promotion of a lasting development of the region by creating viable jobs, linkages into local and Community economy) against possible adverse effects on the sector as a whole (such as the creation of important overcapacity). Such an evaluation does not seek to deny the central importance of regional aid for the achievement of cohesion within the Community but rather to ensure that other aspects of Community interest such as the development of the Community's industry are also taken into account.'

7 After the German Government informed the Commission that it had decided not to apply the Community framework, the Commission adopted, in accordance with Article 93(2) of the Treaty, Decision 90/381/EEC of 21 February 1990 amending German aid schemes for the motor vehicle industry (OJ 1990 L 188, p. 55). Article 1 of that decision provides:

'1. From 1 May 1990, the Federal Republic of Germany shall notify to the Commission pursuant to Article 93(3) of the EEC Treaty all aid measures to be granted for projects costing more than ECU 12 million under the aid schemes set out in the Annex hereto to undertakings operating in the motor vehicle sector as defined in subsection 2.1 of the Community framework for State aid to the motor vehicle industry. Such notification shall be effected in conformity with the requirements laid down in subsections 2.2 and 2.3. The Federal Republic of Germany shall, moreover, provide annual reports as required by the framework.

2. Further to the list of aid schemes set out in the Annex to this Decision (which list is not exhaustive), the Federal Republic of Germany shall also comply with the obligations of Article 1(1) with regard to all other aid schemes capable of benefiting the motor vehicle industry.

3. Aid to undertakings in the motor vehicle industry operating in Berlin which are granted under the Berlin Förderungsgesetz are excluded from the prior notification obligation provided for in the framework but shall be included in the annual reports required by that framework.'

8 By letter of 2 October 1990, the Commission approved the German regional aid scheme laid down for 1991 by the 19th Outline Plan adopted pursuant to the

Law on the Joint Task of 'Improving the regional economic structure' of 6 October 1969 ('the Joint Task Law'), while at the same time issuing a reminder of the need, when implementing the measures envisaged, to take account of the Community framework existing in certain sectors of industry. The outline plan ('the 19th Outline Plan') states in Part I, point 9.3 (p. 43), that the Commission 'has taken decisions which prohibit the implementation of State aid granted in certain sectors, even if granted in the context of approved programmes (regional aid, for example), or which make its implementation subject to prior authorisation of each of the projects which it is intended to benefit...

Such rules exist in the following areas:

(a) ...

— the motor vehicle industry, in so far as the cost of an operation which it is intended to benefit exceeds ECU 12 million.'

9 The political reunification of Germany was proclaimed on 3 October 1990, entailing the accession to the Federal Republic of Germany of five new *Länder* from the former German Democratic Republic, including the Freistaat Sachsen (Free State of Saxony).

10 By letter of 31 December 1990, the Commission informed the Member States that it considered it necessary to extend the Community framework.

11 That Commission decision was also published in Notice 91/C 81/05 (OJ 1991 C 81, p. 4), the fourth and fifth paragraphs of which state:

'... the Commission believes it necessary to renew the framework on State aid to the motor vehicle industry... The only modification which the Commission has decided extends the prior notification obligation for the Federal Republic of Germany to Berlin (West) and the territory of the former GDR (Article 1(3) of [Decision 90/381] is no longer valid as from 1 January 1991).

After two years the framework shall be reviewed by the Commission. If modifications appear necessary (or the possible repeal of the framework) these shall be decided upon by the Commission following consultation with the Member States.'

12 By letters to the German Government of 5 December 1990 and 11 April 1991, the Commission approved the application of the Joint Task Law to the new *Länder*, while again recalling the need, when implementing the proposed measures, to take account of the Community framework existing in certain sectors of industry. Similarly, by letter of 9 January 1991, it approved the extension of existing regional aid schemes to the new *Länder*, stating that the provisions of the Community framework had to be complied with.

13 On 23 December 1992 the Commission decided that the Community framework would not be modified and would remain valid until it organised a subsequent review. That decision was published in Notice 93/C 36/06 (OJ 1993 C 36, p. 17).

14 In its judgment of 29 June 1995 in Case C-135/93 *Spain* v *Commission* [1995] ECR I-1651, paragraph 39, the Court held that that decision should be interpreted as having extended the Community framework only until its next review, which, like the previous ones, had to take place at the end of a further period of application of two years, expiring on 31 December 1994.

15 Following the delivery of that judgment, the Commission informed Member States by letter of 6 July 1995 that, in the Community interest, it had decided on 5 July 1995 to extend its decision of 23 December 1992 with retroactive effect from 1 January 1995, so that the Community framework would remain applicable without interruption. The Commission stated that that extension would come to an end once the procedure under Article 93(1) of the Treaty, which it had simultaneously decided to open, had concluded. That decision, which was published in Notice 95/C 284/03 (OJ 1995 C 284, p. 3), was annulled by judgment of 15 April 1997 in Case C-292/95 *Spain* v *Commission* [1997] ECR I-1931.

16 By a second letter of 6 July 1995, the Commission further informed the Member States of its decision of 5 July 1995 to propose to them, in the light of the judgment in Case C-135/93 *Spain* v *Commission*, to reintroduce the Community framework for a period of two years, while making a number of amendments to it, in particular raising the notification threshold to ECU 17 million. The new text of the proposed Community framework provided, at Point 2.5:

'The [framework] shall enter into force when all Member States have signalled their agreement or at the latest by 1 January 1996. All aid projects, which have not yet received a final approval by the competent authority by that date, shall be subject to prior notification.'

17 The German Government gave its agreement to the reintroduction of the Community framework by letter of 15 August 1995.

Facts of the dispute

18 After the entry into force of the economic, monetary and social union between the Federal Republic of Germany and the German Democratic Republic on 1 July 1990, demand for, and production of, Trabant vehicles in Saxony (Germany) collapsed. In order to safeguard the motor vehicle industry in that region, Volkswagen AG ('Volkswagen') entered into negotiations with the Treuhandanstalt (the public-law body entrusted with restructuring the businesses of the former German Democratic Republic, 'the THA'), which led to an agreement of principle in October 1990. That agreement provided *inter alia* for:

— the joint creation of Sächsische Automobilbau GmbH ('SAB'), a company entrusted with the responsibility for maintaining jobs ('Beschäftigungsgesellschaft'), 87.5% of whose capital was initially held by the THA and 12.5% by Volkswagen;

— the takeover by SAB of the existing paint shop (then under construction) and final assembly hall on the Mosel (Germany) site ('Mosel I');

— the takeover by Volkswagen Sachsen GmbH ('VW Sachsen'), a wholly-owned subsidiary of Volkswagen, of an existing engine production plant on the Chemnitz (Germany) site ('Chemnitz I');

— the takeover by VW Sachsen of cylinder-head production at the Eisenach (Germany) site; and

— the creation by VW Sachsen of a new motor vehicle construction plant in Mosel, comprising the four main activities of manufacture, namely metal pressing, skeleton bodywork, painting and final assembly ('Mosel II'), and a new engine production plant in Chemnitz ('Chemnitz II').

