II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 20 December 1995
amending Spanish aid schemes for the motor vehicle industry

(Only the Spanish text is authentic)

(Text with EEA relevance)

(96/313/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the abovementioned Articles,

Whereas:

I

Opening of the procedure provided for in Article 93 (2) of the Treaty

By letter dated 5 October 1995, the Commission informed Spain of its decision of 20 September 1995 [1] to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of all aid schemes in operation in Spain under which aid could be awarded as from 1 January 1996 to motor vehicle manufacturers.

In opening the procedure, the Commission examined the comments submitted by Spain to justify its refusal to agree to the reintroduction of the Community framework on State aid to the motor vehicle industry (hereinafter referred to as 'the Community framework') as proposed by the Commission in its decision of 5 July 1995. After examining those comments, the Commission concluded at that stage that there were no grounds for accepting Spain's refusal.

By the abovementioned letter of 5 October, the Commission gave the Spanish Government notice to submit its comments within two weeks of the date it received the letter. In accordance with Article 93 (2), the other Member States and interested parties were informed by publication of the letter in the *Official Journal of the European Communities* and were requested to submit their comments.

II

Observations from the Spanish Government

By letter dated 31 October 1995, the Spanish Government communicated its comments under the procedure. Its arguments, which broadly correspond to those which it already advanced in its letter of 16 August 1995 in order to justify its refusal, are set out below:

1. *Disregard of Article 93 (1) of the Treaty*

The Spanish authorities stated that the Commission had altered the literal and logical order of Article 93 (1), which establishes, first, that 'the Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States' and, secondly, that 'it shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market'.

[1] OJ No C 304, 15. 11. 1995, p. 14.

Before discussing the reintroduction of the Community framework with the Member States at the multilateral meeting of 19 July 1995, the Commission had already adopted on 5 July 1995 a decision proposing that the Member States reintroduce the Community framework, warning them that, should they refuse to support the proposal, it would initiate the procedure provided for under Article 93 (2). It could not be argued that the Commission proposal had been discussed at the multilateral meeting of 4 July 1995, at which the Member States had merely taken note of the proposal and reserved their positions on it.

Furthermore, the Commission has not demonstrated that the urgent need to ensure that the new Community framework entered into force prevented it from complying with the provisions of Article 93 (1).

Lastly, the Spanish authorities felt that the facts bore out the remarks they made at the multilateral meeting of 19 July 1995 to the effect that the Commission's *a posteriori* consultation of the Member States had no genuine purpose, because it did not serve to modify the 'appropriate measure' already decided by the Commission on 5 July 1995.

2. *Lack on an overall evaluation of implementation of the Community framework*

The Spanish authorities also disagreed with the reintroduction of the Community framework on the grounds that there had been no overall evaluation of its implementation in recent years. The Commission acknowledged the need for such an evaluation in its letter of 5 October 1995, in which it stated its firm intention to undertake, in the following year, an independent study to review application of the Community framework since its introduction. However, according to the Spanish authorities, the appropriateness of the criteria and method employed for implementing the Community framework over the previous six years should have been demonstrated by the study before the decision was taken to keep the framework in force for three additional years.

Furthermore, the position of the Spanish authorities was in line with the request made by the European Parliament in its resolution of 2 September 1995 on the Commission's communication on the Community automobile industry, in which it called for the repercussions of all common policies affecting the automobile industry to be reviewed at least three times a year.

3. *Justification for a framework on State aid to the motor vehicle industry as opposed to other industries; intervention to restructure the Community motor vehicle industry*

The Spanish authorities took the view that, in principle, it could make sense to favour a reduction in overcapacity in a sector suffering from a lack of competitiveness. However, if the excess capacity was found in a sector in which firms were highly competitive on world markets, the maintenance of a specific framework restricting State aid in that sector would discriminate against those firms vis-à-vis those operating in other sectors and would undermine their future competitiveness. The fallacy of such an approach was even more obvious when it was borne in mind that the most competitive companies in the sector were precisely those deciding to carry out new investments to increase their capacity and improve their technological know-how. The Spanish Government considered that these companies, being in direct contact with the market, had a better knowledge of the sector than the Commission.

