JUDGMENT OF THE COURT
21 March 1991 *

In Case C-303/88,

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Diplomatic Legal Affairs Department, acting as Agent, assisted by Ivo M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

applicant,

supported by

Kingdom of Spain, represented by Javier Conde de Saro, Director-General for Community Legal and Institutional Coordination at the Ministry of Foreign Affairs, and Rosario Silva de Lapuerta, Abogado del Estado, a member of the State Legal Department for proceedings before the Court of Justice, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4 and 6 Boulevard Emmanuel-Servais,

intervener,

v

Commission of the European Communities, represented by its Legal Adviser Antonino Abate, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of Commission Decision 89/43/EEC of 26 July 1988 on aids granted by the Italian Government to ENI-Lanerossi (Official Journal 1989 L 16, p. 52),

* Language of the case: Italian.

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: W. Van Gerven,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument on behalf of the parties at the hearing on 12 July 1990,

after hearing the Opinion of the Advocate General at the sitting on 11 October 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 16 October 1988, the Italian Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Commission Decision 89/43/EEC of 26 July 1988 on aids granted by the Italian Government to ENI-Lanerossi. That decision, which was notified to the Italian Government by letter of 10 August 1988, was published in the Official Journal on 20 January 1989 (Official Journal 1989 L 16, p. 52).

2 In that decision the Commission held that the aid granted between 1983 and 1987 to ENI-Lanerossi in the form of injections of capital into its men's outer wear subsidiaries was contrary to Article 93(3) of the EEC Treaty and incompatible with the common market within the meaning of Article 92 of the Treaty. The aid was therefore to be withdrawn by recovery.

3 It appears from the statement of the grounds for the contested decision that ENI (Ente Nazionale Idrocarburi), a State holding company, took over Lanerossi in 1962. The losses suffered between 1974 and 1979 by four subsidiaries of Lanerossi in the men's outer wear sector, Lanerossi Confezioni (Arezzo, Macerata, Orvieto), Intesa (Maratea, Nocera, Gagliano), Confezioni di Filottrano (Ancona) and Confezioni Monti (Pescara) (hereinafter referred to as 'the four subsidiaries'), were made up by the Italian State. Acting on a complaint in that respect, the Commission informed the Italian Government by letter of 26 June 1980 that that aid could be granted exemption from the rule of incompatibility laid down in Article 92(1) of the Treaty only if it was granted for a limited period and if the restructuring programme which had been notified to the Commission was carried out in such a manner that the companies concerned were returned to viability and financial self-support in the short term.

4 The subsidiaries continued to experience difficulties, and by letter of 20 May 1983 the Commission stated that although it had not objected to the grant of aid until the end of 1982, in view of the social and regional importance of those undertakings, it doubted whether aid could continue to be paid without interfering with the orderly functioning of the common market. The Commission reminded the Italian Government of the obligation on Member States under Article 93(3) of the Treaty to inform the Commission of plans to grant or alter aid, and invited the Italian Government to indicate its intentions within two weeks of receipt of the letter. By a telex message of 24 June 1983 the Italian Government confirmed its intention to notify the Commission of any future intervention in favour of the subsidiaries. By letter of 2 November 1983 it informed the Commission that no further aid was envisaged in favour of those subsidiaries, since the management of ENI-Lanerossi considered that they could not be restructured.

5 In the light of press reports that the losses of the subsidiaries were continuing to be made up, although it had been notified of no plan in that regard, the Commission considered that the situation was contrary to the decisions which it had communicated to that Government; it therefore initiated the procedure under the first subparagraph of Article 93(2) of the Treaty and by letter of 19 December 1984 called on the Italian Government to submit its observations. That procedure led, on 26 July 1988, to the contested decision.

6 On 26 January 1989 the Italian Government submitted an application for interim measures seeking an order suspending the operation of Article 2 of Decision

89/43, which ordered the recovery of the aid that had been paid. That application was dismissed by order of the President of the Court of 17 March 1989.

7 By order of 15 March 1989 the Court granted the Spanish Government leave to intervene in support of the Italian Government.