19 It was initially agreed that the takeover and restructuring of Mosel I and Chemnitz I constituted a temporary solution, designed to avoid unemployment of the existing workforce, pending the entry into service of Mosel II and Chemnitz II, scheduled for 1994.

20 By letter of 19 September 1990, the Commission asked the German Government to notify it, in accordance with the Community framework, of the State aid for those investment projects. By letters of 14 December 1990 and 14 March 1991, the Commission emphasised that that aid could not be put into effect without having been notified to the Commission and received its approval. That question was also put on the agenda of two bilateral meetings held in Bonn (Germany) on 31 January and 7 February 1991.

The decisions of 22 March 1991

21 On 22 March 1991 the Ministry of the Economy and Employment of the Free State of Saxony adopted, on the basis of the Joint Task Law, two decisions providing for the award of certain investment grants to VW Sachsen in relation to Mosel II and Chemnitz II ('the 1991 decisions'). The amount envisaged for those

grants was a total of DEM 757 million for Mosel II, with payments spread out between 1991 and 1994, and DEM 147 million for Chemnitz II, with payments spread out between 1991 and 1996.

22 On 18 March 1991 the Finanzamt (Tax Office) Zwickau-Land addressed a decision to VW Sachsen providing for the grant of certain investment allowances in accordance with the Investitionszulagengesetz (German Law on investment allowances) of 1991.

23 The Volkswagen group also sought the possibility of making special depreciation write-offs, in accordance with the Fördergebietsgesetz (German Law on assisted areas) of 1991.

24 By letter of 25 March 1991, the German authorities supplied the Commission with certain information concerning the aid referred to in paragraphs 21 to 23 above, while stating that they did not yet have more precise information and that it was intended to grant the aid in the context of the aid schemes approved by the Commission for the new *Länder*. By letter of 17 April 1991, the Commission indicated that the letter from the German authorities of 25 March 1991 constituted a notification pursuant to Article 93(3) of the Treaty, but that further information was necessary.

25 By letter of 29 May 1991, the German authorities argued *inter alia* that the Community framework was not applicable to the new *Länder* from 1 January to 31 March 1991, on the ground that it had been applicable only for a period of two years expiring on 31 December 1990 and its extension had not been accepted until April 1991. Since the aid in question had been approved before 31 March 1991, the various files concerned could now, according to those authorities, be examined by the Commission only by reference to the regional aid scheme (see

paragraph 8 above). The Commission rejected the arguments of the German authorities at a meeting on 10 July 1991 and requested further detailed information by letter of 16 July 1991. Following the German Government's reply of 17 September 1991, the Commission put further questions by letter of 27 November 1991.

26 In October and December 1991 the Volkswagen group received investment grants amounting to DEM 360.8 million and investment allowances amounting to DEM 10.6 million in relation to Mosel II and Chemnitz II.

27 By decision of 18 December 1991, which was published in Notice 92/C 68/04 (OJ 1992 C 68, p. 14) and was notified to the German Government on 14 January 1992, the Commission opened the procedure under Article 93(2) of the Treaty for reviewing the compatibility with the common market of the various aids for financing the investments in Mosel I and II, Chemnitz I and II and the Eisenach factory.

28 In that decision, the Commission concluded *inter alia*:

'... the aids proposed by [the German] authorities give rise to major concern for the following reasons:

— they have not been properly notified to the Commission according to the procedure of Article 93(3) of the EEC Treaty,

— the apparent high aid intensity proposed to a plan involving significant expansion of capacity within the European car market could give rise to unfair distortion of competition,

— not enough evidence has been presented to date which justifies the combination of the relatively high intensity of regional aid, the granting of indirect investment aid by the THA and the granting of a temporary operating aid also by THA by reference to the structural and economic problems which [the Volkswagen group] undoubtedly faces in the new *Länder*; on the contrary, the global aid intensity could be disproportionately high and incompatible with the criteria of the Community framework on State aid to the sector.'

29 By letter of 29 January 1992, the German Government declared itself willing to suspend all aid payments until the review procedure was concluded.

30 By letter of 24 April 1992, the Commission asked the German authorities, the THA and Volkswagen for further information. Further to a meeting of 28 April 1992 and the Commission's letters of 14 May, 5 June, 21 August and 17 November 1992, the German authorities provided additional information by letters of 20 May, 3 and 12 June, 20 and 29 July, 8 and 25 September, 16 and 21 October and 4 and 25 November 1992, while Volkswagen did so by letters of 15 June and 30 October 1992 and 12 and 20 June 1993. The parties also met on 16 June, 9 September, 12 and 16 October and 3 December 1992 and 8 and 11 June 1993.

31 On 13 January 1993 Volkswagen decided to postpone a large part of the investments initially intended for the Mosel and Chemnitz factories. It now envisaged that the paint shop and final assembly line of Mosel II would not become operational until 1997 and the engine production unit at Chemnitz II would not come into service until 1996. The Commission agreed to review its assessment on the basis of Volkswagen's new investment projects.

The decisions of 30 March 1993

32 On 30 March 1993 the Ministry of the Economy and Employment of the Free State of Saxony adopted two decisions amending the 1991 decisions ('the 1993 decisions'). The total amount of the investment grants now envisaged amounted to DEM 708 million for Mosel II, with payments spread between 1991 and 1997, and DEM 195 million for Chemnitz II, with payments spread between 1992 and 1997.

33 Certain details of Volkswagen's new investment projects were submitted to the Commission at a meeting on 5 May 1993. By letter of 6 June 1993, the German Government also communicated certain information on the projects, which Volkswagen supplemented by letters of 24 June and 6 July 1993 and a fax message of 10 November 1993. That new information was also examined at meetings on 18 May, 10 June and 2 and 22 July 1993. Fresh information on the production capacities envisaged by Volkswagen was supplied in a letter from the government of 15 February 1994 and a fax message of 25 February 1994.

