II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 July 1998

concerning the Spanish *Plan Renove Industrial* system of aid for the purchase of commercial vehicles (August 1994 — December 1996)

(notified under document number C(1998) 2048)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(98/693/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 given notice to the parties concerned to submit their comments, in accordance with the abovementioned Article [1],

Whereas:

I

On 9 February 1995 the Commission sent a request, followed by a reminder sent on 4 April 1995, for information on a matter of which it had been made aware by the press, namely a system of aid for the purchase of commercial vehicles. The system forms part of the *Plan Renove Industrial* and is designed to assist natural persons, small and medium-sized enterprises (SMEs), regional public bodies and bodies providing local public services. It involves the granting of loans for the purchase of commercial vehicles and its purpose is to renew the commercial vehicle fleet in Spain. Not until 7 April 1995 did the Directorate-General for Transport receive a reply from the Spanish authorities, dated 6 March 1995. A further request for information, dated 6 July 1995, was answered by the Spanish authorities on 26 July 1995. Finally, on 20 February 1996, the Commission asked for further details. These were received in a letter dated 14 March 1996, receipt of which was recorded on 18 March 1996.

The system was set up under an Agreement, concluded on 27 September 1994 between the Official Credit Institute *(Instituto de Crédito Oficial:* ICO) and the Spanish Ministry of Industry and Energy, whereby the ICO is responsible for arranging mediation contracts with the financial institutions. Under these contracts, the financial institutions implement the aid scheme and are subsequently compensated by the ICO.

The aid consists of a subsidy of up to five percentage points of the interest payable on the loans granted for purchasing vehicles or for leasing them with intention to purchase. These loans may cover as much as 70 % of the total value of the new vehicle (excluding VAT) and last for four years, with no grace period, the loan guarantees being negotiated between the recipient and the financial institution.

The initial budget was for roughly ESP 9 billion (ECU 53,8 million) [2], given that the credit line opened with the ICO was ESP 100 billion (ECU 598,1 million) and that the maximum subsidy was ESP 93 196 (ECU 557) per

[1] OJ C 266, 13. 9. 1996, p. 10.

[2] Exchange rate of 11 May 1998: 1 ECU = ESP 167,182.

million (ECU 5 981) loaned (up-dated value of a five-point interest-rate subsidy for a four-year loan of ESP 1 million). In view of that limit, the maximum subsidy can also be calculated as roughly 6,5 % of the total cost of the vehicle (9,3 % x 70 %), exclusive of VAT.

The subsidy is for the purchase of five categories of vehicle: (A) semi-trailers and lorries weighing more than 30 tonnes, (B) commercial vehicles weighing between 12 and 30 tonnes, (C) commercial vehicles weighing between 3,5 and 12 tonnes, (D) car-based vehicles, light commercial vans and commercial vehicles weighing up to 3,5 tonnes, and (E) motor buses and coaches. Some 60 % of the subsidised vehicles are in categories B, C and D, while 30 % are in category A and 10 % in category E.

The system was originally intended to run from August 1994 to December 1995, but was extended to the end of 1996, since only 33 % of the credit line had been committed by the end of 1995. However, in their letter of 26 February 1997, the Spanish authorities formally notified the Commission that a new *Plan Renove* would be in force throughout 1997.

One essential condition for obtaining the subsidy is the requirement that a vehicle of roughly equivalent capacity and registered more than 10 years ago (seven years ago in the case of tractor units) be irrevocably withdrawn from the market. The proof of that withdrawal will be passed on by the Directorate-General for Traffic (Dirección General de Tráfico) which presupposes that the withdrawn vehicle has been registered in Spain. The following table shows the matching between the purchased and the withdrawn vehicle:

Type of vehicle purchased	Type of vehicle to be withdrawn from the market
A: Semi-trailers and lorries weighing more than 30 tonnes	A or B
B: Commercial vehicles weighing between 12 and 30 tonnes	A, B or C
C: Commercial vehicles weighing between 3,5 and 12 tonnes	A, B, C or D
D: Car-based vehicles, commercial light vans and commercial vehicles weighing up to 3,5 tonnes	A, B, C or D
E: Motor buses and coaches	E

II

Access to the international road haulage market was opened up to Community competition in 1969, with the entry into force of Council Regulation (EEC) No 1018/68 ([3]) introducing a Community quota for the carriage of goods by road between Member States, though there were already bilateral agreements between Member States. Access to international transport was subject to Community quotas until the adoption of Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States ([4]), as amended by the Act of Accession of Austria, Finland and Sweden. Consequently, the market has been completely open to competition since 1 January 1993, when Regulation (EEC) No 881/92 abolished all quantitative restrictions on international road transport.