As regards the reference made in the Commission's letter of 5 October 1995 to the fact that Spain had accepted application of the Community famework in the past, the Spanish Government stressed that its acceptance came after initiation of the procedure provided for in Article 93 (2) and was not unconditional. Before Spain's acceptance, the Member of the Commission with special responsibility for competition policy had assured the Spanish Government, by letter dated 10 January 1990, that the regional benefits arising from State aid to the motor vehicle industry would continue to be a decisive factor in the Commission's decisions and that the greater the structural handicaps of the affected regions, the more weight would be carried by regional arguments. In its reply of 5 February 1995, the Spanish Government pointed out that acceptance of the Community framework did not prejudge its position on the future stance that the Commission might adopt within the new policy on State aid it had announced in December 1989.

On the Commission's view that the existence of a large number of competitors in an industrial sector did not in itself offer a cast-iron guarantee of free competition, the Spanish authorities remarked that it remained an element that contributed to the proper functioning of market mechanisms by reducing the scope for collusion agreements amongst companies.

Lastly, the Spanish authorities repeated that it was inappropriate to use competition policy for restructuring an industrial sector in the Community. The measures and instruments used to restructure the industry could not be based exclusively on competition criteria, without taking into account competitiveness, industrial organization and regional development aspects. The Spanish authorities considered that the State aid monitoring provisions laid down in the Treaty were sufficient to nurture competition and that it was inappropriate to have a framework system (supercontrol) which disregarded a host of indirect effects generated by the investments. Thus, the provisions of point (a) of Article 92 (3) had not been duly taken into account.

The Spanish authorities stressed that it was clear from the Commission's decisions approving State aid under the original Community framework from 1989 until mid-1995 that the average aid intensity approved in the Community was 25 %. While the average intensity of the aid approved for certain Member States was as high as 46 %, the average approved in Spain was only 13 %.

4. *Regional aid based on point (a) of Article 92 (3)*

The Spanish Government considered that the arguments put forward in the Commission's letter of 5 October 1995 showed that, in practice, the distinction established by the Treaty between regional aid based on point (a) of Article 92 (3) and point (c) of Article 92 (3) was being disregarded. The sole requirement for authorizing aid under point (a) was that it should promote the economic development of the region concerned, while aid allowed under point (c) should facilitate the development of a given region without adversely affecting trading conditions to an extent contrary to the common interest.

The Commission's criterion whereby regional aid should be in proportion to the actual regional handicap for an investor would, if applied unreservedly, impede the creation of the economic incentives needed for developing the less favoured areas of the Community. The creation of wealth and employment in the less favoured areas of the Community, which is one of its most important objectives, would be unduly subordinated to competition policy requirements. Therefore, Spain could not accept the way in which the Community framework had so far been applied in practice, namely on the basis of the absolute principle that, where a sector suffered from excess capacity, regional aid granted in that sector had to be confined to offsetting the actual net disadvantages arising from the location of the aided project in an assisted area. The Spanish Government stressed that it was up to the Commission to prove, in each case, that an investment did not 'promote the economic development' of a given assisted area — the sole criterion laid down in point (a) of Article 92 (3) — as a consequence of the presumed sectoral overcapacity.

The Spanish authorities also contradicted the argument that, when the aid in question promoted the location and development in a particular area of investment in a Community sector suffering from overcapacity, it could not facilitate the economic development of the region concerned. In theory, overcapacity is corrected in a perfectly competitive market through the balancing of supply and demand. Given the great disparities in the level of development between different regions of the Community, this theory could not be applied. Thus, because there was no optimum adjustment mechanism and because the long-term viability of an industrial activity was determined by a variety of factors, it could not be argued that an investment would have no positive effects on the development of a given region. On the contrary, the location of investments in areas with less competitive advantage generated a broad spectrum of positive effects that should be considered as inducing economic development in the area. For that reason, the reduction in the industry's relative costs resulting from the granting of aid was fully justified as a mechanism for promoting industrial activity in the less favoured areas of the Community.