34 The Commission also collected new information on those projects on a visit to the sites in early April 1994 and at meetings on 11 May and 2, 7 and 24 June 1994. In addition, documents were submitted to it on the occasion of those meetings, and others were sent to it by the German authorities and Volkswagen on 10 May, 30 June and 4 and 12 July 1994.

The decisions of 24 May 1994

35 On 24 May 1994 the Ministry of the Economy and Employment of the Free State of Saxony adopted two decisions amending the 1991 and 1993 decisions ('the 1994 decisions'). The total amount of the investment grants now envisaged amounted to DEM 648 million for Mosel II, with payments spread between 1991 and 1997, and DEM 167 million for Chemnitz II, with payments spread between 1992 and 1997.

36 By an agreement of 21 June 1994 and a supplementary agreement of 1 November 1994, Volkswagen acquired from the THA the 87.5% of the shares in SAB which it did not already own.

Commission Decision 94/1068/EC

37 On 27 July 1994 the Commission adopted Decision 94/1068/EC concerning aid granted to the Volkswagen Group for investments in the new German *Länder* (OJ 1994 L 385, p. 1, 'the Mosel I decision'). In the fourth paragraph of Point IV of the grounds of that decision, the Commission found:

'On opening the procedure the Commission had regarded all Volkswagen's investment plans in Saxony as a single project and therefore intended to decide on all elements of State aid together. Even after its decision in 1993 to postpone investment in the new plants, Volkswagen initially argued that this did not affect the production technology, the labour input and other crucial variables. This year, however, on the basis of information collected during a site visit and through new expert advice, it became obvious that this view could no longer be maintained. Volkswagen also acknowledged to the Commission that their former plans had become obsolete and that they were being reworked. The new plans for

the new car and engine plants Mosel II and Chemnitz II will now be closely linked to the development of the Golf A4 that will be put into production at the same time as Mosel II is now planned to come on stream, i.e. in 1997. A final version of the new plans will only be available at the end of 1994. On the basis of current information these new plans will include significant changes in technology and production structure. Under these circumstances it is obvious that the original link between the investment projects in the existing former THA plants and the new greenfield projects has been severed. The Commission has therefore decided to limit its current decision to the restructuring aid for the existing plants, on which it can form a clear opinion on the basis of the available information, and to postpone the decision on the aid to the greenfield projects until Volkswagen and Germany are able to present their definitive investment and aid plans...'

38 It is apparent from the Mosel I decision that the paint shop and final assembly line of Mosel I were modernised and altered in accordance with the agreement concluded with the THA (see paragraph 18 above). In an initial period to 1992, Mosel I was used for the final assembly of the VW Polo and Golf A2 models, the parts for which were manufactured elsewhere by other plants in the Volkswagen group and delivered to Mosel in knocked-down form. From July 1992, the combined use of the paint shop and final assembly line of Mosel I, the alteration of which had just been completed, and of the new body shop of Mosel II, which had just come into service, allowed production of the Golf A3 model to start at Mosel, while pressing work was being carried out elsewhere. The logistics were then transferred from the Wolfsburg (Germany) site to Mosel I in January 1993, and new supplier undertakings, capable of supplying the necessary parts to Mosel I and Chemnitz I, became established in the neighbourhood. The new Mosel II press shop started to operate in March 1994 alongside Mosel I.

39 It was in those circumstances that, in Article 1 of the Mosel I decision, the Commission *inter alia* declared various aids granted up to the end of 1993, the date on which the restructuring was to be completed, amounting to DEM 487.3 million for Mosel I and DEM 84.8 million for Chemnitz I, compatible with the common market. On the other hand, certain aid granted subsequently was

declared incompatible with the common market, in particular that categorised as aid for replacement and modernisation investments, which according to the Mosel I decision could not be authorised under the Community framework (see Points IX and X of the grounds of the Mosel I decision).

40 The German Government subsequently informed the Commission on several occasions of delays in the completion of Mosel II and Chemnitz II. In a letter of 12 April 1995, the Commission reminded the German authorities that they were required to notify it of Volkswagen's projects for those new plants, so that it could examine the aid concerned. That letter received no reply. By letter of 4 August 1995, the Commission requested that the necessary information be communicated to it as soon as possible and stated that, if the Federal Republic of Germany did not comply with that request, it would adopt a provisional decision, followed by a definitive one, on the basis of the information it already had. In reply to that letter, the German Government informed the Commission, by letter of 22 August 1995, that Volkswagen's investment projects were still not finalised.

41 On 31 October 1995 the Commission adopted Decision 96/179/EC enjoining the German Government to provide all documentation, information and data on the new investment projects of the Volkswagen Group in the new German *Länder* and on the aid that is to be granted to them (OJ 1996 L 53, p. 50).

42 Following that decision, certain information on those projects and on production capacity was given to the Commission at a meeting on 20 November 1995. That information was confirmed by letter of 13 December 1995 and clarified on a visit to the sites on 21 and 22 December 1995. On 15 January 1996 the Commission put further questions to the German authorities. After a meeting on 23 January 1996, most of the missing information was communicated to the Commission by letters of 1 and 12 February 1996.

The decisions of 21 February 1996

43 On 21 February 1996 the Ministry of the Economy and Employment of the Free State of Saxony adopted two decisions amending the 1991, 1993 and 1994 decisions. The total amount of the investment grants now envisaged amounted to DEM 499 million for Mosel II, with payments spread between 1991 and 1997, and DEM 109 million for Chemnitz II, with payments spread between 1992 and 1997.

44 By letter of 23 February 1996, the Commission reminded the German authorities that it still lacked certain information. That information was communicated to it at a meeting on 25 March 1996 and was discussed on 2 and 11 April 1996. A further meeting took place on 29 May 1996.

The contested decision

45 On 26 June 1996 the Commission adopted the contested decision, the operative part of which reads as follows:

'*Article 1*

The following aid proposed by Germany for the various investment projects of Volkswagen... in Saxony is compatible with Article 92(3)(c) of the EC Treaty and

Article 61(3)(c) of the [Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3, "the EEA Agreement")]:

— aid granted by Germany to [the Volkswagen group] for [its] investment projects in Mosel (Mosel II) and Chemnitz (Chemnitz II) in the form of investment grants (Investitionszuschüsse) of up to DEM 418.7 million,

— aid granted by Germany to [the Volkswagen group] for [its] investment projects in Mosel (Mosel II) and Chemnitz (Chemnitz II) in the form of investment allowances (Investitionszulagen) of up to DEM 120.4 million.