8 Reference is made to the Report for the Hearing for a fuller account of the background to the case, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The Italian Government argues that the decision in issue was adopted contrary to Articles 92 and 93 of the Treaty. It raises a number of pleas in law based on the absence of any State aid within the meaning of Article 92(2) of the Treaty, breach of the principle of equal treatment as between public and private undertakings, the absence of any effect on Community trade and competition, infringement of Article 92(3)(a) and (c), breach of the principle of protection of legitimate expectations, the unlawful nature of the consequences given to the alleged failure to notify and the inadequacy of the statement of reasons for the recovery of aid which was ordered. Finally, it raises an argument based on the practical impossibility of recovering the aid in question.

The absence of any State aid within the meaning of Article 92 of the Treaty

10 The Italian Government argues that the Commission has not established in the decision in issue that the LIT 260.4 thousand million used to make up the operating losses suffered by the subsidiaries between 1983 and 1987 came from State funds and, consequently, that those injections of capital fell within the concept of State aid. It states that under the legislation incorporating it, ENI must operate on the basis of its own resources, obtained from cash flow and from the national and foreign capital markets, without drawing on the capital funds allocated to it by the State. It adds that although it is true that ENI received capital funds in 1983 and 1985 intended for the textile sector, the Commission has in no way shown that the resources used to cover the losses of the four subsidiaries came from those funds.

11 As the Court has consistently held (see in particular the judgment in Joined Cases 67, 68 and 70/85 *Van der Kooy* v *Commission* [1988] ECR 219, at paragraph 35), no distinction should be drawn between cases where aid is granted directly by the State and cases where it is granted by public or private bodies established or appointed by the State to administer the aid. In this case there is considerable evidence in the documents before the Court that the injections of capital were the result of action attributable to the Italian State.

12 Under Law No 136 of 10 February 1953 (Official Gazette of the Italian Republic 1953 No 72), which established it, ENI is a public corporation controlled by the Italian State and the members of its board of directors and management board are appointed by decree of the Prime Minister. Furthermore, although ENI is required to operate in accordance with economic criteria, it does not have full freedom of action, since it must take account of directives issued by the Comitato Interministeriale per la Programmazione Economica (Interministerial Committee for Economic Planning). Taken as a whole, those factors show that ENI operates under the control of the Italian State.

13 In addition, with the authorization of the Minister for State Holdings, ENI may issue bonds guaranteed as to capital and interest by the State. It is not necessary to rule on the question whether that guarantee in itself constitutes State aid; its existence distinguishes ENI's borrowing from the normal borrowing of a private company.

14 In those circumstances the Commission was entitled to regard the funds provided by ENI through Lanerossi to the four subsidiaries as State interventions which could constitute aid. Contrary to what the Italian Government has submitted, it is not necessary to establish that the capital funds received by ENI from the Italian State were specifically and expressly intended to make up the losses of the four subsidiaries. It is sufficient to observe that in any event the receipt of the capital funds enabled ENI to release other resources to make up the losses of the four subsidiaries.

15 The first plea in law put forward by the Italian Government must therefore be rejected.

Breach of the principle of equal treatment as between public and private undertakings

16 The Italian and Spanish Governments submit that the decision in issue is contrary to the principle of equal treatment as between public and private undertakings, which is recognized in Article 90 of the EEC Treaty.

17 They argue that in private industrial groups it is quite normal to find transfers of funds between companies in order to make up losses suffered by one of the members of the group. Such transfers may be explained by the desire to safeguard the reputation of the group, by a price strategy decided on at group level, for which the group may consider it appropriate to tolerate losses in one sector of its activities for a certain period, or by a programme of progressive disinvestment, where the group may decide to bear the losses suffered during the last years of operation of one of its members. Consequently, a public holding company should be allowed to make up the losses of one of its members under the same conditions as a private holding company.

18 Again according to the Italian and Spanish Governments, the private investor criterion, which is used by the Commission in order to determine whether losses have been made up under normal market conditions, is too narrow. In support of that argument they state that a distinction must be drawn between private investors, whose sole motive is profit, and private entrepreneurs, such as an industrial holding company whose decisions may be governed not merely by short-term profitability but also by social and regional considerations.

19 The Commission showed itself to be aware of the implications of the principle of equal treatment as between public and private undertakings in its communication to the Member States of 17 September 1984 on public authorities' holdings in company capital (published in the Bulletin of the European Communities, September 1984). In that statement it correctly observes that its action may neither penalize nor favour public authorities which provide companies with equity capital.