The Spanish Government considered that the wide discretion enjoyed by the Commission in applying the exceptions provided for in Article 92 (3), as confirmed by the Court of Justice, could not nullify, in a general way, the difference established by the Treaty itself in the treatment of regional aid covered by points (a) and (c) of Article 92 (3).

Lastly, the fact that the Commission was fully empowered to organize its own departments as it thought fit did not deprive the Member States of the right to give their views on that organization. The Spanish Government therefore took the view that the assessment of the long-term benefits of regional investments should be carried out by the Commission departments in charge of regional policy, which used a different method from the one employed by the Commission departments in charge of competition matters when applying the Community framework.

5. *External competition*

The Spanish Government stated that neither the Commission's intention to obtain 'reciprocity in the conditions of access to third markets for the manufacturers of the EU by order means that competition policy' nor its assertion that the WTO Agreement on Subsidies and Countervailing Measures 'contains an element of progress since regional aid in third countries must now be based on a general development plan to be submitted to the WTO and against which the Commission can react if necessary', avoided the risk of regional aid in third countries with an intensity of up to 75 % being presumed to be compatible with that Agreement. This risk was acknowledged by the Commission in its document 'Implications of the GATT subsidy code for State aid control in the EU' discussed at the multilateral meeting of December 1994. In this connection, the Spanish Government stressed that the industry itself had confirmed the existence of a real risk.

6. *Internal procedure and method of applying the Community framework*

In reply to the Commission's observations communicated by its letter of 10 October 1995, the Spanish Government pointed out that the document (ref. IV/5558/92) submitted to the multilateral meeting of 8 December 1992 referred to some principles of assessment but not to the method of applying them.

That document indeed established, in connection with regional aid, that the Commission had decided that the net marginal cost arising as a result of location in an assisted area should be carefully examined, in each case, in comparison with location in a central non-assisted area. This would make it possible to determine the cost inherent in a particular region. To that end, the Commission had assessed, with the help of the manufacturers and an independent expert, the net marginal investment cost and the net marginal operating cost during the five first years of operation. The above document also stated that 'until now, the Commission has accepted that the regional aid could exceed the additional marginal costs when it concluded that the project did not imply sectoral problems' and that, when the project did give rise to sectoral problems, of the different options available, 'the Commission considers that the best one consists of limiting the aid to the amount strictly needed to compensate the additional net costs'. According to the Spanish Government, the 1992 document did not explain the 'method' applied or the factors or parameters used for calculating the 'net marginal cost'.

The Spanish Government therefore concluded that the method was not discussed at the multilateral meeting of 8 December 1992. Only the soundness of the principle on which the method is based was discussed, and several national delegations expressed their opposition to it.

Furthermore, the conclusions of the Advocate-General in Case C-225/91, *Matra SA* v. *Commission* [1], did not refer to the specific method adopted by the Commission departments when implementing the Community framework but to the 'common method for assessment of regional aid'.

On the internal procedure and 'method' applied by the Commission, the Spanish Government pointed out that:

1. the method adopted by the Commission implied the acceptance of very many assumptions which were difficult, if not impossible, to verify;

2. in the examination of a particular case, the only data available to the Member State concerned were those which it submitted to the Commission; it did not know which data were finally taken into account, because the Commission departments used information from different sources;

3. neither did the Member State know how the Commission's departments used the data in order to calculate a maximum percentage of aid to be authorized. It only knew that 'the data are processed by a very advanced computer model which makes thousands of calculations';

4. two questions were also highlighted with regard to 'regional aid top-up': first, the discretionary powers of the Commission departments in applying the top-up in particular cases and, second, its low level of 3 % in comparison with the regional aid intensities approved by the Commission for certain areas.

