JUDGMENT OF THE COURT

4 June 2002 *

In Case C-483/99,

Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg,

applicant,

v

French Republic, represented initially by K. Rispal-Bellanger and S. Seam, and subsequently by G. de Bergues and S. Seam, acting as Agents, with an address for service in Luxembourg,

defendant,

supported by

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

and by

* Language of the case: French.

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, with J. Crow, Barrister, and D. Wyatt QC, with an address for service in Luxembourg,

interveners,

APPLICATION for a declaration that, by maintaining in force Article 2(1) and (3) of Decree No 93-1298 of 13 December 1993 vesting in the State a 'golden share' in Société Nationale Elf-Aquitaine (JORF of 14 December 1993, p. 17354), according to which the following rights attach to the 'golden share' held by the French Republic in that company:

(a) any direct or indirect shareholding by a natural or legal person, acting alone or in conjunction with others, which exceeds the ceiling of one tenth, one fifth or one third of the capital of, or voting rights in, the company must first be approved by the Minister for Economic Affairs (Article 2(1) of the Decree);

(b) the right to oppose any decision to transfer or use as security the assets listed in the annex to the Decree — the assets in question being the majority of the capital of four subsidiaries of the parent company, namely Elf-Aquitaine Production, Elf-Antar France, Elf-Gabon SA and Elf-Congo SA (Article 2(3) of the Decree),

and by failing to lay down sufficiently precise and objective criteria for approval of, or opposition to, the abovementioned operations, the French Republic has

failed to comply with its obligations under Articles 52 (now, after amendment, Article 43 EC) to Article 58 of the EC Treaty (now Article 48 EC) and Article 73b of the EC Treaty (now Article 56 EC),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P. Jann (Rapporteur), N. Colneric and S. von Bahr (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, J.-P. Puissochet, R. Schintgen, V. Skouris and J.N. Cunha Rodrigues, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: H.A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 May 2001, at which the Commission was represented by M. Patakia and by F. de Sousa Fialho, acting as Agent, the French Republic by S. Seam and by F. Alabrune, acting as Agent, the Kingdom of Spain by S. Ortiz Vaamonde, acting as Agent, and the United Kingdom of Great Britain and Northern Ireland by R. Magrill and D. Wyatt,

after hearing the Opinion of the Advocate General at the sitting on 3 July 2001,

gives the following

Judgment

1 By application received at the Court Registry on 21 December 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by maintaining in force Article 2(1) and (3) of Decree No 93-1298 of 13 December 1993 vesting in the State a 'golden share' in Société Nationale Elf-Aquitaine (JORF of 14 December 1993, p. 17354, hereinafter 'Decree No 93-1298'), according to which the following rights attach to the 'golden share' held by the French Republic in that company:

(a) any direct or indirect shareholding by a natural or legal person, acting alone or in conjunction with others, which exceeds the ceiling of one tenth, one fifth or one third of the capital of, or voting rights in, the company must first be approved by the Minister for Economic Affairs (Article 2(1) of the Decree);

(b) the right to oppose any decision to transfer or use as security the assets listed in the annex to the Decree — the assets in question being the majority of the capital of four subsidiaries of the parent company, namely Elf-Aquitaine Production, Elf-Antar France, Elf-Gabon SA and Elf-Congo SA (Article 2(3) of the Decree),

and by failing to lay down sufficiently precise and objective criteria for approval of, or opposition to, the abovementioned operations, the French Republic has failed to comply with its obligations under Articles 52 (now, after amendment, Article 43 EC) to 58 of the EC Treaty (now Article 48 EC) and Article 73b of the EC Treaty (now Article 56 EC).

2 By applications received at the Court Registry on 13, 22 and 27 June 2000 respectively, the Kingdom of Spain, the Kingdom of Denmark and the United Kingdom of Great Britain and Northern Ireland sought leave to intervene in the case in support of the form of order sought by the French Republic. By orders of the President of the Court of 4, 7 and 12 July 2000 respectively, those Member States were granted leave to intervene. By letter of 6 April 2001, the Kingdom of Denmark withdrew its intervention.

Legal framework

Community law

3 Article 73b(1) of the Treaty is in the following terms:

'Within the framework of the provisions set out in this Chapter, all restrictions on the movement of capital between Member States and between Member States and third countries shall be prohibited.'