20 It follows from that principle of equal treatment that capital placed by the State, directly or indirectly, at the disposal of an undertaking in circumstances which correspond to normal market conditions cannot be regarded as State aid. In the present case it must therefore be determined whether, in similar circumstances, a private industrial group might also have made up the operating losses of the four subsidiaries between 1983 and 1987.

21 As the Court held in its judgment of Case 234/84 (*Belgium* v *Commission* [1986] ECR 2263, at paragraph 15), a private shareholder may reasonably subscribe the capital necessary to secure the survival of an undertaking which is experiencing temporary difficulties but is capable of becoming profitable again, possibly after a reorganization. It must therefore be accepted that a parent company may also, for a limited period, bear the losses of one of its subsidiaries in order to enable the latter to close down its operations under the best possible conditions. Such decisions may be motivated not solely by the likelihood of an indirect material profit but also by other considerations, such as a desire to protect the group's image or to redirect its activities.

22 However, when injections of capital by a public investor disregard any prospect of profitability, even in the long term, such provision of capital must be regarded as aid within the meaning of Article 92 of the Treaty, and its compatibility with the common market must be assessed on the basis solely of the criteria laid down in that provision.

23 In this case it should be observed that the four subsidiaries suffered losses continually from 1974 to 1987 and that the operating losses made up between 1983 and 1987 were approximately equal to the turnover of the four subsidiaries during that same period. Furthermore, in 1983 the management of ENI-Lanerossi expressed the firm view that no restructuring of the four subsidiaries was possible, but only subsequently undertook a reconversion of the subsidiaries which culminated in January 1988 in their transfer to the private sector. It is undisputed that the sector in which the subsidiaries were operating, that is to say the men's outer wear sector, was in a situation of crisis, with serious problems of adjustment arising from structural overcapacity, low prices and intense competition both within and outside the Community.

24 In those circumstances, and having regard to the length of the period during which ENI-Lanerossi continued its financial support to the four subsidiaries, the Commission was entitled to take the view that the losses were made up in circumstances which would have been unacceptable for a private investor operating under normal market conditions and that no private investor, even an industrial holding company, would have taken into account the considerations put forward by the Italian and Spanish Governments, mentioned above. The Commission could thus conclude that no private investor would have covered capital losses of such an extent for so long a period. It must therefore be held that ENI's action constituted State aid within the meaning of Article 92(1) of the EEC Treaty.

25 The second plea in law put forward by the Italian Government must therefore be rejected.

The absence of effects on Community trade and competition

26 The Italian Government submits that the Commission has not stated sufficient grounds for its conclusion that the aid to the four subsidiaries was likely to affect trade between Member States and distort competition. It states that the subsidiaries' production, which accounted for only 2.5% of Italian production in the men's outer wear sector and 0.33% of Italian exports in that sector, was too small to have any impact on Community trade or, in particular, present any obstacle to exports from other Member States to Italy.

27 It must be observed right away that as the Court held in its judgment in Case 102/87 (*France* v *Commission* [1988] ECR 4067, at paragraph 19), aid may be such as to affect trade between the Member States and distort competition where the recipient undertaking competes with producers in other Member States, even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may thereby be maintained or increased with the result that undertakings established in other Member States have significantly less chance of exporting their products to the market in that Member State. Furthermore, even aid of a relatively small amount is liable to affect trade between Member States where there is strong competition in the sector in question (judgment in Case 259/85 *France* v *Commission* [1987] ECR 4393, at paragraph 24).

28 In this case, the Commission has stated in the contested measure that during the period under consideration (1983 to 1987), the textile industry was suffering from stagnation of demand, depressed prices and overcapacity. Intra-Community trade in this sector has increased significantly, rising from 19.3% of Community production in 1983 to 29.1% in 1986, indicating keen competition. The aid granted by ENI maintained the subsidiaries artificially in operation after 1982 and restored their finances, thus facilitating their reconversion and the selling off of certain production sites, the cost of which ENI-Lanerossi would normally have been obliged to bear.