The Spanish Government therefore took the view that the method applied was highly subjective, lacked transparency in some areas and involved very little consideration of the regional aspects. The practical consequence of the application of the method was, for example, that the approval of an aid scheme, whose intensity was less than 25 % of the aid intensity authorized by the Commission as a general rule for a given assisted area, could be delayed for a year.

Neither could it always be assumed that the Member State concerned and the beneficiary company were fully satisfied where they did not bring an action against the Commission's decision before the Court of Justice. The Spanish authorities mentioned, in this connection, the limited scope of the Court's review of the legality of Commission decisions [2].

In reply to the assertion that 'the Commission has taken the necessary precautions to guarantee the confidentiality of the information submitted', the Spanish Government stated that confidentiality was not assured, as had been demonstrated in a number of cases (e.g., in the steel industry). The Spanish Government also stressed that the information requested for some cases was disproportionate.

The Spanish Government could not accept the comment made in point (f) of the Commission's letter of 5 October 1995 that the preservation of distortions in intra-Community trade was incompatible with avoidance of shifting industrial and unemployment difficulties from one Member State to another and the flight of wealth- and employment-creating projects to outside the Community. In contrast to the Commission's view, the Spanish Government considered that the Community framework had not served in practice to prevent Member States offering higher regional aid to a company, as had been shown by the Fourth Survey on State Aid.

Lastly, with regard to the concluding remarks made in the Commission's letter of 5 October 1995, which stated that there were no grounds for accepting the refusal of the

[1] [1993] ECR I-3203, paragraphs 17, 18, 19 and 22.

[2] Judgment of 15 June 1993 in Case C-225/91, *Matra SA* v. *Commission*, [1993] ECR I-3203, paragraph 25.

Spanish authorities to agree to the reintroduction of the Community framework, to which the other fourteen Member States had unconditionally agreed, the Spanish Government observed that Spain's conflicting position could be justified by the fact that during the crisis in the sector the Spanish industry had had to face more severe structural problems than the other European motor-manufacturing countries. The Spanish Government also pointed to the excessive difficulties that implementation of the Community framework had caused in the granting of public aid aimed at overcoming those problems.

III

Comments from third parties

The Commission's decision of 20 September 1995 to initiate proceedings under Article 93 (2) in respect of all aid schemes in operation in Spain under which aid could be awarded as from 1 January 1996 to motor vehicle manufacturers was published in the *Official Journal of the European Communities* [1].

By publishing that notice, the Commission gave the other Member States and other parties concerned notice to submit their comments on the procedure in question within a period of two weeks.

The Commission did not receive any comments from other Member States or interested parties.

IV

Assessment of the observations and comments received

As regards the various arguments put forward by the Spanish Government, outlined in sections II.1 to II.6 of this Decision, the Commission maintains the following:

1. *Disregard of Article 93 (1)*

The Commission reiterates its firm intention fully to discharge its obligation to cooperate regularly, obligation imposed by the Treaty on both the Commission and the Member States, as recalled by the Court of Justice in its judgment of 29 June 1995 [2], and reaffirms its conviction that it complied with the spirit of Article 93 (1) by adding the item to the agenda for the multilateral meeting of 4 July 1995 so as to give Member States an opportunity to comment on its planned decision. At that meeting, nearly all the Member States supported the Commission's proposal to reintroduce the Community framework for a two-year period, but wished to have another opportunity to discuss the proposed changes at a further multilateral meeting before responding to the Commission's request for consent.

Furthermore, as acknowledged by the Spanish Government in its letter of 18 August 1995, the comments made by the Spanish delegation at the multilateral meeting of 19 July 1995 were in fact discussed point by point and taken into account by the Commission at the meeting. The Commission would repeat that, at the last multilateral meeting, all the amendments it proposed were supported by the vast majority of Member States, and no other amendment was put forward by a Member State. The Commission therefore saw no need to alter its proposal of 5 July 1995 before the deadline for replies by the Member States, which expired on 22 August 1995.

Consequently, the Commission considers that its decision of 5 July 1995 was adopted in accordance with the provisions of Article 93 (1) and falls within the scope of permanent cooperation with the Member States.