4 Article 73d(1)(b) of the EC Treaty (now Article 58(1)(b) EC) provides:

'The provisions of Article 73b shall be without prejudice to the right of Member States:

...

(b) to take all requisite measures to prevent infringements of national law and regulations, in particular in the field of taxation and the prudential supervision of financial institutions, or to lay down procedures for the declaration of capital movements for purposes of administrative or statistical information, or to take measures which are justified on grounds of public policy or public security.'

5 Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5) contains a nomenclature of the capital movements referred to in Article 1 of that directive. In particular, it lists the following movements:

'I — Direct investments ...

1. Establishment and extension of branches or new undertakings belonging solely to the person providing the capital, and the acquisition in full of existing undertakings.

2. Participation in new or existing undertakings with a view to establishing or maintaining lasting economic links.

...'

6 According to the explanatory notes appearing at the end of Annex I to Directive 88/361, 'direct investments' means:

'Investments of all kinds by natural persons or commercial, industrial or financial undertakings, and which serve to establish or to maintain lasting and direct links between the person providing the capital and the entrepreneur to whom or the undertaking to which the capital is made available in order to carry on an economic activity. This concept must therefore be understood in its widest sense.

...

As regards those undertakings mentioned under I-2 of the Nomenclature which have the status of companies limited by shares, there is participation in the nature of direct investment where the block of shares held by a natural person or another undertaking or any other holder enables the shareholder, either pursuant to the provisions of national laws relating to companies limited by shares or otherwise, to participate effectively in the management of the company or in its control.

...'

7 The nomenclature appearing in Annex I to Directive 88/361 also refers to the following movements:

'III — Operations in securities normally dealt in on the capital market ...

...

A — Transactions in securities on the capital market

1. Acquisition by non-residents of domestic securities dealt in on a stock exchange

...

3. Acquisition by non-residents of domestic securities not dealt in on a stock exchange

...'

8 Article 222 of the EC Treaty (now Article 295 EC) provides:

'This Treaty shall in no way prejudice the rules in Member States governing the system of property ownership.'

National law

9 Articles 1 and 2 of Decree No 93-1298 provide as follows:

'Article 1

In order to protect the national interest, an ordinary "golden share" held by the State in Société Nationale Elf-Aquitaine shall be converted into a "golden share" to which the rights defined in Article 2 below shall attach.

Article 2

I. Any direct or indirect shareholding, whatever its nature or legal form, by a natural or legal person, acting alone or in conjunction with others, which exceeds the ceiling of one tenth, one fifth or one third of the capital of, or voting rights in, the company must first be approved by the Minister for Economic Affairs. Fresh

approval must be given in the event that the beneficiary seeks to act in conjunction with others or undergoes a change of control, or if there is any change in the identity of one or more members of a group acting in concert. Similarly, prior approval must be given where any limit is exceeded by an individual member of a group acting in concert. ...

II. Two representatives of the State, appointed by decree, shall sit on the board of directors of the company, without entitlement to vote. One representative shall be appointed on a proposal by the Minister for Economic Affairs and the other on a proposal by the Minister for Energy.

III. In the circumstances prescribed by the abovementioned Decree No 93-1296, a decision to transfer or use as security the assets listed in the annex hereto may be opposed.'

10 The list set out in the annex to Decree No 93-1298 refers to the majority of the capital of Elf-Aquitaine Production, Elf-Antar France, Elf-Gabon SA and Elf-Congo SA.

Pre-litigation procedure

11 By letter of 15 May 1998 the Commission issued a formal notice to the French Government in which it claimed that certain provisions of the French legislation regarding the acquisition of shares in privatised companies were incompatible with Community law.

12 By letter of 31 July 1998 the Minister for Economic Affairs, Finance and Industry replied that, in his view, the provisions of the Treaty do not preclude Member States from ensuring continuity of their energy supplies. However, he stated that he was willing to amend certain aspects of the legislation concerned, in consultation with the Commission.

13 The Commission took the view that the arguments and proposals for amendments put forward by the French Government were unsatisfactory, and therefore sent a reasoned opinion to the French Republic on 18 January 1999, calling on it to comply with that opinion within a period of two months.

14 The French Government replied to the reasoned opinion by letter of 11 February 1999, accompanied by a draft decree amending Decree No 93-1298. That draft stated that the authorisation of the Minister for Economic Affairs provided for in Article 2(1) of the decree would henceforth be required only where the exceeding limits 'might threaten to disrupt France's supplies of petroleum products'.