29 Having regard to those factors, the Commission's assessment that the aid gave the four subsidiaries a very considerable advantage over their competitors and was thus likely to affect trade and distort competition within the meaning of Article 92(1) of the Treaty is supported by sufficient reasons and is not manifestly incorrect. The plea in law raised in this regard by the Italian Government must therefore be rejected.

Infringement of Article 92(3)(a) and (c) of the Treaty

30 The Italian Government considers that the contested decision was adopted contrary, first, to Article 92(3)(a) and (c) of the Treaty, on the ground that the aid in question made it possible to promote regional and sectoral development, and, secondly, to the obligation to state reasons.

31 It denies first of all the Commission's assertion that only some of the four subsidiaries' plants operated in regions where the standard of living was abnormally low or where there was serious underemployment as referred to in Article 92(3)(a). It argues in that regard that all the plants of two of the four subsidiaries were in areas regarded by the Commission as having a very low standard of living and suffering from serious underemployment, and that the province of Arezzo, which in the second paragraph of part X of the contested decision the Commission describes as not having an abnormally low standard of living or suffering from serious underemployment, is one of the zones where Community aid may be paid under Council Regulation (EEC) No 219/84 of 18 January 1984 instituting a specific Community regional development measure contributing to overcoming constraints on the development of new economic activities in certain zones

adversely affected by restructuring of the textile and clothing industry (Official Journal 1984 L 27, p. 22).

32 More generally, the applicant argues that the efforts at restructuring and reconversion carried out with regard to the four subsidiaries facilitated the development of economic activities in the textile sector and in the areas concerned. It disputes the Commission's conclusion that any reconversion should have taken place within a short period, and cites as an appropriate parameter the period of five years fixed for special intervention programmes under Article 3(6) of Regulation No 219/84, cited above, which corresponds to the five years (1983 to 1987) covered by the contested decision. Finally, the Italian Government submits that the reconversion of the four subsidiaries contributed to the achievement of the objectives of European policy in the men's clothing sector by reducing production in that sector.

33 It should be observed that the Commission did not challenge the Italian Government's assertions concerning the fact that two of the four subsidiaries were established in disadvantaged zones or that concerning the economic situation in the province of Arezzo.

34 It must be pointed out first of all that as regards the application of Article 92(3) of the Treaty the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context (judgment in Case C-301/87 *France* v *Commission* [1990] ECR I-307, at paragraph 49).

35 Furthermore, even though the contested decision concerns only the aid granted to the four subsidiaries between 1983 and 1987, it is undisputed that the losses suffered by those undertakings were made up from 1974 onwards, that is to say for a total period of 14 years.

36 It is clear from the contested decision that the Commission's negative assessment concerning the compatibility of the aid with the common market was based not only on the duration of the aid but also on its nature. The Commission correctly

points out that the aid in question was not in accordance with the Community guidelines for aid to the textile and clothing industry communicated to the Member States by letters of 30 July 1971 and 4 February 1977 or with the guidelines on rescue aid communicated to the Member States by letter of 24 January 1979.

37 The guidelines concerning the textile industry permit the grant of aid for a short period and for specific operations with the aim in particular of providing the recipient with a level of competitiveness sufficient to ensure success on the Community market. In this case the aid was used in a general way to improve the financial situation of the four subsidiaries and artificially maintain them in operation. With regard to rescue aid, it appears from the Community guidelines that this must take the form of loans or loan guarantees and can be paid only for the time needed to draw up recovery measures, not to exceed six months. The aid granted in this case manifestly does not meet those criteria and cannot therefore be regarded as promoting the economic development of the areas and activities concerned.

38 Finally, it is clear from the contested decision that the Italian Government's argument to the effect that the reconversion of the four subsidiaries contributed to achieving Community objectives in the men's outer wear sector was examined by the Commission in the course of the procedure. The Italian Government had claimed that production capacity had been reduced by about 55%, on the basis of a corresponding reduction in the work force of the four subsidiaries. However, as the decision correctly points out, such a reduction in the work force does not automatically result in a corresponding reduction in production capacity, particularly when it is accompanied by increased productivity. Furthermore, even assuming that the reconversion of the four subsidiaries did have the effect of reducing production in the men's clothing sector, it is established that 17% of the production capacity was reconverted to other sub-sectors of the textile and clothing industry, thus increasing the pressure on those sub-sectors.