Article 2

The following aid proposed by Germany for the various investment projects of Volkswagen... in Saxony is incompatible with Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement and may not be granted:

— the proposed investment aid for [the Volkswagen group] for [its] investment projects in Mosel II and Chemnitz II in the form of special depreciation on investment under the Assisted Areas Law ("Fördergebietsgesetz") with a nominal value of DEM 51.67 million,

— the proposed investment aid to [the Volkswagen group] for [its] investment project in Mosel II in the form of investment grants ("Investitionszuschüsse") in excess of the amount specified in the first indent of Article 1 and constituting an additional DEM 189.1 million.

Article 3

Germany shall ensure that the capacity of the Mosel plants in 1997 does not exceed a level of 432 units per day...

Furthermore, Germany shall send to, and discuss with, the Commission an annual report on the realisation [of] the DEM 2 654.1 million of eligible investments in Mosel II and Chemnitz II and the actual payments of aid so as to ensure that the combined effective aid intensity expressed in gross grant equivalent does not exceed 22.3% for Mosel II and 20.8% for Chemnitz II...

Article 4

Germany shall inform the Commission within one month of the notification of this Decision of the measures taken to comply herewith.

Article 5

This Decision is addressed to the Federal Republic of Germany.'

46 Following a letter from the chairman of Volkswagen to the Prime Minister of the Free State of Saxony on 8 July 1996, the Free State of Saxony in July 1996 paid Volkswagen DEM 90.7 million in respect of the investment grants which the Commission had declared incompatible with the common market in the contested decision.

Procedure

47 By applications lodged at the Registry of the Court of First Instance on 26 August and 13 September 1996, the Free State of Saxony, first, and Volkswagen and VW Sachsen, second, brought two actions for partial annulment of the contested decision, which were registered under Cases T-132/96 and T-143/96 respectively.

48 By the present application, registered at the Registry of the Court of Justice on 16 September 1996, the Federal Republic of Germany brought an action against the same decision.

49 By order of 4 February 1997, the Court stayed the proceedings in the present case pending judgment by the Court of First Instance in Cases T-132/96 and T-143/96.

50 By order of the President of the Court of 13 March 2000, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in the present case in support of the form of order sought by the Commission.

51 By judgment of 15 December 1999 in Joined Cases T-132/96 and T-143/96 *Freistaat Sachsen and Others* v *Commission* [1999] ECR II-3663 ('the judgment of the Court of First Instance'), the Court of First Instance dismissed the actions referred to in paragraph 47 above.

52 By applications lodged at the Court Registry on 23 February 2000, the Free State of Saxony, first, and Volkswagen and VW Sachsen, second, brought two appeals against the judgment of the Court of First Instance, which were registered under Cases C-57/00 P and C-61/00 P respectively.

Substance

53 The Federal Republic of Germany asks the Court, first, to annul Article 2 of the contested decision, second, to annul Article 1 of that decision to the extent that the investment grants and investment allowances declared compatible with the common market are limited to DEM 418.7 million and DEM 120.4 million respectively, and, finally, to annul the second paragraph of Article 3 of the decision in so far as the combined effective aid intensity expressed as gross grant equivalent is limited to 22.3% for Mosel II and 20.8% for Chemnitz II. It further asks for the Commission to be ordered to pay the costs.

54 In support of its application, the Federal Republic of Germany puts forward a number of pleas in law, alleging breach of Article 92(2)(c) of the EC Treaty (now, after amendment, Article 87(2)(c) EC), breach of the obligation to state reasons under Article 190 of the EC Treaty (now Article 253 EC), breach of Article 92(3)(b) of the Treaty, breach of Article 92(3)(a) of the Treaty, breach of Article 92(3) of the Treaty, incomprehensibility and incorrectness of the cost-benefit analysis carried out by the Commission, and, finally, breach of the principle of the protection of legitimate expectations.

55 The Commission asks the Court to dismiss the action as unfounded and order the applicant to pay the costs.

56 At the reply stage, the Federal Republic of Germany abandoned two of its pleas in law, namely breach of Article 92(3)(a) of the Treaty and breach of the principle of the protection of legitimate expectations.

First plea in law: breach of Article 92(2)(c) of the Treaty

57 The German Government, on the basis of various data (productivity, marginal rate of export in eastern Germany, difference between domestic demand and local production, growth of gross domestic product, gross domestic product per inhabitant and unemployment rate) considers that, in 1996 and for an indefinite period, eastern Germany was affected by the serious disadvantages caused by the division of Germany.

58 According to that government, the aid granted is compatible with the common market in so far as the conditions required by Article 92 of the Treaty are satisfied, which they are in the present case.

59 It submits that, in the contested decision, the Commission deliberately refused to apply that provision, on the ground that derogations from the prohibition of State aid are to be interpreted narrowly. Without contesting the need for such an interpretation of derogations, the German Government criticises the Commission for cutting down to the greatest possible extent the scope of the derogation provided for by the provisions of Article 92(2)(c) of the Treaty, thus damaging their effectiveness.

60 It notes that those provisions were maintained, even after German reunification, in the Treaty on European Union, the Treaty of Amsterdam and the EEA Agreement, which demonstrates that the authors of those Treaties and that Agreement understood the derogation as intended to overcome the special situation resulting from the political and economic division of Germany.

61 In the context of the application of Article 92(2)(c) of the Treaty, the Commission should confine itself to ascertaining that the national authorities have not misused the aid, and in particular to ascertaining that it is intended to compensate for the economic disadvantages linked with the division of Germany, which is precisely what the Commission failed to do in this case.

62 Moreover, it follows from a comparison of the words used in subparagraph (c) of Article 92(2) of the Treaty ('compensate... for the disadvantages') with those used in subparagraph (b) ('make good the damage caused') that, in the situation referred to in the former provision, the economic disadvantages have not occurred as the result of a single sudden event, but have appeared gradually because of the separate development of eastern and western Germany.

63 It is submitted that in the present case the Commission made excessive use of its powers of review and intentionally omitted to examine the need to compensate for the economic disadvantages linked with the division of Germany.