15 In a note sent to the Commission on 19 April 1999 the French authorities emphasised the importance of maintaining a central decision-making body in France, the fear that a non-Community company might acquire control of Société Nationale Elf-Aquitaine and the importance of that company's petroleum reserves for the purposes of safeguarding France's energy supplies and for the French economy in general.

16 The Commission took the view that the amendments proposed by the French Government were inadequate, and therefore decided to bring the present action before the Court.

Pleas and arguments of the parties

17 The Commission states, as a preliminary point, that the phenomenon of widespread intra-Community investment has prompted certain Member States to adopt measures to control that situation. Those measures, most of which have been adopted in the context of privatisations, are liable, in certain circumstances, to be incompatible with Community law. For that reason, it adopted on 19 July 1997 its Communication on certain legal aspects concerning intra-EU investment (OJ 1997 C 220, p. 15, hereinafter 'the 1997 Communication').

18 In that communication, the Commission interpreted the relevant Treaty provisions concerning the free movement of capital and freedom of establishment, *inter alia* in the context of procedures for the grant of general authorisation or the exercise of a right of veto by public authorities.

19 Point 9 of the 1997 Communication is worded as follows:

'The analysis undertaken above concerning measures having a restrictive character on intra-Community investment has concluded that discriminatory measures (i.e. those applied exclusively to investors from another EU Member State) would be considered as incompatible with Articles 73b and 52 of the Treaty governing the free movement of capital and the right of establishment unless covered by one of the exceptions of the Treaty. As regards non-

discriminatory measures (i.e. those applied to nationals and other EU investors alike), they are permitted in so far as they are based on a set of objective and stable criteria which have been made public and can be justified on imperative requirements in the general interest. In all cases, the principle of proportionality has to be respected.'

20 According to the Commission, the rules vesting in the French Republic a 'golden share' in Société Nationale Elf-Aquitaine, whereby any holding of shares or voting rights which exceeds certain ceilings must be authorised in advance by that Member State and a decision to transfer or use as security the majority of the capital of four subsidiaries of that company may be opposed, are contrary to the criteria laid down by the 1997 Communication and thus infringe Articles 52 to 58 and 73b of the Treaty.

21 Those national rules, although applicable without distinction, create obstacles to the right of establishment of nationals of other Member States and to the free movement of capital within the Community, inasmuch as they are liable to impede, or render less attractive, the exercise of those freedoms.

22 According to the Commission, authorisation and opposition procedures can be held to be compatible with those freedoms only if they are covered by the exceptions contained in Article 55 of the EC Treaty (now Article 45 EC), Article 56 of the EC Treaty (now, after amendment, Article 46 EC) and Article 73d of the Treaty, or if they are justified by overriding requirements of the general interest and qualified by stable, objective criteria which have been made public, in such a way as to restrict to the minimum the discretionary power of the national authorities.

23 The provisions in issue do not meet any of those criteria. Consequently, they are liable, by reason of their opacity, indirectly to introduce an element of discrimination and legal uncertainty. Furthermore, Article 222 of the Treaty is irrelevant, since the present case does not concern the holding by the State of a controlling interest in the capital of any company but rather State control over the sharing of property ownership between private individuals.

24 Whilst the continuity of supplies of petroleum products in the event of a crisis may in principle fall within the scope of overriding requirements of the general interest, the measures in question must nevertheless be shown to be necessary and proportionate to the objective pursued.

25 That objective could be more effectively attained by sectoral measures coming into force in the event of a crisis and qualified by well-defined technical criteria relating not to the capital of the companies concerned but to the use of stocks.

26 Moreover, the objective of ensuring security of petroleum supplies in the event of a crisis is already adequately safeguarded by the measures provided for under Community law and international law. Thus, there exists a Community framework, in certain directives and decisions of the Council, which establishes a policy designed to guarantee supplies of petroleum products in the Member States whilst respecting the rules of the internal market. Similarly, at international level, there is a mechanism set up by the International Energy Agency, namely the Agreement on an International Energy Program, to which the French Republic is a party. That agreement contains provisions designed to ensure a fair distribution of petroleum in the event of a shortage, so that it supplements the Community directives, which are concerned only with building up stocks and restricting demand.