39 In those circumstances it must be concluded that the Italian Government has provided no support for the conclusion that the Commission exceeded the limits of

its discretion in considering that the aid in question did not meet the conditions which would entitle it to one of the derogations under Article 92(3).

Breach of the principle of protection of legitimate expectations

40 The Italian Government submits that the Commission's conduct between 1983 and 1987 gave rise to a legitimate expectation regarding the legality of the aid which must at least prevent the Commission from ordering its recovery. In that regard the applicant draws attention first of all to the absence of any formal procedure between 20 May 1983, the date on which the Commission sent a further letter concerning the subsidiaries of ENI-Lanerossi, and 19 December 1984, the date on which it formally called on the Italian Government to submit its observations. It goes on to argue that by allowing 55 months to pass before concluding the procedure the Commission led the applicant to entertain the reasonable belief that the aid was lawful.

41 That argument cannot be upheld. The Italian Government cannot submit that it was encouraged to consider that the aid in question was compatible with the common market simply because the Commission did not initiate the procedure under Article 93 of the Treaty earlier, when in June 1983 it gave the Commission confirmation of its intention to notify it of any future action in favour of the four subsidiaries and in November 1983 it assured the Commission that no aid for those undertakings was envisaged.

42 The Italian Government never notified the Commission of its intention to continue to grant aid to the four subsidiaries; in the course of the examination procedure it frequently asked for further time to reply to the Commission's requests for information, and the figures concerning the aid granted for the years 1986 and 1987 were provided only four days before the final decision.

43 When a Member State which grants aid contrary to the duty of notification laid down in Article 93(3) of the Treaty subsequently displays reluctance to provide the appropriate information to the Commission, it is itself responsible for prolonging the examination procedure; it cannot therefore rely on the length of that procedure as a ground for a legitimate expectation regarding the compatibility of

the aid in question with the common market. If it could do so, Articles 92 and 93 of the Treaty would be set at naught, as the Court held in Case C-5/89 (*Commission* v *Germany* [1990] ECR I-3437), since national authorities would thus be able to rely on their own unlawful conduct in order to deprive decisions taken by the Commission under provisions of the Treaty of their effectiveness.

44 The plea based on breach of the principle of protection of legitimate expectations must therefore be rejected.

The unlawful nature of the effects attributed to the failure to notify

45 The Italian Government denies first of all that the failure to notify the aid makes that aid irremediably unlawful, as the Commission asserts in the second paragraph of part V of the contested decision. Secondly, it states that it did comply with the obligation laid down in Article 93(3), inasmuch as the Commission was informed of changes in the situation of the four subsidiaries in sufficient time to enable it to submit its comments.

46 The consequences of an infringement of Article 93(3) were set out in paragraphs 12 et seq. of the judgment in Case C-301/87, cited above. The Court held in that judgment that once the Commission has established that aid has been granted without notification, it has the power, after giving the Member State in question an opportunity to submit its comments on the matter, to issue an interim decision requiring it to suspend immediately the payment of the aid pending the outcome of the examination of the aid and to provide the Commission, within such period as it may specify, with all such documentation, information and data as are necessary in order to examine the compatibility of the aid with the common market.

47 Where the Member State complies in full with the Commission's order, the Commission is obliged to examine the compatibility of the aid with the common market in accordance with the procedure laid down in Article 93(2) and (3) of the Treaty. However, if the Member State, notwithstanding the Commission's order,

fails to provide the information requested, the Commission is empowered to terminate the procedure and make its decision on the basis of the information available to it on the question whether or not the aid is compatible with the common market.

48 If the Member State fails to suspend payment of the aid, notwithstanding the Commission's order, the Commission is entitled, while carrying out the examination on the substance of the matter, to bring the matter directly before the Court by applying for a declaration that such payment constitutes an infringement of the Treaty.

49 However, in this case it is undisputed that the Commission carried out an examination of the compatibility of the aid in question with the common market and then held, in Article 1 of the contested decision, that it was incompatible with the common market within the meaning of Article 92 of the Treaty. That examination may, therefore, be the subject of judicial review.