Findings of the Court

64 Article 92(2)(c) of the Treaty says that 'aid granted to the economy of certain areas of the Federal Republic of Germany affected by the division of Germany, in so far as such aid is required in order to compensate for the economic disadvantages caused by that division', shall be compatible with the common market.

65 Since that provision was not repealed after the reunification of Germany either by the Treaty on European Union or by the Treaty of Amsterdam, it cannot, in the light of the objective scope of the rules of Community law, be presumed that it has been devoid of purpose since that reunification (see Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraphs 47 and 48, and Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraph 116).

66 However, since it constitutes a derogation from the general principle laid down in Article 92(1) of the Treaty that State aid is incompatible with the common market, Article 92(2)(c) must be interpreted narrowly (Case C-156/98 *Germany* v *Commission*, paragraph 49).

67 On this point, the Court has already held in Case C-156/98 *Germany* v *Commission*, paragraph 52, and Case C-334/99 *Germany* v *Commission*,

paragraph 120, that the expression 'division of Germany' refers historically to the establishment of the dividing line between the two occupied zones in 1948, and that the 'economic disadvantages caused by that division' can therefore only mean the economic disadvantages caused in certain areas of Germany by the isolation which the establishment of that physical frontier entailed, such as the breaking of communication links or the loss of markets as a result of the breaking-off of commercial relations between the two parts of German territory.

68 The German Government, in particular during the oral procedure, contested that interpretation by the Court and proposed, essentially, that the concept of 'economic disadvantages caused by that division' within the meaning of Article 92(2)(c) of the Treaty should apply to the aid needed to compensate for the backwardness in economic development which could be attributed to the politico-economic system which had existed on the territory of the new *Länder*.

69 That interpretation of the concept of economic disadvantages caused by the division of Germany cannot be accepted.

70 The conception of the German Government, according to which Article 92(2)(c) of the Treaty permits full compensation for the undeniable economic backwardness suffered by the new *Länder*, disregards both the nature of that provision as a derogation and its context and aims (see Case C-334/99 *Germany* v *Commission*, paragraph 121).

71 The requirement of a narrow interpretation of a derogation from the general principle that State aid is incompatible with the common market must be borne in mind (see paragraph 66 above).

72 Consequently, as follows clearly from paragraph 54 of Case C-156/98 *Germany* v *Commission*, it is only the economic disadvantages directly caused by the geographical division of Germany which may be compensated for within the meaning of that provision.

73 It follows that Article 92(2)(c) of the Treaty cannot be interpreted as covering situations which are not the direct consequences of the former existence of the inter-German frontier but which are to a large extent the specific result of the economic policies of the German Democratic Republic.

74 The interpretation of Article 92(2)(c) of the Treaty advocated by the German Government would thus have the consequence of breaking the direct link which must necessarily exist between the economic disadvantage and the geographical division of Germany.

75 The differences in development between the original and the new *Länder* are explained by causes other than the geographical split caused by the division of Germany, in particular by the different politico-economic systems set up in each part of Germany.

76 It follows that, since the German Government has not established that the aid was necessary to compensate for an economic disadvantage caused by the geographical division of Germany, consequently it has not shown that the Commission infringed Article 92(2)(c) of the Treaty.

77 That government submits, however, that in the past that provision was not interpreted by the Commission solely as intended to compensate for the

disadvantages resulting directly from the frontier between western and eastern Germany, but also as intended to overcome the economic consequences of the division of Germany into different economic zones. It refers in this respect to the Commission decision of 11 December 1964 concerning aids designed to facilitate the integration of the Saarland into the economy of the Federal Republic of Germany (*Bulletin of the European Economic Community* No 2-1965, p. 33, 'the Saarland decision').

78 It is apparent from that decision that the Commission authorised, either under Article 92(2)(b) or under Article 92(2)(c) of the Treaty, certain aid in favour of, first, expellees, refugees and victims of the war or of dismantling of plants, second, the regions adjoining the Soviet zone, third, Berlin (Germany), because of its special situation, and, finally, the Saarland, in order to promote its integration into the Federal Republic of Germany.

79 However, contrary to the German Government's claims, that aid was not granted solely for the benefit of the Saarland and, in particular, the legal basis relied on by the Commission in authorising the aid granted to the Saarland is not clearly stated. As the Advocate General observed in point 71 of his Opinion in Joined Cases C-57/00 P and C-61/00 P *Freistaat Sachsen and Others* v *Commission* (judgment delivered today), Article 92(2)(b) and Article 92(2)(c) of the Treaty are mentioned as alternatives, and, since the Saarland decision relates also to aid in favour of the regions adjoining the Soviet zone and of Berlin, it is not possible to deduce from the reference to Article 92(2)(c) of the Treaty that that reference was made solely in respect of the Saarland, as it could have been made only in respect of the regions adjoining the Soviet zone and Berlin.

80 In any event, whatever the interpretation given by the Commission to Article 92(2)(c) of the Treaty in the past, that cannot affect the correctness of

the Commission's interpretation of that provision in the contested decision and hence its validity.

81 It is only in the context of Article 92(2)(c) of the Treaty that the validity of the contested decision must be examined, not by reference to an alleged earlier practice.

82 It follows from all the foregoing that the first plea in law must be rejected.

Second plea in law: breach of Article 190 of the Treaty

Alleged failure to state reasons for the decision with respect to Article 92(2)(c) of the Treaty

83 By the first part of the second plea, the German Government criticises the Commission for stating reasons for the contested decision only with respect to Article 92(3)(c) of the Treaty, even though it indicated that it regarded Article 92(2)(c) as constituting the decisive legal basis. According to that government, the Commission, without giving any reasons, confined itself to stating the need for a narrow interpretation of the latter provision and referring to the fact that it should not be applied to regional aids in favour of new investment projects.

84 According to the German Government, it is settled case-law that the extent of the obligation to state reasons depends in particular on the nature of the act in question. That obligation is subject to especially strict conditions in the case of decisions addressed to specific addressees, in order for the Court to be able to exercise its power of review and for both the Member States and the persons concerned to be aware of the circumstances in which the Community institutions have applied the Treaty. That statement of reasons is all the more important in the present case in that, in addition to a Member State, the authorities of a *Land* and a private company are concerned.

85 That government adds that the reference by the Commission to other decisions which are likewise vitiated by inadequate statements of reasons is not capable of making the contested decision intelligible to the persons concerned.