2. *Lack of an overall evaluation of implementation of the Community framework*

The Commission again assures the Member States of its firm intention to undertake next year an independent review of the application of the Community framework since its introduction, as it has done for the code limiting aid to the synthetic fibres industry. Adopted on 1 January 1989, the motor vehicle Community framework was comprehensively reviewed for the first time in December 1992 and will be reviewed again in 1996. A more regular review — let alone a review more than once a year, as suggested — is not required in law and would not be desirable, not only for practical reasons but also because it would have dangerous consequences in terms of legal certainty.

The Commission also wishes to repeat its undertaking to continue working on a horizontal approach which could possibly replace the sectoral frameworks. It should nevertheless stress that, for the time being, it is convinced of the usefulness of the Community framework for assessing aid to the motor vehicle industry, whose application has been fully effective, as can be seen from the Commission's annual competition reports and its decisions on individual State aid cases published in the *Official Journal of the European Communities.*

The Commission again points to the positive attitude and general satisfaction on the practical results of the implementation of the Community framework since its adoption in 1989 shown by all the other Member States whose economies depend heavily on this industry. A similar position has also been taken by most, if not all, European vehicle manufacturers.

3. *Justification for a Community framework on State aid to the motor vehicle industry as opposed to other industries; intervention to restructure the Community motor vehicle industry*

The Commission must again refer to the reasons outlined, when the Community framework was approved, to justify

[1] OJ No C 304, 15. 11. 1995, p. 14.
[2] Case C-135/93, *Spain* v. *Commission* (not yet published).

the adoption of appropriate measures pursuant to Article 93 (1) in the sector in order to ensure the progressive development of the common market. It further takes the view that the reasons and arguments which prompted the renewal of the Community framework in 1990 [1] and its 1992 review are still valid and, therefore, that the appropriate measures proposed pursuant to Article 93 (1) regarding State aid to the motor vehicle industry are necessary in order to prevent a serious threat of distortion of competition in this highly sensitive sector. This need was also confirmed by the Commission in its recent communication to the Council and the European Parliament on the European Union automobile industry.

The Commission must also point out that the existence of a large — albeit slowly declining — number of competitors does not in itself guarantee free competition, as the strategic importance of this industry is a sufficient argument for Member States not to reject requests for State aid. This has also been the case in Spain, against which the Commission has had to initiate two sets of proceedings under Article 93 (2) (Cases C 1/95, *Suzuki-Santana* [3] and C 34/95, *VW-Seat* [4]) in respect of restructuring aid awarded to rescue the companies concerned. The Spanish authorities have moreover notified or granted State aid to other motor manufacturers in Spain (e.g. Nissan Motor Ibérica, Mercedes-Benz, Opel España, FASA Renault and Ford España) on which the Commission has not yet determined its position.

The Commission cannot share the Spanish Government's view that it is illogical to keep in force a restrictive Community framework which links the monitoring of State aid to reductions in the capacities of companies operating in a highly competitive sector. Reduction of capacity is required only where restructuring aid is granted. Moreover, this requirement, which is limited to markets where there is surplus capacity, is no longer specifically imposed in respect of State aid to the motor vehicle sector, but is also prescribed by the Community guidelines on State aid for rescuing and restructuring firms in difficulty [2] (see pont 3.2.2. (ii) of the guidelines). As to regional aid schemes, the Commission's assessment is mainly determined by the specific handicaps of the area concerned and the regional 'top-ups' are limited to low intensities because the Commission does not wish to interfere with each company's freedom of action in the market, as long as fair competition is maintained.

Lastly, the Commission stresses that Spain has never been discriminated against. It is wrong to compare, without more detailed analysis, the average aid intensity approved in the Community, or in a particular Member State, with that approved in Spain. It should be borne in mind that different types of aid measure (e.g. aid for research and development, restructuring and rescue aid, regional aid) have different average aid intensities. It should also be stressed that, in recent years, no regional aid to the motor vehicle sector has been approved in Spain for a greenfield project.