Road haulage cabotage was opened up to Community competition on 1 July 1990, with the entry into force of Council Regulation (EEC) No 4059/89 of 21 December 1989 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State ([5]). This Regulation introduced cabotage quotas.

The Regulation was replaced by Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State ([6]), amended by Regulation (EC) No 3315/94 ([7]) and currently in force, under which cabotage is to be completely deregulated from 1 July 1998, after a transitional period during which the initial number of Community authorisations (30 000) will increase by 30 % annually from 1 January 1995.

Access to the international market for the carriage of persons has been liberalised through Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus ([8]), as amended by Regulation (EC) No 11/98 ([9]). This Regulation, which entered into force on 1 June 1992 lays down market access conditions for each type of passenger transport service. Cabotage rights were introduced by Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State ([10]), as amended by the Act of Accession of Austria, Finland and Sweden. Under this Regulation, road passenger transport cabotage, except for regular services, is liberalised as from 30 August 1992.

([3]) OJ L 175, 23. 7. 1968, p. 13.

([4]) OJ L 95, 9. 4. 1992, p. 1.
([5]) OJ L 390, 30. 12. 1989, p. 3.
([6]) OJ L 279, 12. 11. 1993, p. 1.
([7]) OJ L 350, 31. 12. 1994, p. 9.
([8]) OJ L 74, 20. 3. 1992, p. 1.
([9]) OJ L 4, 8. 1. 1998, p. 1.
([10]) OJ L 251, 29. 8. 1992, p. 1.

III

By letter dated 26 June 1996, the Commission informed the Spanish authorities of its decision to initiate the procedure provided for in Article 93(2) of the Treaty, inviting them to state their views on the decision to initiate the procedure, and it informed the other Member States and interested third parties by publishing its letter in the *Official Journal of the European Communities* [11]. In this decision the Commission stated that it considered the aid illegal and expressed its doubts on the conformity of the aid with the Treaty.

Following initiation of the procedure, the Spanish authorities submitted their comments in a letter dated 26 July 1996, receipt of which was recorded by the Commission on 1 August 1996. Following a request for further information sent on 19 December 1996, the Spanish authorities communicated certain details in the course of a bilateral meeting held on 14 January 1997 and by letter of 12 February 1997. Publication in the Official Journal drew no reactions from any interested third parties.

With regard to the actual recipients of the aid, the Spanish authorities, in their letter of 12 February 1997, pointed out that many of them fell into the category of 'regional public bodies and bodies providing local public services'. These are firms which provide public services, such as urban passenger transport, fire-fighting and waste collection services, under a special concession. They include, for example, local passenger transport companies such as *Transportes de Barcelona, Empresa Municipal de Transportes de Gijón, Tranvías de Cadiz SA and Empresa Municipal de Transportes de Madrid.*

The remaining recipients are natural persons or SMEs, covered by the definition laid down in the Community guidelines on State aid for SMEs [12] and the Commission Recommendation of 3 April 1996 concerning the definition of small and medium-sized enterprises [13], engaged in transport for hire-and-reward but also own account transport operations. Most are very small firms with just one lorry or bus, carrying passengers or goods by road. In their letter of 12 February, these details were spelt out. Nevertheless, given the difficulty in obtaining detailed information about all 12 591 recipients of the aid granted under the *Plan Renove,* since the details are not on computer file, the Spanish authorities have obtained their information by analysing a sample of cases relating to 46 % of vehicles in category A and 67,1 % in category E which, by reason of their size, are the most likely to be involved in intra-Community trade. On this basis, the Spanish authorities have stated that 80,8 % of aid recipients are very small firms holding just one licence for road transport operations, 16,2 % are firms holding two to five licences, 2,4 % have six to 20 licences and only 0,1 % are large enough to have more than 20 licences.