86 According to the Commission, the contested decision states its reasons adequately, since it fits into a context which was well known to the German Government.

— Findings of the Court

87 According to settled case-law, the statement of reasons required by Article 190 of the Treaty must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question, so as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power 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, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the

relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, in particular, Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19, and Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63).

88 It is true that the contested decision contains a short summary of the reasons for which the Commission refused to apply the derogation in Article 92(2)(c) of the Treaty to the facts of the case.

89 However, it must be pointed out that the contested decision was adopted in a context with which the German Government was familiar and forms part of a consistent decision-making practice.

90 On this point, it should be noted that in its relations with the Commission the German Government from 1990 referred on several occasions to the provisions of Article 92(2)(c) of the Treaty, stressing their importance for the economic recovery of the new *Länder*.

91 The arguments put forward in this respect by the German Government were rejected by several decisions of the Commission, such as Commission Decision 94/266/EC of 21 December 1993 on the proposal to award aid to SST-Garngesellschaft mbH, Thüringen (OJ 1994 L 114, p. 21), the Mosel I decision, and Commission Decision 94/1074/EC of 5 December 1994 on the German authorities' proposal to award aid to Textilwerke Deggendorf GmbH, Thüringen (OJ 1994 L 386, p. 13).

92 In view of this context, the contested decision could be reasoned in a summary manner (Case 73/74 *Papiers Peints and Others* v *Commission* [1975] ECR 1491, paragraph 31, and Case C-156/98 *Germany* v *Commission*, paragraph 105).

93 In the present case, although the reasoning is summary, the contested decision was adequately reasoned.

94 Consequently, the first part of the second plea in law is unfounded.

Alleged contradictory nature of the reasoning of the contested decision as regards the nature of the investment

95 By the second part of the second plea in law, the German Government claims that the reasoning of the contested decision is contradictory. According to that government, it is settled case-law that decisions must contain reasoning that is clear, unequivocal and free of contradictions, thus enabling the courts to exercise judicial review.

96 In its view, the contested decision is ambiguous and contradictory in that, while in Point XII of the grounds of the decision the Commission referred to the existence of an extension of existing capacity, it regarded, by contrast, in the fifth paragraph of Point III and in Point V of the grounds, the project as a single project which had not yet been completed and was thus postponed. It is not possible to treat the same investment process as completed and thus capable of being extended and, at the same time, as not completed but merely postponed.

— Findings of the Court

97 It is common ground that in 1993 Volkswagen decided to postpone part of the investment project originally envisaged.

98 On the other hand, the concept of 'extension of investment' does not refer to the timetable for carrying out the investment project proper. That concept must be seen together with that of investment on a 'greenfield site'.

99 It is clear from the eighth paragraph of Point XII of the grounds of the contested decision that a greenfield investment or site 'does not simply mean that the project is situated in a green field somewhere, but that, from the investing company's point of view, the site is a new, as yet undeveloped one'. As that paragraph states, '[c]onsequently, the company faces the following typical special problems as compared with the extension of an existing plant: lack of adequate infrastructure, lack of organised logistics, no trained workforce adapted to the needs of the company, and no established supplier structure'.

100 By contrast, in the present case, the Commission took account, in the ninth paragraph of Point XII of the grounds of the contested decision, of 'the fact that the different shops of the investment in Mosel come on stream at different times'. Since the establishment in Mosel by 1994 of a motor vehicle construction plant was operational, the Commission could rightly deduce, in the tenth paragraph of that point, that from the point of view of Community law the 'future investment for a new plant and final assembly hall in Mosel II thus no longer constitutes a greenfield investment but represents an extension of existing capacity'.

101 Accordingly, since the reasoning of the contested decision is not contradictory, the second part of the second plea in law is unfounded.

102 It therefore follows from paragraphs 94 and 101 above that this plea must be rejected.

Third plea in law: breach of Article 92(3)(b) of the Treaty

103 The German Government criticises the Commission for failing to apply Article 92(3)(b) of the Treaty and failing to give reasons for declining to apply that provision, which the government claims to have relied on as a legal basis as a precaution. It refers to the second paragraph of Point x of the grounds of the contested decision, according to which:

'The derogation in Article 92(3)(b) can certainly not be applied to Germany. It is true that German unification has had negative effects on the German economy, but these alone are not sufficient to apply that provision to an aid scheme. Recently, the Commission took the view that an aid scheme remedied a serious disturbance in the economy of a Member State when, in 1991, aid was approved for a privatisation programme in Greece. In its decision the Commission noted that the privatisation programme was an integral part of the undertakings given pursuant to Council Decision 91/306/EEC of 4 March 1991 in connection with the consolidation of the national economy as a whole. The German situation is clearly different.'

104 According to that government, Article 92(3)(b) of the Treaty should apply where certain regions of a Member State, such as the new *Länder*, are in a critical economic situation.

Findings of the Court

105 Under Article 92(3)(b) of the Treaty, aid 'to remedy a serious disturbance in the economy of a Member State' may be considered to be compatible with the common market.

106 Having regard to the context and structure of that provision and the need for a narrow interpretation of the derogations from the general principle that State aid is incompatible with the common market (see paragraph 66 above), it must be stated that the disturbance mentioned in that provision must affect the economy of a Member State, not merely that of one of its regions or areas.

107 It is in the framework of Article 92(3)(a) or (c) of the Treaty that disadvantaged regions of a Member State may benefit from aid considered by the Commission to be compatible with the common market.

108 In its third plea in law, the German Government merely referred to a serious disturbance of the economy of the Free State of Saxony and made no allegation that that situation had as a consequence a serious disturbance of the economy of the Federal Republic of Germany.

109 It follows that the German Government's argument concerning the refusal to apply Article 92(3)(b) of the Treaty must be rejected.

110 As to the complaint of inadequate reasoning for the refusal to apply that provision, it must be stated, having regard to the case-law referred to in paragraphs 87 and 92 above, that the contested decision, although summary in this respect, appears sufficiently reasoned in view of the context of the case, of the decisions previously adopted by the Commission in this context, especially the Mosel I decision, and of the absence of specific arguments put forward during the administrative procedure.