4. *Regional aid based on point (a) of Article 92 (3)*

The Community framework is a competition policy instrument and not an industrial policy tool, which would make it possible to intervene to restructure the industry. The Commission is aware that, as market integration progresses in line with the creation of the common market, increased competition may lead to calls for State support which Member States can provide only in the form of State aid, as the more protectionist devices usually used by governments to shield their companies from foreign competition have disappeared. That is why many of the cases examined by the Commission in recent years have concerned *ad hoc* aid measures which fall outside the scope of approved aid schemes. Unilateral measures of assistance in one Member State may lead to unemployment in other Member States and consequently to calls for compensatory aid. The strict State aid discipline imposed by the framework is therefore aimed precisely at preventing intervention on industrial policy grounds.

On the treatment of regional aid to the motor vehicle industry, the Commission considers that its cost-benefit analysis does reflect the distinction between points (a) and (c) of Article 92 (3) since the regional handicap for an investor is an essential element taken into account in the Commission's assessment. Consequently, the regions covered by point (a), where the standard of living is abnormally low or where there is serious underemployment, are usually entitled to higher levels of regional aid than others in view of their exceptional handicaps. The Commission would point out here that it has allowed higher aid intensities on average in the case of Member States' proposals to grant aid to motor vehicle manufacturers in support of investment projects located in regions covered by point (a). It would also stress that since the introduction of the Community framework no investment project in a disadvantaged area of the Community has been abandoned by any vehicle manufacturer as a result of the strict limitation of regional aid in porportion to the regional handicaps.

[1] OJ No C 81, 26. 3. 1991, p. 4.
[2] OJ No C 368, 23. 12. 1994, p. 12.
[3] OJ No C 144, 10. 6. 1995, p. 13.
[4] OJ No C 237, 12. 9. 1995, p. 12.

Nevertheless, the assessment by the Commission of individual awards under existing regional aid schemes, while taking into account the central importance of regional aid for achieving cohesion within the Community, also seeks, among other things, to ensure that competition within the common market is not distorted. It is therefore wrong to claim that the sole condition for regional aid measures covered by point (a) of Article 92 (3) to be deemed compatible with the Treaty is that they must promote the economic development of the areas in question, as other aspects of Community interest are also taken into account. A case-by-case demonstration that the aid measures under analysis do not promote regional economic development is not necessary, because the assessment by the Commission of the compatibility of the aid with the Treaty does not simply concern regional development or cohesion objectives, but seeks to strike a balance between a wider range of objectives set by the Treaty.

It should be stressed in this connection that the Commission has a wide discretion for the purposes of applying Article 92 (3), and the way in which it has used this discretion in the motor vehicle sector has been endorsed by the Court of Justice (Case C-225/91, *Matra SA* v. *Commission*). The Commission takes the view in particular that only those aid plans which promote lasting regional development deserve exemption under point (a) of Article 92 (3). Unviable projects which create unnecessary production capacity do not therefore qualify for that exemption. By focusing on the regional handicaps which are identified by means of a comparison with alternative locations, the Commission implicitly avoids such aid being granted to unviable projects in the motor vehicle industry.

Lastly, the Commission would point out that no sectoral or horizontal code, addressing capital intensive industries in particular, can be confined to assessing regional aid falling under point (c) of Article 92 (3) and leave regional aid in areas covered by point (a) of Article 92 (3) entirely to the discretion of Member States under the sole condition that the aid in question promotes the economic development of the area concerned.

5. *External competition*

On the implications of the WTO Agreement on Subsidies and Countervailing Measures for State aid control in the European Union and the possible distortive effects of applying the Community framework to motor vehicle manufacturers in the Community in cases where they face unfair competition from third countries, the Commission stresses that the new WTO Agreement is a major step forward. As far as regional aid is concerned, the new code makes it possible for aid granted by third coutnries to international competitors to be monitored for the first time, since regional aid must now be based on a coherent and economically justificable aid plan to be submitted to the WTO and to which the Commission can object if necessary. As regards research and development aid, difficulties may arise as the WTO rules allow higher aid intensities than those applicable within the Community. Nevertheless, if it were demonstrated that the international competitors of Community motor manufacturers were benefiting from more generous treatment, the Commission would consider applying the 'matching clause' written into the new Agreement.