Moreover, in their comments on the initiation of the procedure, the Spanish authorities argued that the delay in examining the aid scheme and the amount of time which had elapsed between the Commission's requests for information, gave them reasonable grounds for believing that no aids were involved, or that any aid which had been granted was compatible with the Treaty. In defence of this view they referred to judgments of the Court of Justice of the European Communities, in particular those given on 20 March 1984 in Case No C-84/82 (*Germany* v. *Commission* [14]) and on 21 March 1991 in Case No C-303/88 (*Italy* v. *Commission* [15]).

At the meeting on 14 January 1997, the Spanish authorities informed the Commission that, by the end of 1996, the system had been applied as follows: 12 591 operations carried out, 14 295 vehicles subsidised, ESP 7 976 million (ECU 47,7 million) granted.

In their letter of 12 February 1997 the Spanish authorities maintain that, in the case of subsidies for vehicles in categories B, C and D, the risk of distortion to competition is minimal since these types of vehicle are normally used for activities which are not open to international competition and that, consequently, infra-Community trade cannot be appreciably affected.

In the abovementioned letter, the Spanish authorities pointed out that semi-trailers and lorries weighing more than 30 tonnes (A) and buses and coaches (E) are used in road transport activities open to competition. Only 4 288 vehicles in category A were subsidised in 1995, as against 167 353 licences granted for this type of vehicle. Similarly, 1 459 buses and coaches were subsidised in 1995, out of a total of 28 012 licensed.

The Spanish authorities stressed, in their letter of 26 July 1996, that the introduction of the *Plan Renove* had not led to any increase in capacity in this sector, since it was impossible for a withdrawn vehicle to be placed on the market again and there was an almost exact correspondence between the withdrawn vehicle and the new one. As the Spanish authorities confirmed at the meeting on 14 January 1997, no subsidy is granted prior to production of a document certifying that the vehicle has been definitively withdrawn. This certificate appears on the vehicle licence, so the vehicle cannot possibly be put on the road again. The withdrawn vehicles are then scrapped. However, with regard to the equivalence in capacity between withdrawn vehicles and those replacing them,

[11] See footnote 1.
[12] OJ C 213, 19. 8. 1992, p. 2 and OJ C 213, 23. 7. 1996, p. 4.
[13] OJ L 107, 30. 4. 1996, p. 4.
[14] [1984] ECR 1451.
[15] [1991] ECR I-1433.

the Spanish authorities recognised, in their letter of 26 July 1996, that in 15,7 % of cases there had been no equivalence in capacity: in 3,4 % of cases the replacement vehicle was in a lower category, while in 12,3 % of cases (i.e. 1 758 of the 14 295 vehicles subsidised) the new vehicle was in a higher category.

When initiating the Article 93 procedure, the Commission warned of the danger of discrimination, since to qualify for the aid in question, applicants were required to produce a document issued by the Dirección General de Tráfico (Directorate-General for Traffic) certifying that the vehicle concerned had been withdrawn from service. This meant that the withdrawn vehicle had to have been registered in Spain.

However, the Spanish authorities, in their letter of 26 July 1996, argued that there was no requirement that the recipient of the aid be the owner of the vehicle withdrawn from circulation. Carriers not established in Spain were thus eligible for the subsidy if they signed an agreement with a carrier established in Spain who would then scrap his old vehicle to enable the subsidy to be granted to the foreign carrier. Although the vehicle must be registered in Spain, a non-resident carrier could thus receive the aid indirectly.

Moreover, according to the Spanish authorities, there is no requirement that the recipient of the aid purchase the new vehicle in Spain, only that the purchase be financed via one of the bodies associated with the *Plan Renove*. This obligation could not give rise to problems of discrimination, since there are a great many such bodies (not only banks but also the financial arms of international vehicle manufacturers such as Scania and Iveco) located not only in Spain but also throughout Europe.

The Spanish authorities did, however, point out that foreign carriers never opted for this arrangement since the benefits to be derived from the *Plan Renove Industrial* were insufficient when compared with those available in other Member States, where interest rates are generally much lower than in Spain.

When initiating the Article 93 procedure, the Commission pointed out that, because the ICO enjoys a wide margin of discretion, the *Plan Renove* lacks transparency and could lead to discrimination. In their letter of 26 July 1996 and at the meeting on 14 January 1997, the Spanish authorities explained that there had never been any recourse to the theoretical option of exceptionally granting loans which did not meet the stipulated conditions, since the purpose of this exception was to enable the Plan to benefit firms which met all the criteria for consideration as SMEs but which, for exceptional reasons, marginally failed to meet one or other of those criteria at some point in the process.