111 Accordingly, the third plea in law must be rejected.

Fourth plea in law: breach of Article 92(3) of the Treaty

1. First part of the fourth plea

112 By the first part of the fourth plea, the German Government alleges that, assuming Article 92(2)(c) of the Treaty not to be applicable, the Commission should have taken into account, in order to decide on the compatibility of an aid with the common market, the factors available to it at the time of the grant of the aid in question, not at the time of adoption of the contested decision. At the date of granting the aid in question, it was not subject to an obligation of separate

notification, since it formed part of the 19th Outline Plan which had been approved by the Commission by letter of 2 October 1990 addressed to the German Government.

113 According to that government, it follows from the Court's case-law that, to assess the compatibility of aid with the common market, the date to be taken is that on which the aid was granted, so that the date to be taken into consideration is 22 March 1991. It submits that, because of its expiry on 31 December 1990 and the opposition of the German Government, the Community framework did not at that time apply in Germany.

114 The Community framework may therefore be regarded as applicable only from April 1991, that is, after the date when the aid was granted, 22 March 1991.

115 In those circumstances, the aid at issue should have been regarded as forming part of an aid scheme which had received the general authorisation of the Commission.

116 The Commission submits that the German Government's argument is wrong. It submits essentially, first, that at the time of adoption of the contested decision, 26 June 1996, it was not required to base its decision on the factual and legal situation of March 1991. Second, even if it should have based itself on the factual and legal situation of March 1991, the aid at issue would still have had to be notified to it and it would have had to review it without restriction. Finally, on the supposition that it should have based its decision on a date at which the Federal Republic of Germany had not yet agreed to the application of the Community framework for the motor vehicle industry, that would not have prevented the Commission from applying that framework.

— Findings of the Court

117 The German Government's argument is based on the premiss that, since the Community framework did not apply from January to March 1991, the aid at issue, which came within the regional aid scheme provided for by the 19th Outline Plan, was already approved.

118 That argument cannot be accepted.

119 As is clear from paragraphs 8 and 12 above, the German Government took note that the approval of the regional aid referred to in the 19th Outline Plan did not extend to the sectors mentioned there, in particular the motor vehicle sector, where the costs of a benefit operation exceeded ECU 12 million.

120 Moreover, that was the understanding of the German Government, as is apparent from the quotation from the 19th Outline Plan in paragraph 8 above.

121 Consequently, since the approval did not cover aid in the motor vehicle sector, the aid at issue should have been notified, either under the provisions of the Community framework or, if that did not apply, under Article 93(3) of the Treaty.

122 In those circumstances, having regard to the fact that the question of the applicability of the Community framework between January and April 1991 is not material, the first part of this plea must be rejected.

2. Second part of the fourth plea

123 By the second part of the fourth plea, the German Government criticises the Commission for having, in the context of the application of Article 92(3)(c) of the Treaty, carried out a cost-benefit analysis of the project in which the project relating to Mosel II and Chemnitz II was no longer regarded as new investment (greenfield investment) but as an extension investment, despite the fact that it had been classified differently for some years.

124 That analysis thus leads, as regards the period for assessing the disadvantages suffered by Volkswagen, to less favourable figures and a lesser degree of compatibility of the aids. According to the German Government, it cannot be disputed that Mosel II and Chemnitz II constitute new greenfield investment and that, had they been considered as such, all the investment grants at issue would have been declared compatible with the common market.

— Findings of the Court

125 As regards the calculation of operating costs, the Commission drew a distinction between 'greenfield' investments, for which additional costs are taken into account for a period of five years, and 'extension' investments, for which it takes additional costs into account for a period of three years only.

126 According to the eighth paragraph of Point XII of the grounds of the contested decision: '... The term "greenfield project" does not simply mean that the project is situated in a green field somewhere, but that, from the investing company's point of view, the site is a new, as yet undeveloped one. Consequently, the company faces the following typical special problems as compared with the extension of an existing plant: lack of adequate infrastructure, lack of organised logistics, no trained workforce adapted to the needs of the company, and no established supplier structure. If, however, these services can be provided by a nearby plant belonging to the same group, then the project is treated as an extension, even if it is located in a green field. The Community concept differs from the concept of new investments that may be defined in national law. Since, in the case of a greenfield project as defined in this way, more difficulties arise and the time-span for reaching full capacity and thus viability is somewhat longer, there is justification for calculating the operating cost disadvantages over a longer period...'.

127 In the present case, the Commission considered that the Mosel II body and press shops were greenfield investments. It therefore took into account their operating costs over a period of five years, from 1993 to 1997 (body shop) and 1994 to 1998 (press shop), in its cost-benefit analysis. By contrast, the Mosel II and Chemnitz II paint shop and final assembly hall were classified as extension investments, so that their operating costs were taken into account over a period of three years, from 1997 to 1999.

128 The ninth and tenth paragraphs of Point XII of the grounds of the contested decision state:

'In the present case, the Commission had to take into account the fact that the different shops of the investment in Mosel come on stream at different times. Thus, the start-up problems associated with the different subprojects will also occur at different times. Furthermore, the Commission took account of the fact

that, through the delay in project implementation, the character of the project has also changed. With the installation of the press and body shops and their link with the modernised paint shop and final assembly halls of the old Mosel I plant, a fully operational car plant was established in Mosel by 1994. This is also demonstrated by the profitability of the VW companies in Saxony since 1994.

The future investment for a new paint and final assembly hall in Mosel II thus no longer constitutes a greenfield investment but represents an extension of existing capacity. Since a supplier structure is already in place (see above), since the infrastructure exists and since most of the workers will be taken over from Mosel I, the typical handicaps associated with greenfield investments will arise to a much lesser degree. This also applies to the Chemnitz II engine plant. As in other cases of capacity extension, the build-up of production in these plants is very rapid. Although the German authorities and VW originally suggested an analysis of the period from 1998 to 2002 for all projects in Mosel and Chemnitz, the Commission has analysed the operating handicaps over five years for the proposed greenfield projects, i.e. for 1993 to 1997 (body shop) and for 1994 to 1998 (press shop), and over three years for the extension projects, i.e. 1997 to 1999 (paint shop, final assembly, Chemnitz II). It was also taken into account that the press shop and the body shop will be expanded from a production capacity from 432 cars/day to 750 cars/day during the same period in order to be able to supply fully the new Mosel II paint shop and final assembly. Therefore, the additional operating handicaps for this period (1997 to 1999) that can be attributed to this extension of capacity were also included in the analysis.'