50 The plea based on the unlawful nature of the effects attributed to the absence of notification must therefore be rejected, and it is not necessary to reply to the second argument put forward by the Italian Government.

Insufficient statement of grounds for the order for recovery of the aid

51 The Italian Government submits first that the decision to order the recovery of the aid is a matter for the Commission's discretion, the exercise of which must be supported by reasons. In this case the Commission has indicated no reason justifying the repayment of the aid.

52 As the Court has consistently held, the statement of the reasons in which a decision is based must enable the Court to review the legality of the decision and provide the party concerned with details sufficient to allow that party to ascertain whether or not the decision is well founded. The requirement of a statement of reasons must be viewed in the context of the circumstances of the case, and in particular the content of the measure in question, the nature of the reasons relied on and the interest which the addressee may have in obtaining explanations (see in particular the judgment in Case 41/83 *Italy* v *Commission* [1985] ECR 873, at paragraph 46).

53 When it initiated the procedure under Article 93(2) the Commission informed the applicant government that any aid which might be granted before the decision terminating the procedure could give rise to an order for recovery; that possibility was also pointed out in a Commission communication published in the Official Journal on 24 November 1983 (Official Journal 1983 C 318, p. 3).

54 It appears from the contested decision that the recovery of the total amount of aid was ordered because of 'the seriousness and scale of the breach'. Although such a justification, viewed in isolation, may seem excessively laconic, it should be borne in mind that it is put forward in the context of a decision which explains in detail the impact of the aid in question on a sector in crisis, such as the textile and clothing sector.

55 It follows that the Italian Government's plea based on the alleged inadequate statement of reasons must be rejected.

The impossibility of recovering the aid

56 The applicant argues that the implementation of Article 2 of the decision, on the recovery of the aid, is impossible. It states first that the uncertain identity of the addressees of the order for recovery is sufficient in itself to make that order unlawful. In that regard it points out the inconsistencies between the grounds of the decision in question, which refer to recovery from the 'recipients' of the aid, Article 1 of the decision, which refers to the ENI-Lanerossi group, and a telex from the Commission dated 23 November 1988 which refers to a debt owed by ENI. Secondly, it submits that under Italian law it has no right to recover from the purchasers of the four subsidiaries sums which were not taken into consideration in the conditions of sale of the undertakings in question.

57 With regard to the alleged uncertainty of the identity of the addressees of the order for recovery, it is clear from the contested decision that the aid was to be recovered from the undertakings which actually benefited from it, that is to say the four subsidiaries.

58 If the Italian Government had serious doubts in that regard it could, like any Member State which encounters unforeseen difficulties in implementing an order for recovery, have submitted those problems for consideration by the Commission. In such a case the Commission and the Member State concerned must, in accordance with the duty of genuine cooperation stated in particular in Article 5 of the Treaty, work together in good faith with a view to overcoming the difficulties whilst fully observing the Treaty provisions, in particular the provisions on aid (see the judgment in Case 94/87 *Commission* v *Germany* [1989] ECR 175, at paragraph 9).

59 Finally, any uncertainty as to the identity of the addressees of the order for recovery was dispelled at the hearing of the application for interim measures in this case, on 13 March 1989, when the Commission's agent stated that the order for recovery concerned exclusively the four subsidiaries.

60 With regard to the second point, it must be held that even if in Italian law ENI cannot recover sums which were not taken into account in the conditions of sale of the four subsidiaries, that cannot stand in the way of the full application of Community law and can therefore have no effect on the obligation to recover the aid in question.

61 It follows that the last argument of the Italian Government must be rejected.

62 Since none of the pleas in law put forward by the Italian Government have been upheld, the action must be dismissed in its entirety.

Costs

63 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, including those of the application for interim measures. Since the applicant has been unsuccessful, it must be ordered to pay the Commission's costs. The Government of the Kingdom of Spain must bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Italian Republic to pay the costs of the Commission, including those of the application for interim measures;

(3) Orders the Kingdom of Spain to bear its own costs.

Due Mancini O'Higgins Moitinho de Almeida

Rodríguez Iglesias Díez de Velasco Slynn

Kakouris Schockweiler Grévisse Zuleeg

Delivered in open court in Luxembourg on 21 March 1991.

J.-G. Giraud
Registrar

O. Due
President