Furthermore, the Spanish authorities stated that the ICO had had no margin of discretion with regard to the maximum amount of the subsidy, since this amount, ESP 93 196 (ECU 557) had already been fixed in the Agreement. They also stated that the interest rate actually applied to the loans was the going rate on the Madrid interbank market (the MIBOR) and was therefore a commercial and objectively-based interest rate.

On a number of occasions the Spanish authorities alleged that the amount of the subsidy in question was lower than the *de minimis* figure laid down in the abovementioned Community guidelines on State aids for SMEs and in the Commission Communication concerning *de minimis* aids ([16]), and that the subsidy therefore does not constitute aid within the meaning of Article 92(1) of the Treaty.

The Spanish authorities have also argued that most of the potential applicants for subsidies are own-account transport operators whose main business is not transport, and that the Community guidelines on State aids for SMEs and the *de minimis* rule should therefore apply to purchases made by those non-transport companies.

When initiating the Article 93 procedure, the Commission pointed out that the aids granted under the *Plan Renove Industrial* might be cumulated with those authorised under the Commission Decisions of 6 April 1993 ([17]) and 7 February 1996 ([18]), including the option of granting aid for the purchase of rolling stock or vehicles to companies which merge or consolidate, and guaranteeing loans for vehicle replacement.

In their letter of 12 February 1997 the Spanish authorities stated that no such cumulation had occurred in the case of merger and consolidation aids granted under Article 21(b) of the Ministerial Order of 26 April 1993, since this relates to the purchase, not of new vehicles but of transport equipment by firms holding restricted licences under business merger and consolidation procedures.

Article 28 of the Order provides for guarantees for loans and leasing or commercial credit operations, including loans for replacing vehicles more than eight years old. The Spanish authorities stated that, although ESP 9 055 million (ECU 54,2 million) was earmarked for this aid scheme, only ESP 149 million (ECU 891 000) had been

([16]) OJ C 68, 6. 3. 1996, p. 9.
([17]) OJ C 128, 8. 5. 1993, p. 6.
([18]) OJ C 70, 8. 3. 1996, p. 6.

allocated to vehicle replacement loans. These loan guarantees were provided by means of a temporary contribution of not more than 9 % of the loan amount to mutual guarantee companies, enabling the firms concerned to obtain loans on more favourable terms.

First by fax and then in a letter dated 19 November 1997 the Commission asked the Spanish authorities to provide further information on companies who were not providing transport services as a main activity and only operate in local markets without impact on intra-Community trade. The Spanish authorities replied by their letters of 27 November 1997 and 20 February 1998, registered on 3 December 1997 and 23 February 1998 by the General Secretariat of the Commission respectively. It derives from the information provided that with regard to the purchasers of Category D vehicles a number of beneficiaries, identifiable for the Spanish authorities, operate under restricted licences.

IV

Article 92 of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. This concept of aid therefore requires the consideration of three fundamental issues: the use of State resources, the distortion of competition and the extent to which trade is affected.

In the case under examination, the Commission considers that the aid for the purchase of commercial vehicles is granted from State resources since the subsidies come from the budget of the Spanish Ministry of Industry and Energy.

The aid in question takes the form of purchasing aid, which presumes that it will benefit the purchasers of commercial vehicles by lowering the cost of such vehicles.

From the point of view of these purchasers, the aid is intended to benefit natural persons, SMEs, local or regional authorities or local service providers. The subsidies reduce their normal business expenses, thus giving them an advantage over their competitors. The Commission considers that the aid strengthens the financial position of the recipient firms, giving them greater scope for action and a competitive advantage.

The Commission considers that, where the recipients are public or private bodies providing local or regional public services not open for competition on the basis of Community legislation ([19]) with carriers from other Member States, trade between Member States is not affected within the meaning of Article 92(1) of the Treaty. The aid is granted within the context of the provision of a public service via a concession contract in a regulated market. Due to the lack of liberalisation there is no competition with carriers from other Member States and, therefore, no reference to international transport services.

Accordingly, the Commission considers that measures under the *Plan Renove Industrial* to assist local or regional public bodies or to local firms providing local public services under a concession do not constitute State aids within the meaning of Article 92(1) of the Treaty, since the services provided by such bodies and companies do not affect trade between Member States.