27 The French Republic denies the alleged failure to comply with its obligations. It maintains that any restrictions on freedom of establishment and the free movement of capital which may result from the legislation in issue are in any event justified, first, by the public-security exception laid down in Articles 56 and 73d(1)(b) of the Treaty and, second, by overriding requirements of the general interest. Moreover, they are proportionate and adequate in relation to the objective pursued by them.

28 The French Government argues, first, that the availability of supplies of petroleum products in the event of a crisis, guaranteed, first, by the right to requisition the crude oil reserves of Société Nationale Elf-Aquitaine located abroad and, second, by the authorisation procedures designed to ensure that the central decision-making body of that company remains in France, are matters of public security. In its judgment in Case 72/83 *Campus Oil and Others* [1984] ECR 2727, paragraph 34, the Court held that safeguarding supplies of petroleum products in the event of a crisis was a matter of internal security. That applies without qualification in the present case.

29 Second, the rules at issue in the present action are not discriminatory. No support is to be found in the case-law of the Court for the requirement, formulated by the Commission, that there must exist precise, objective and stable criteria restricting to the minimum the discretionary power of the national authorities, and such a requirement cannot therefore be applied.

30 Third, the measures in question satisfy the criteria of necessity and proportionality. Petroleum products are of fundamental importance for a country's existence since not only its economy but above all its institutions, its essential public services and even the survival of its inhabitants depend upon them. That is the position in the case of France. An interruption of supplies of petroleum products, with the risks thus posed for the country's existence, could therefore

seriously affect its public security, *a fortiori* since France is heavily dependent on imports in that sector.

31 In the event of a serious crisis, France could effectively ensure its supplies of petroleum products only by requisitioning the crude oil reserves of Société Nationale Elf-Aquitaine located abroad. However, that would be possible only if the company's central decision-making body remains in France.

32 The French Government argues that there are no national sectoral measures which could more effectively ensure France's supplies of petroleum products in the event of a serious crisis, especially as regards the use of stocks. In the absence of significant national petroleum reserves, no sectoral measure could be taken in respect of crude oil supplies.

33 According to the French Government, the Community rules referred to by the Commission and the measures taken in the context of the International Energy Agency are not sufficient to ensure supplies of petroleum products in the event of a serious crisis, as the Court has previously recognised in paragraphs 28 to 31 of its judgment in *Campus Oil*, cited above. Consequently, the Commission has failed to discharge its obligation to show that the measures in question do not accord with the principle of proportionality. In any event, the special rights forming the subject-matter of the present action constitute a necessary adjunct to the international measures.

34 The intervening Member States share, in essence, the view expressed by the French Republic.

Findings of the Court

Article 73b of the Treaty

35 It must be recalled at the outset that Article 73b(1) of the Treaty gives effect to free movement of capital between Member States and between Member States and third countries. To that end it provides, within the framework of the provisions of the chapter headed 'Capital and payments', that all restrictions on the movement of capital between Member States and between Member States and third countries are prohibited.

36 Although the Treaty does not define the terms 'movements of capital' and 'payments', it is settled case-law that Directive 88/361, together with the nomenclature annexed to it, may be used for the purposes of defining what constitutes a capital movement (Case C-222/97 *Trummer and Mayer* [1999] ECR I-1661, paragraphs 20 and 21).

37 Points I and III in the nomenclature set out in Annex I to Directive 88/361, and the explanatory notes appearing in that annex, indicate that direct investment in the form of participation in an undertaking by means of a shareholding or the acquisition of securities on the capital market constitute capital movements within the meaning of Article 73b of the Treaty. The explanatory notes state that direct investment is characterised, in particular, by the possibility of participating effectively in the management of a company or in its control.

38 In the light of those considerations, it is necessary to consider whether the rules vesting in the French Republic a 'golden share' in Société Nationale Elf-Aquitaine, whereby any holding of shares or voting rights which exceeds certain

limits must be authorised in advance by France and a decision to transfer or use as security the majority of the capital of four subsidiaries of that company may be opposed, constitute a restriction on the movement of capital between Member States.

39 The French Government concedes in principle that the restrictions arising from the rules in issue fall within the scope of the free movement of capital, but argues that the rules apply without distinction to national shareholders and to shareholders who are nationals of other Member States. They do not therefore involve any discriminatory or particularly restrictive treatment of nationals of other Member States.