It is the Commission's general stance that the WTO anti-subsidy rules should not form the basis for the Community's internal aid policy. The Commission stresses that there are no examples of investment plans inside the Community which have failed as a result of the Commission's aid policy in the motor vehicle sector.

6. *Internal procedure and method of applying the Community framework*

In response to the various arguments put forward concerning the internal procedure and methods applied by the Commission in implementing the Community framework with regard to regional aid, the Commission makes the following points:

— The underlying principles of the method were incorporated in the paper on the review of the motor vehicle Community framework drafted in preparation for the multilateral meeting of 8 December 1992 at which the method was discussed.

  The Court of Justice also had an opportunity to review the method in Case C-225/91, (*Matra SA* v. *Commission*). The Advocate-General concluded in that case — which also concerned an investment project in an area covered by point (a) of Article 92 (3) — that the Commission had, in his view, verified with the required detail and according to the Community framework applicable to those matters whether the aid measures notified by Portugal were necessary to overcome the regional handicap of the area concerned, and consequently that the Commission had not overstepped the limits of its discretion under Article 92 (3). The Advocate-General did therefore assess in that case the application of the motor vehicle Community framework and, in particular, the method used for assessing the allowable intensity of regional aid.

— The method, which was presented and discused at the multilateral meeting of 8 December 1992, is conceived as an objective instrument for assessing the structural handicaps which an investor faces in an assisted area as compared with an alternative location in a non-assisted area. Comparative cost-benefit analysis was chosen also because it is a method commonly used by companies to justify internally (e.g. to their board of directors) the decision to locate a mobile investment in one particular site as against alternative site(s). The number of parameters taken into consideration in each particular case is not limited, and the analysis can therefore include all

possible quantifiable disadvantanges identifiable by the investor. Contrary to the Spanish Government's claims, therefore, the method does not consist of a fixed set of factors or parameters, nor is it a very advanced computer model; it is a straightforward calculation in present values of all investment and operating advantages and disadvantages. For that calculation a commonly used software package is applied.

— The method adopted is in no way applied on a discretionary basis: on the contrary, it involves direct three-way cooperation between the Commission, the Member State and the company concerned with a view to determining the acceptable level of aid intensity for the project under consideration. In every case examined, the Member State and the company concerned are invited to comment on the findings and sources of the Commission's analysis, in order to give them the opportunity to point out any errors which the Commission departments or its consultants may have made, before the Commission takes a final decision on the case. The exceptional openness with which the method is applied has always helped a conclusion to be reached which is both acceptable and transparent for the parties concerned. By referring the verification of cost advantages and disadvantages to outside consultants specialized in this type of analysis as well as in the technical side of the motor industry, the Commission is seeking to reduce the subjecivity inherent in any *ex ante* analysis to the minimum.

— The time taken to reach a decision should as a rule be less than one year, although this depends on the cooperation of the Member States and the companies involved (see, for example, the recent Cases N 135/95, *Opel Austria* and N 660/95, *Mercedes-Benz Germany*) [1]. It should be stressed in this connection that the Commission has laid down strict deadlines to be met by its departments during the procedure (see the *Manual of Operational Procedures,* points 16.2.1.3 and 16.2.1.5). Once the Commission has received full and proper notification, it has only two months in which to scrutinize general schemes. It has also undertaken to take decisions within 30 working days on individual awards. It must also make any request for additional information normally within 15 working days of receiving the notification.