In those cases where the aid is granted, to natural persons or SMEs pursuing a business other than transport at a solely local or regional level, and where only the purchase of small commercial vehicles (Category D) typically used for very short journeys in such environments is subsidised, it can also be concluded that such aid has no effect on trade between Member States. Such business activities are considered to affect only the companies' respective local markets. In addition, the effect of such own account services on the transport market is negligible because entrusting a transport company with the provision of the service — contracting it out — is not a viable option in economic terms. The Commission is, therefore, of the opinion the aid provided does not constitute State aid within the meaning of Article 92(1) of the Treaty.

The other recipients, however, having transport as their main business or only as an auxiliary one compete with transport companies which are not eligible for aid under the *Plan Renove Industrial* both from Spain or from other Member States since the liberalisation of road transport in 1990 led to competition with firms from other Member States, both in international transport and in the cabotage sector.

([19]) Article 3 of Council Regulation (EEC) No 2454/92 of 23 July 1992 laying down the conditions under which non-resident carriers may operate national road passenger transport services within a Member State (OJ L 251, 29. 8. 1992, p. 1) and Council Regulation (EEC) No 1191/69 of 26 July 1969 on action by Member States concerning the obligations inherent in the concept of a public service in transport by rail, road and inland waterway (OJ L 156, 28. 6. 1969, p. 1) as last amended by Regulation (EEC) No 1893/91 (OJ L 169, 29. 6. 1991, p. 1).

The Commission considers that although there is no formal legal reason why carriers not established in Spain should not take advantage, albeit indirectly, of the subsidies available under the *Plan Renove,* in practice the system nevertheless discriminates against non-resident carriers since they have to scrap a vehicle registered in Spain and, therefore, may have to buy scrapping rights from Spanish operators, whereas the latter can take direct advantage of the subsidies without recourse to an intermediary.

It is therefore reasonable to conclude that granting subsidies for purchasing commercial vehicles under the *Plan Renove Industrial* leads also to a distortion of competition between carriers established in Spain and those who operate in Spain but are based in other Member States. Above all, however, the aids granted distort or threaten to distort competition because recipients of subsidies under the *Plan Renove* are in a privileged position *vis-à-vis* competitors unable to take advantage of the aid scheme.

The Commission considers it reasonable to accept that the management of the loans through ICO does not imply any potential discrimination between recipients of the subsidies.

Where aid strengthens the financial position of firms in a particular sector involved in intra-Community trade, this trade must be regarded as affected within the meaning of Article 92(1) of the Treaty. Since the aid provided for in the *Plan Renove Industrial* strengthens the financial position and scope for action of the recipient companies as compared with their competitors, and since this effect takes place within the context of intra-Community trade, the Commission considers that the latter is likely to be affected by the granting of such aid.

V

Accordingly, the Commission considers that aid granted to SMEs under the *Plan Renove Industrial* constitutes aid within the meaning of Article 92(1) of the Treaty, under which aid having the characteristics described in that paragraph is, in principle, incompatible with the common market. Article 77 as well as Article 92(2) and (3) of the Treaty set out the types of aid which are, or may be, compatible with the common market.

Article 77 of the Treaty, especially designed for the needs of the transport sector, provides exemptions for State aid granted for the coordination of transport or compensating for the provision of a public service. Pursuant to that Article, Council Regulation (EEC) No 1107/70 of 4 June 1970 on the granting of aids for transport by rail, road and inland waterway ([20]), as last amended by Regulation (EC) No 543/97 ([21]), authorises aid for the coordination of transport. The Commission, however, considers that the Spanish aid scheme in question cannot be covered by any of the exemptions provided for in the Regulation since it does not constitute a measure necessary for the coordination of transport.

The concept of aid meeting the needs of coordination of transport implies Government intervention in the transport sector. The more a sector is liberalised, the less need there is for coordinating activities to be undertaken by the Member States. Indeed, in a liberalised transport market coordination may be achieved by the market itself, within the limits of the framework conditions set by the Member States in accordance with Community law as set out in Article 75 of the Treaty. In conclusion, in this case no transport specific exceptions apply.

In the case at issue, the exceptions provided for in Article 92(2) of the Treaty are not applicable because the aid scheme is not directed towards the attainment of the objectives set out. According to those objectives aid shall be compatible with the common market if it is granted either to individuals for social purposes, or to compensate for damages caused by natural disasters or exceptional occurrences, or for effects of the division of Germany.