40 That argument cannot be accepted. Article 73b of the Treaty lays down a general prohibition on restrictions on the movement of capital between Member States. That prohibition goes beyond the mere elimination of unequal treatment, on grounds of nationality, as between operators on the financial markets.

41 Even though the rules in issue may not give rise to unequal treatment, they are liable to impede the acquisition of shares in the undertakings concerned and to dissuade investors in other Member States from investing in the capital of those undertakings. They are therefore liable, as a result, to render the free movement of capital illusory (see, in that regard, Joined Cases C-163/94, C-165/94 and C-250/94 *Sanz de Lera and Others* [1995] ECR I-4821, paragraph 25, and Case C-302/97 *Konle* [1999] ECR I-3099, paragraph 44).

42 In those circumstances, the rules in issue must be regarded as a restriction on the movement of capital within the meaning of Article 73b of the Treaty. It is therefore necessary to consider whether, and on what basis, that restriction may be justified.

43 As is also apparent from the 1997 Communication, it is undeniable that, depending on the circumstances, certain concerns may justify the retention by Member States of a degree of influence within undertakings that were initially public and subsequently privatised, where those undertakings are active in fields involving the provision of services in the public interest or strategic services (see today's judgments in Case C-367/98 *Commission* v *Portugal*, ECR I-4731, paragraph 47, and Case C-503/99 *Commission* v *Belgium*, ECR 4809, paragraph 43).

44 However, those concerns cannot entitle Member States to plead their own systems of property ownership, referred to in Article 222 of the Treaty, by way of justification for obstacles, resulting from privileges attaching to their position as shareholder in a privatised undertaking, to the exercise of the freedoms provided for by the Treaty. As is apparent from the Court's case-law (*Konle*, cited above, paragraph 38), that article does not have the effect of exempting the Member States' systems of property ownership from the fundamental rules of the Treaty.

45 The free movement of capital, as a fundamental principle of the Treaty, may be restricted only by national rules which are justified by reasons referred to in Article 73d(1) of the Treaty or by overriding requirements of the general interest and which are applicable to all persons and undertakings pursuing an activity in the territory of the host Member State. Furthermore, in order to be so justified, the national legislation must be suitable for securing the objective which it pursues and must not go beyond what is necessary in order to attain it, so as to accord with the principle of proportionality (see, to that effect, *Sanz de Lera*, cited above, paragraph 23, and Case C-54/99 *Église de Scientologie* [2000] ECR I-1335, paragraph 18).

46 As regards a prior administrative authorisation scheme such as that forming the subject-matter of the Commission's main complaint, as contained in head (a) of the form of order sought by it, and relating to Article 2(1) of Decree No 93-1298, the Court has previously held that such a scheme must be proportionate to the aim pursued, inasmuch as the same objective could not be attained by less

restrictive measures, in particular a system of declarations *ex post facto* (see, to that effect, *Sanz de Lera*, paragraphs 23 to 28; *Konle*, paragraph 44; and Case C-205/99 *Analir and Others* [2001] ECR I-1271, paragraph 35). Such a scheme must be based on objective, non-discriminatory criteria which are known in advance to the undertakings concerned, and all persons affected by a restrictive measure of that type must have a legal remedy available to them (*Analir*, cited above, paragraph 38).

47 In the present case, the objective pursued by the legislation at issue, namely the safeguarding of supplies of petroleum products in the event of a crisis, falls undeniably within the ambit of a legitimate public interest. Indeed, the Court has previously recognised that the public-security considerations which may justify an obstacle to the free movement of goods include the objective of ensuring a minimum supply of petroleum products at all times (*Campus Oil*, paragraphs 34 and 35). The same reasoning applies to obstacles to the free movement of capital, inasmuch as public security is also one of the grounds of justification referred to in Article 73d(1)(b) of the Treaty.

48 However, the Court has also held that the requirements of public security, as a derogation from the fundamental principle of free movement of capital, must be interpreted strictly, so that their scope cannot be determined unilaterally by each Member State without any control by the Community institutions. Thus, public security may be relied on only if there is a genuine and sufficiently serious threat to a fundamental interest of society (see, in particular, *Église de Scientologie*, cited above, paragraph 17).

49 It is necessary, therefore, to ascertain whether the obstacles resulting from the legislation in issue are such as to enable the Member State concerned to ensure a minimum supply of petroleum products in the event of a genuine and serious threat, and whether or not they go beyond what is necessary for that purpose.

