JUDGMENT OF THE COURT
9 April 1987 *

In Case 5/86

Commission of the European Communities, represented by B. van der Esch, Principal Legal Adviser, assisted by L. Gyselen, a member of the Commission's Legal Department, both acting as Agents, with an address for service in Luxembourg at the office of Georges Kremlis, also a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, in the person of its Minister for Foreign Affairs, represented by Robert Hoebaer, Director at the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, with an address for service in Luxembourg at the Belgian Embassy, résidence Champagne, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that by not complying with the Commission's decision of 27 June 1984 on the aid granted by the Belgian Government to a producer of polypropylene fibre and yarn (Official Journal 1984, L 283, p. 42), the Kingdom of Belgium has failed to fulfil an obligation under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. F. O'Higgins and F. Schockweiler, Presidents of Chambers, G. Bosco, T. Koopmans, O. Due, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon
Registrar: H. A. Rühl, Principal Administrator

* Language of the Case: Dutch.

having regard to the Report for the Hearing and further to the hearing on 26 February 1987 at which the Commission was represented by R. C. Fischer, a member of its Legal Department, acting as Agent, and the Kingdom of Belgium by J. Devadder, Assistant Adviser at the Legal Department of the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries,

after hearing the Opinion of the Advocate General delivered at the sitting on 26 February 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 13 January 1986, the Commission of the European Communities brought an action before the Court under the second subparagraph of Article 93 (2) of the EEC Treaty for a declaration that by not complying with Commission Decision No 84/508 of 27 June 1984 on the aid granted by the Belgian Government to a producer of polypropylene fibre and yarn, the Kingdom of Belgium has failed to fulfil an obligation under the EEC Treaty.

2 Reference is made to the Report for the Hearing for a more detailed summary of the facts of the case, the course of the procedure and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 By the contested decision the Commission found that a State participation amounting to BFR 224 million in the capital of a subsidiary created by the largest Belgian textile and carpet group for the purpose of establishing a production plant for polypropylene staple fibre and filament yarn constituted aid incompatible with the common market within the meaning of Article 92 of the EEC Treaty and

therefore had to be withdrawn. The Commission also required Belgium to inform it within two months of the date of the notification of the decision of the measures it had taken to comply with the decision.

4 The decision was notified by a letter dated 6 August 1984 and has not been made the subject of an action for annulment.

5 In a letter dated 18 January 1985 the Belgian Government proposed to convert the aid which it had granted into a loan spread over five or seven years which would be repayable by the undertaking concerned as far as profits during that period allowed. In a letter dated 26 February 1985 the Commission rejected that proposal. In a letter dated 3 October 1985 the Belgian Government informed the Commission that it did not see any solution which would meet the requirements laid down in the decision. The Commission therefore brought this action.

6 The Belgian Government has acknowledged before the Court that since the decision was not contested within the time allowed it has become final. However, it maintains that it was impossible for it to implement the decision for two reasons: the repayment of the State aid would contravene the principle regarding the maintenance of share capital laid down in Belgian company law as a safeguard for the rights of creditors and would also be factually impossible in the circumstances of this case unless the undertaking was wound up.

7 However, in its defence, the Belgian Government acknowledges that in its judgment of 15 January 1986 in Case 52/84 *(Commission* v *Kingdom of Belgium* [1986] ECR 89) the Court has in the meantime rejected the same arguments which it put forward in this case. It states that it has accordingly entered into negotiations with the Commission in order to find a solution to the problem.

8 In its reply the Commission mentions a meeting on 6 March 1986 between its representatives and those of the Belgian Government which did not result in a satisfactory solution.

9 In its rejoinder lodged at the Court Registry on 28 May 1986 the Belgian Government states that the Société nationale de restructuration des secteurs nationaux has been instructed to take the necessary steps to obtain repayment of the aid. In reply to a question by the Court about the progress made in implementing the decision, the Belgian Government, by a letter dated 17 November 1986, informed the Court that the authority responsible for implementing the decision had encountered certain problems of company law during the negotiations but that it nevertheless considered that a solution would be found in the coming months.

10 At the hearing on 26 February 1987 the representative of the Belgian Government stated that the major shareholders in the company concerned had recently agreed to buy back the State participation in the company's capital which was the subject of the Commission's decision and that the repurchase was still to be authorized by the Belgian authorities.

11 It must be borne in mind that the action concerns the failure by the Kingdom of Belgium to comply with the contested decision within the prescribed period and that the decision, which was notified to it by letter dated 6 August 1984, required the Belgian Government to inform the Commission within two months of the date of its notification of the measures taken to comply with it. The Court must therefore find that the decision was not implemented within the prescribed period.

12 It follows that the Court must make the declaration in the terms sought by the Commission in its conclusions.

Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by not complying within the prescribed period with Commission Decision No 84/508/EEC of 27 June 1984 on the aid granted by the Belgian Government to a producer of polypropylene fibre and yarn, the Kingdom of Belgium has failed to fulfil an obligation under the EEC Treaty;

(2) Orders the Kingdom of Belgium to pay the costs.

Mackenzie Stuart O'Higgins Schockweiler Bosco

Koopmans Due Bahlmann Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 9 April 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President