Under Article 92(3) of the Treaty aid may by considered compatible with the common market. In order to ensure the proper functioning of the common market and having regard to the principles in competition matters established by the Treaty, the exceptions provided for in that Article must be construed narrowly when aid measures are assessed.

Article 92(3)(a) exempts aid which promotes the development of areas with economic difficulties and a special need for assistance. The exception cannot be considered relevant to aid schemes without a regional element — the whole territory of the Member State is covered — and with a clear sectoral objective and the Commission has traditionally considered vehicle-purchasing aid, within the common transport policy context not to be justifiable from a regional viewpoint, given the mobile nature of the object of the subsidy. The same can be said for the exception provided by Article 92(3)(c) of the Treaty when reference is made to the development of regions.

([20]) OJ L 130, 15. 6. 1970, p. 1.
([21]) OJ L 84, 26. 3. 1997, p. 6.

With regard to the exceptions provided for in Article 92(3)(b) and (d), the aid at issue is not intended to promote the execution of a project of common European interest or to remedy a serious disturbance in the Spanish economy, nor does it have any features of such projects. It is also not intended to promote culture or heritage conservation, nor does it comply with any other exemption on the basis of Council legislation.

Article 92(3)(c) also provides for an exception relating to aid granted to facilitate the development of certain economic activities and where the aid measures do not adversely affect trading conditions to an extent contrary to the common market. Legal practice requires, *inter alia*, that the aid has to be restricted to those cases where it is necessary to achieve objectives which market forces do not achieve by themselves (judgment of the Court of 17 September 1980 in Case C-730/79, *Philip Morris* v. *Commission* ([22])). In conclusion, the Commission considers that the State aid measures notified in the given case should be assessed under Article 92(3)(c) of the Treaty.

The Commission has adopted some specific conditions for aid schemes which are not considered to be incompatible with Article 92 of the Treaty: the *de minimis* rule. As has already been pointed out by the Commission when initiating the Article 93 procedure, under these rules, certain amounts provided by the Member States, due to their low thresholds, are not considered to threaten to distort competition and trade between Member States to any perceptible degree. However, the *de minimis* rule explicitly exempts the transport sector from its scope, as in this sector — characterised by a large number of small companies — even relatively small amounts can have an impact on competition and trade between Member States.

The Commission similarly regards as invalid the arguments mentioned in the context of the application of the Community guidelines on State aids for SMEs and the applicability of the *de minimis* rule to companies who are performing own-account transport operations. The transport sector is made up of transport for hire or reward as well as own-account transport, as both activities are regarded as being interchangeable. From a macroeconomic as well as an operational point of view in certain situations the outsourcing of transport services permits an optimum allocation of resources and brings a desired element of flexibility to the organisation of transport.

The Commission acknowledges the validity of the argument that financial incentive may help to withdraw from the market commercial vehicles with low technical standards with regard to safety and/or the environment. However, the Member State concerned needs to prove the positive impact of a proposed measure.

In particular, in order to be compatible with the common market, aid provided for the purchase of vehicles must be organised in such a way that, in compliance with the Community guidelines on State aid for environmental protection ([23]), the eligible costs are strictly confined to the extra investment costs necessary to meet environmental objectives by achieving standards higher than those already required by law. A similar approach can be considered for safety standards. Any measure justified under the guidelines may never counteract other Community legislation or the Articles of the Treaty.

The Commission in its guidelines does not consider aid provided to ensure compliance with existing mandatory technical standards to be eligible except for certain investment in fixed assets. Such aid has a considerable distortive effect on competition as it subsidises investment which becomes necessary anyhow under economic considerations and is, therefore, inevitable. Aid compensating for such investments is not regarded as serving the common European interest.

First, Spain has never provided the Commission with any proof of the positive impact, nor does the measure provide any incentive to go beyond the existing mandatory technical standards.

Secondly, in a market with overcapacity like the road transport sector, aid for the purchase of tonnage and even more additional tonnage — there is no exact equivalence, in terms of size, between the new vehicles and those withdrawn — is, in principle, considered contrary to the Community interest. It had been confirmed to the Commission that the granting of the aid under the *Plan Renove Industrial,* has led to a certain increase in capacity, although the Commission accepts that the system of prior checks provides a sufficient guarantee that replaced vehicles are indeed finally withdrawn from the market. The Commission, in its general aid practice, authorises aid for new investment which would not take place otherwise but not just for replacement ([24]).