50 In that connection, as regards the Commission's main complaint concerning Article 2(1) of Decree No 93-1298, it should be remembered that, under the system established by that provision, any direct or indirect shareholding which exceeds certain limits, regardless of its nature or legal form, must first be approved by the Minister for Economic Affairs in respect of each of the persons participating in that holding. According to the applicable provisions, the exercise of that right is not qualified by any condition, save for a reference, formulated in general terms in Article 1 of that decree, to the protection of the national interest. The investors concerned are given no indication whatever as to the specific, objective circumstances in which prior authorisation will be granted or refused. Such lack of precision does not enable individuals to be apprised of the extent of their rights and obligations deriving from Article 73b of the Treaty. That being so, such a system must be regarded as contrary to the principle of legal certainty (*Église de Scientologie*, paragraphs 21 and 22).

51 Such a wide discretionary power constitutes a serious interference with the free movement of capital, and may have the effect of excluding it altogether. Consequently, the system in issue clearly goes beyond what is necessary in order to attain the objective pleaded by the French Government, namely the prevention of any disruption of a minimum supply of petroleum products in the event of a real threat.

52 As regards the Commission's complaint concerning Article 2(3) of Decree No 93-1298, which provides for a right to oppose any decision to transfer or use as security the assets of four subsidiaries of Société Nationale Elf-Aquitaine located abroad, the same considerations apply. Even though what is involved here is not a system of prior authorisation but a system of opposition *ex post facto*, it is common ground that the exercise of that right is likewise not qualified by any condition limiting the wide discretion of the minister concerned regarding controls on the identity of the holders of the assets of the subsidiary companies. It follows that the system clearly goes beyond what is necessary in order to attain the objective pleaded by the French Government, namely the prevention of disruption of a minimum supply of petroleum products in the event of a real

threat. Moreover, the French legislative provisions in issue do not reflect any such limitation.

53 Since the structure of the system established does not include any precise, objective criteria, the legislation in issue goes beyond what is necessary in order to attain the objective indicated.

54 It must therefore be held that, by maintaining in force the legislation in issue, the French Republic has failed to comply with its obligations under Article 73b of the Treaty.

Articles 52 to 58 of the Treaty

55 The Commission further seeks a declaration of failure to comply with Articles 52 to 58 of the Treaty, namely the Treaty rules regarding freedom of establishment, in so far as they concern undertakings.

56 To the extent that the legislation in issue involves restrictions on freedom of establishment, such restrictions are a direct consequence of the obstacles to the free movement of capital considered above, to which they are inextricably linked. Consequently, since an infringement of Article 73b of the Treaty has been established, there is no need for a separate examination of the measures at issue in the light of the Treaty rules concerning freedom of establishment.

Costs

57 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been applied for in the successful party's pleadings. Since the Commission has applied for the French Republic to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs. In application of the first subparagraph of Article 69(4) of those Rules, the Kingdom of Spain and the United Kingdom, which have intervened in the proceedings, must bear their own costs.

On those grounds,

THE COURT,

hereby:

1. Declares that, by maintaining in force Article 2(1) and (3) of Decree No 93-1298 of 13 December 1993 vesting in the State a 'golden share' in Société Nationale Elf-Aquitaine, according to which the following rights attach to the 'golden share' held by the French Republic in that company:

   (a) any direct or indirect shareholding by a natural or legal person, acting alone or in conjunction with others, which exceeds the ceiling of one tenth, one fifth or one third of the capital of, or voting rights in, the company must first be approved by the Minister for Economic Affairs;

(b) the right to oppose any decision to transfer or use as security the assets listed in the annex to the Decree — the assets in question being the majority of the capital of four subsidiaries of that company, namely Elf-Aquitaine Production, Elf-Antar France, Elf-Gabon SA and Elf-Congo SA,

the French Republic has failed to comply with its obligations under Article 73b of the EC Treaty (now Article 56 EC);

2. Orders the French Republic to pay the costs;

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

Rodríguez Iglesias Jann Colneric

von Bahr Gulmann Edward

La Pergola Puissochet Schintgen

Skouris Cunha Rodrigues

Delivered in open court in Luxembourg on 4 June 2002.

R. Grass G.C. Rodríguez Iglesias

Registrar President