129 In this respect, the Commission enjoys a wide discretion in the context of the application of Article 92(3) of the Treaty (see, *inter alia*, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraphs 23 to 25), so that, as regards the question whether the paint shop and final assembly hall of Mosel II and Chemnitz

II should be classified as greenfield investments or extension investments, review by the Court is limited to verifying the accuracy of the facts relied on to make the disputed classification and ascertaining that there was no manifest error of assessment.

130 It must be stated here that the concepts of greenfield investment or extension investment must come under a Community interpretation, otherwise the content and scope of those concepts could vary according to the national law applicable, thereby harming the uniform application of Community law.

131 The Commission's view that the scale of the disadvantages linked to operating costs which may be taken into account varies depending on whether a complete infrastructure has to be set up (the position which occurs, according to the Commission, where there is no adequate infrastructure, organised logistics, labour force trained for the undertaking's specific requirements, or network of suppliers) or already exists is not manifestly erroneous and meets the requirement of a narrow interpretation of derogations from the general principle that State aid is incompatible with the common market, stated in Article 92(1) of the EC Treaty (see paragraph 66 above).

132 The Commission was entitled to consider, and did not commit a manifest error of assessment in considering, that the Mosel II and Chemnitz II paint shop and final assembly hall could not be classified as greenfield investments, since from 1994 at the latest there was a fully operational motor vehicle production unit consisting of the Mosel I paint shop and final assembly hall, the Mosel II body and press shops, and Chemnitz II. It appears in particular from the case-file that by 1994 Volkswagen had available on the spot an adequate infrastructure, organised logistics, a labour force trained for its requirements and a stable network of suppliers, so that the investment carried out could be regarded as an extension investment within the meaning of the contested decision.

133 The second part of the fourth plea is therefore unfounded.

134 It follows from all the foregoing that this plea in law must be rejected.

Fifth plea in law: incomprehensibility and inaccuracy of the cost-benefit analysis performed by the Commission

135 By the fifth plea, the German Government criticises the Commission for failing to take account of the actual original situation characterising the Mosel II and Chemnitz II investments and for making inadequate findings with respect to that new investment.

136 This comment applies in particular to the finding made by the Commission in the contested decision that an operational and viable plant had been set up in Mosel by mid-1994. That finding disregarded the restructuring measures taken at Mosel I and Chemnitz I after the agreement of principle with the THA reached in October 1990, which were in the nature of interim measures intended to employ the workforce until the construction of Mosel II and Chemnitz II. As to the alleged profitability of Mosel I and Chemnitz I, the Commission misunderstood the Volkswagen group's internal methods of calculation. Similarly, Volkswagen always emphasised to the Commission, with regard to its involvement in Saxony, the need to consider the entire investment project globally, and did not accept that it could be segmented. In this respect, the German Government refers to the observations of Volkswagen and VW Sachsen and of the Free State of Saxony in their pleadings submitted to the Court of First Instance in Cases T-132/96 and T-143/96.

137 According to the Commission, this plea of the German Government alleging that the analysis it performed in the contested decision is incomprehensible is not reasoned and is thus legally immaterial.

138 Nevertheless, the Commission submits, on the substance, that the German Government was closely associated with the administrative procedure. Furthermore, the successive drafts of cost-benefit analyses produced by the Commission from 1992 were transmitted to the government and were gone through point by point with its representatives.

Findings of the Court

139 Without it being necessary to consider the question of the admissibility of this plea, it must be noted, with respect first to the complaint of alleged lack of reasoning concerning the calculation of the cost-benefit analysis, that the German Government was closely associated with the process of drafting the contested decision, and was therefore aware of the reason why the Commission considered that it could not accept the cost-benefit analysis done by Volkswagen (see, to that effect, Case 13/72 *Netherlands* v *Commission* [1973] ECR 27, paragraph 12).

140 It should also be observed that the Commission is not required to address, in the reasoning of a decision, all the issues of fact and law raised by the persons concerned, where it has taken account of all the circumstances and all the relevant factors of the case (see, to that effect, Case C-360/92 P *Publishers Association* v *Commission* [1995] ECR I-23, paragraph 39, and Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others* v *Commission* [1996] ECR I-5151, paragraph 32).

141 In the present case, it is apparent from the case-file that the German Government, in particular, has not disputed that the successive draft cost-benefit analyses done by the Commission from 1992 were transmitted to it and were commented on point by point with its representatives, especially at the meetings of 11 April and 29 May 1996. Moreover, it is apparent that the definitive cost-benefit analysis on which the contested decision is based essentially repeats the analysis in the drafts examined on the occasion of those meetings, and that where the contested decision diverges from the drafts discussed at the meetings the differences are in favour of Volkswagen and VW Sachsen.

142 In those circumstances, the reasoning of the contested decision must be considered to be adequate, the fact that the decision does not take over all the data in the cost-benefit analysis and that that analysis is not annexed to the decision — for obvious reasons of confidentiality — being of no relevance on this point.

143 As regards, second, the complaint that a plant was operational from 1994, the documents in the case show that from 1994 at the latest there was an operational motor vehicle production unit consisting of the Mosel I paint shop and final assembly hall, the Mosel II body and press shops, and Chemnitz II. Consequently, from that date, contrary to the German Government's assertions, Volkswagen and VW Sachsen were undeniably able to start motor vehicle production.

144 As regards, third, the question of the alleged lack of profitability of Mosel I and Chemnitz I, it must be stated that the German Government has not submitted, even summarily, anything to support that allegation.

145 As regards, finally, the need to consider the investment project in a global and not, as the Commission did, in a segmented manner, it must be stated that the various plants were brought into operation over a period of time, so that each unit had to be the subject of a separate assessment in order for the state of development of the site at the time of coming on stream to be taken into consideration. That separate assessment was necessary in view of the distinction drawn by the Commission between greenfield investments and extension investments, a distinction which has as a necessary consequence a differentiation as regards the intensity of the aid authorised.

146 It follows from the above considerations that the fifth plea must be rejected.

147 In the light of all the foregoing, the application must be dismissed.

Costs

148 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 Commission has applied for the Federal Republic of Germany to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs. In accordance with Article 69(4) of the Rules of Procedure, the United Kingdom must bear its own costs.

On those grounds,

THE COURT

hereby:

1. **Dismisses the application;**

2. **Orders the Federal Republic of Germany to pay the costs;**

3. **Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Rodríguez Iglesias Puissochet Wathelet

Schintgen Timmermans Edward

Jann Skouris Macken

von Bahr Cunha Rodrigues

Delivered in open court in Luxembourg on 30 September 2003.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President