([22]) [1980] ECR 2671.

([23]) OJ C 72, 10. 3. 1994, p. 3.

([24]) Paragraph 18 of the Communication of the Commission of 1975, COM(75) 77 final, 26. 2. 1975.

However, under the *Renove Industrial* aid system, the basis for calculating the subsidy is the price of a new vehicle: no environmental factor is taken into account. The subsidy is proportional to the price of the vehicles and not to their environmental or safety performance.

Already in Decision 98/182/EC ([25]) the Commission contended that a similar measure in a scheme intended to improve the competitive position of commercial road haulage companies is likely to produce a distortion of competition, since it seeks to reduce the normal business running costs of a company, whereas such costs have to be borne in full by its competitors.

The Commission therefore considers that the exemption under Article 92(3)(c) of the Treaty cannot be applied in this case. Furthermore, the Spanish authorities have neither argued nor shown that the aids in question qualify for any of the abovementioned exemptions provided for in the Treaty, in Regulation (EEC) No 1107/70 or in any other Council Regulation.

In addition the Commission considers that there has been a genuine risk of cumulating the aids granted under the *Plan Renove Industrial* with those granted under the guarantee measures authorised by the Commission in 1993 and 1996, and that this may have resulted in aids exceeding the levels provided for in the *Plan Renove Industrial*.

On the basis of all the foregoing information, the Commission considers that the aid for the purchase of commercial vehicles granted under the *Plan Renove Industrial* to certain natural persons and SMEs is not compatible with the common market for the purposes of Article 92 of the Treaty.

VI

Under Article 93(3) of the Treaty, the Commission should have been informed of that aid in sufficient time to enable it to submit its comments. The Spanish Government implemented the aid system without having met that notification requirement: accordingly, the Commission considers that system illegal under Community law.

The Commission does not accept the argument that the aid became legal by virtue of time elapsing since the scheme was first put into effect. The Spanish authorities still failed to comply with their obligation under Article 93(3) of the Treaty to notify their plans to grant aid and await the relevant Commission decision authorising the provision of the aid. The Commission reminds them that under that Article a Member State may not put its proposed measures into effect until the procedure has resulted in a final decision, and that failure to comply with this provision constitutes an infringement of Community law which may result in recovery of the aid, with interest.

The Spanish Government was informed by letter of 26 June 1996 that the Article 93 procedure was being initiated. On that occasion, the Spanish Government's attention was drawn to the Commission Communication to the Member States ([26]) pointing out that any aid illegally granted may be the subject of a Decision ordering the Member State concerned to recover it. In their reply, the Spanish authorities argued that such a Decision would contravene the principle of proportionality, given the low level of aid involved.

The Commission nevertheless considers that, in this instance, the aid should be recovered in order to restore the conditions of fair competition, which prevailed before the aid was granted,

HAS ADOPTED THIS DECISION:

Article 1

Aid granted under the *Plan Renove Industrial* to regional public bodies and bodies providing local public services, in the form of interest rate subsidies on loans for the purchase of commercial vehicles between August 1994 and December 1996, under the cooperation Agreement of 27 September 1994 between the Spanish Ministry of Industry and Energy and the *Instituto de Crédito Oficial*, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 2

Aid granted to natural persons or SMEs pursuing a business other than transport on a solely local or regional level, for the purchase of commercial vehicles of Category D, does not constitute State aid within the meaning of Article 92(1) of the Treaty.

Article 3

All other aid granted to natural persons and SMEs constitutes State aid within the meaning of Article 92(1) of the Treaty, is illegal and is incompatible with the common market.

([25]) OJ L 66, 6. 3. 1998, p. 18.

([26]) OJ C 156, 22. 6. 1995, p. 5.

Article 4

Spain shall abolish and recover the aid referred to in Article 3. The aid shall be repaid in accordance with the provisions of national law, and maturity interest shall be added to the sums recovered. The interest shall be calculated on the basis of the reference rates used in evaluating regional aid schemes and shall run from the date when the illegal aid was granted until the date when it is actually repaid.

Article 5

Spain shall inform the Commission, within two months of the date of notification of this Decision, of the steps it has taken to comply therewith.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 July 1998.

For the Commission
Neil KINNOCK
Member of the Commission