— While recognizing that the method requires the companies involved to submit commercially sensitive information, the Commission would point out that, in accordance with the basic prohibition enshrined in Article 92 (1) of the Treaty, State aid should be granted only where it is demonstrated to be necessary and proportionate to the objectives pursued; this demonstration requires a detailed technical assessment of the industrial project aided by the public authorities. On the information requirements deriving from the strict discipline imposed by the Community framework, the Commission has taken the necessary precautions to guarantee the confidentiality of information submitted. In particular, whenever the Commission is assisted by outside experts, full confidentiality is ensured through very strict contractual obligations and severe penalties for non-compliance. In the Matra case, the Advocate-General strongly endorsed the Commission's use of outside consultancy services. He stated in paragraph 14 of his conclusions that the fact that the Commission was guided by an outside study reinforced his conviction that, when assessing the evolution of the European market in multi-purpose vehicles, the Commission had not used its discretionary powers under Article 92 (3) undiscerningly [2].

— In reply to the Spanish Government's argument that the Community framework as implemented by the Commission could shift industrial and unemployment difficulties from one Member State to another or even create wealth and employment outside the Community, the Commission maintains that, in absence of the Community framework, it could not prevent in this very mobile industry an extremely unhealthy race among Member States to offer regional aid in order to attract new investments, which could lead to compensating closures in other assisted or non-assisted areas of the Community. In any event, the effectiveness of the Community framework in this respect cannot be measured by the Fourth Survey on State Aid, which does not provide any statistical analysis of aid to specific sectors other than steel and shipbuilding.

— Lastly, there is no truth in the argument that, during the recent economic downturn, the Spanish car industry has had to face more serious problems than most other European countries. The Spanish industry is perfectly integrated into the European supply and demand markets, a substantial share of its production (usually more than 50 %) being exported. Moreover, the Spanish domestic market is not one of the most severely affected by the sectoral crisis (see table below). The proof that the Spanish motor vehicle industry is

[1] Commission Decisions not yet published.

[2] See also paragraph 20 of the Advocate-General's conclusions.

not facing special difficulties lies in the fact that all its producers are currently investing or planning to invest in new projects for which aid is requested (see section IV.3).

New passenger car registrations

	Europe	Spain
1993	− 15,3 %	− 24,1 %
1994	+ 5,7 %	+ 21,9 %

Source: ACEA estimates.

V

Conclusions

In view of the foregoing, the arguments and submissions put forward by the Spanish authorities do not justify their refusal to agree to the reintroduction of the Community framework on State aid to the motor vehicle industry as proposed by the Commission by means of its decision of 5 July 1995 based on Article 93 (1) and discussed with the Member States at the multilateral meetings of 4 and 19 July 1995.

All the other Member States have unconditionally agreed to the reintroduction of the Community framework for a two-year period starting on 1 January 1996 as proposed by the Commission. Consequently, Spain is the only Member State which has not unconditionally agreed to the reintroduction of the Community framework. The Commission cannot accept the non-applicability of the Community framework in only one of the Member States unless exceptional circumstances were to prevail in that Member State. The existence of such exceptional circumstances has not been proven by the Spanish authorities.

In view of the Spanish Government's refusal to comply with these measures, the Commission, having initiated and carried out the procedure laid down in Article 93 (2), is entitled, by means of a decision taken pursuant to that provision and on the basis on the considerations set out in section III, to require existing State aid schemes to be altered by placing the Spanish Government under the obligation to comply with the requirements regarding prior notification and submission of annual reports contained in those measures,

HAS ADOPTED THIS DECISION:

Article 1

From 1 January 1996 until 31 December 1997, Spain shall notify the Commission pursuant to Article 93 (3) of the EC Treaty of all aid measures granted in respect of projects costing more than ECU 17 million under any existing or approved aid schemes to undertakings operating in the motor vehicle sector as defined in point 2.1 of the Community framework on State aid to the motor vehicle industry. Such notification shall be carried out in accordance with the requirements laid down in points 2.2 and 2.3 of the said framework. Spain shall, moreover, submit annual reports as required by the Community framework.

Article 2

Spain shall inform the Commission of the measures taken to comply with this Decision within two weeks of notification thereof.

Article 3

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 20 December 1995.

For the Commission

Karel VAN MIERT

Member of the Commission