Case 5/86

Commission of the European Communities
v
Kingdom of Belgium

(Failure to comply with a decision concerning a measure for granting aid to a producer of polypropylene fibre and yarn)

Report for the Hearing 1773

Opinion of Mr Advocate General Darmon delivered on 26 February 1987 1776

Judgment of the Court, 9 April 1987 1777

Summary of the Judgment

Aid granted by Member States — Commission decision finding aid incompatible with the common market — Decision requiring the aid to be repaid — Obligation of the Member State to comply with it in the time allowed

(EEC Treaty, Arts 92 and 93)

REPORT FOR THE HEARING

delivered in Case 5/86 *

I — Summary of the facts

1. On 18 November 1983 the Belgian Government informed the Commission that in March 1983 it had granted aid to the largest Belgian textile and carpet group for the purpose of establishing a production plant for polypropylene staple fibre and filament yarn. The aid, amounting to BFR 224 million, took the form of a State participation in the capital of the subsidiary created by the textile and carpet group for the abovementioned purpose.

* Language of the Case: Dutch.

2. On 27 June 1984 the Commission adopted, in accordance with the first paragraph of Article 93 (2) of the EEC Treaty, a decision stating that the aid in question was incompatible with the common market under the terms of Article 92 of the EEC Treaty and should therefore be withdrawn. The Belgian Government was also required to inform the Commission within a period of two months from notification of the decision of the measures taken by Belgium to comply with the decision.

3. The Commission notified that decision to the Kingdom of Belgium by letter of 6 August 1984. The decision became final two months after its notification since the Kingdom of Belgium did not reply within that period.

4. 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. By letter of 3 October 1985 the Belgian Government finally informed the Commission that it did not see any solution which would meet the requirements laid down by the Commission in its decision of 27 June 1984.

II — Written procedure and conclusions of the parties

1. By application lodged at the Court Registry on 13 January 1986 pursuant to the second paragraph of Article 93 (2) of the EEC Treaty the Commission therefore brought these proceedings.

The written procedure followed the normal course.

2. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. The Belgian Government was, however, requested to inform the Court how far the Commission's decision had been implemented. That request was complied with within the period allowed.

3. The *Commission* claims that the Court should:

(1) Declare that the Belgian Government has not complied 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 since it has not adopted measures to withdraw that aid within the period laid down and that the Kingdom of Belgium has therefore failed to fulfil an obligation under the Treaty;

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

4. The *Kingdom of Belgium* states that it has commenced the procedure for implementing the decision.

III — Submissions and arguments of the parties

1. The *Commission* simply points out that the decision of 27 June 1984 was duly adopted and that the Belgian Government has not adopted any measure to comply with the decision in the period allowed or indeed before its application was lodged.

2. The *Belgian Government* recognizes that since the decision in question has not been contested it may be regarded as final.

3. As regards the *implementation* of that decision, the *Belgian Government* points out

that in its letter of 18 January 1985 it had proposed a solution for the repayment of the State participation in the capital of the undertaking in question which, in its view, deprived the measure of its character of aid; it also claims that it is impossible to implement the decision for two reasons, namely that the repayment of the State aid would contravene the principle that share capital must be maintained laid down in Belgian company law in accordance with the Second Directive of 13 December 1976 and that repayment would also be physically impossible in the circumstances of this case unless the undertaking was wound up.

The Belgian Government recognizes, however, that the Court rejected those arguments in its judgment of 15 January 1986 in Case 52/84.

4. In its defence it states that it entered into negotiations with the Commission in order to find a solution to the problem and in its rejoinder, lodged at the Court Registry on 28 May 1986, that the Société nationale de restructuration des secteurs nationaux has been instructed to take the necessary steps to arrange the early sale and repayment of the aid and that it will inform the Court and the Commission of the results without delay.

On 13 November 1986, in reply to a question put to it by the Court, the Belgian Government informed it that:

'The Société nationale de restructuration des secteurs nationaux, which had been instructed to undertake the steps necessary to arrange the early sale and repayment of the aid, has encountered certain problems of company law during the negotiations. Nevertheless, it considers that a solution will be found in the coming months.'

5. The *Commission* also refers to the judgment of 15 January 1986 in Case 52/84 in reply to the Belgian Government's contention that it is impossible to implement the decision.

6. As regards the statement in the defence to the effect that negotiations had been begun with the Commission in order to find a solution to the problem, the Commission points out that at a meeting on 6 March 1986 between its representatives and those of the Belgian Government the Belgian delegation did not mention any unforeseen or unforeseeable difficulties in the implementation of the decision or consequences overlooked by the Commission; according to paragraph 16 of the judgment in Case 52/84, cited above, if such circumstances had been submitted by the Member State for consideration by the Commission, they would have led to the two parties' working together in good faith with a view to overcoming difficulties whilst fully observing the Treaty provisions. According to the Commission, at that meeting the Belgian delegation did not claim that it was impossible to implement the decision but simply stressed that the major shareholder in the undertaking concerned by the aid did not accept the decision.

G. C. Rodríguez Iglesias
Judge Rapporteur