JUDGMENT OF THE COURT (Sixth Chamber)

11 September 2003 *

In Case C-197/99 P,

Kingdom of Belgium, represented by A. Snoecx, acting as Agent, assisted by J.-M. De Backer, G. Vandersanden and L. Levi, avocats, with an address for service in Luxembourg,

appellant,

supported by

Compagnie belge pour le financement de l'industrie SA (Belfin), represented by M. van der Haegen, D. Waelbroeck and A. Fontaine, avocats, with an address for service in Luxembourg,

intervener in the appeal,

* Language of the case: French.

APPEAL against the judgment of the Court of First Instance of the European Communities (Fourth Chamber, Extended Composition) of 25 March 1999 in Case T-37/97 *Forges de Clabecq* v *Commission* [1999] ECR II-859, seeking to have that judgment set aside,

the other parties to the proceedings being:

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

defendant at first instance,

Forges de Clabecq SA, a company in receivership established in Clabecq (Belgium),

applicant at first instance,

Région Wallonne

and

Société wallonne pour la sidérurgie SA (SWS), established in Liège (Belgium),

interveners at first instance,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann, F. Macken (Rapporteur), N. Colneric and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 December 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 26 May 1999, the Kingdom of Belgium brought an appeal pursuant to Article 49 of the ECSC Statute of the Court of Justice against the judgment of 25 March 1999 in Case T-37/97 *Forges de Clabecq* v *Commission* [1999] ECR II-859 (hereinafter 'the contested judgment'), in which the Court of First Instance rejected the application brought by the undertaking Forges de Clabecq SA (hereinafter 'Clabecq') for the annulment of Commission Decision 97/271/ECSC of 18 December 1996, ECSC steel — Forges de Clabecq (OJ 1997 L 106, p. 30) (hereinafter 'the contested decision') declaring certain financial assistance granted to Clabecq to be incompatible with the common market.

Legal framework

The ECSC Treaty

2 Article 4 of the ECSC Treaty states:

'The following are recognised as incompatible with the common market for coal and steel and shall accordingly be abolished and prohibited within the Community, as provided in this Treaty:

...

(c) subsidies or aids granted by States, or special charges imposed by States, in any form whatsoever;

...'.

3 The first and second paragraphs of Article 95 of the ECSC Treaty provide as follows:

'In all cases not provided for in this Treaty where it becomes apparent that a decision or recommendation of the Commission is necessary to attain, within the

common market in coal and steel and in accordance with Article 5, one of the objectives of the Community set out in Articles 2, 3 and 4, the decision may be taken or the recommendation made with the unanimous assent of the Council and after the Consultative Committee has been consulted.

Any decision so taken or recommendation so made shall determine what penalties, if any, may be imposed.'

4 In order to meet the restructuring needs of the steel sector, the Commission relied on the provisions of Article 95 of the Treaty to introduce, in the early 1980s, a Community scheme authorising the grant of State aid to the steel industry in specific and limited cases. That scheme underwent a series of amendments in order to deal with the cyclical problems encountered by the steel industry. The decisions successively adopted for that purpose are commonly known as the 'Steel Aid Code'.

5 The fifth Steel Aid Code, laid down in Commission Decision No 3855/91/ECSC of 27 November 1991 establishing Community rules for aid to the steel industry (OJ 1991 L 362, p. 57) (hereinafter 'the Fifth Code'), was applicable from 1 January 1992 to 31 December 1996.

6 Under Article 1(1) of the Fifth Code, all aid to the steel industry financed by a Member State or regional or local authorities or through State resources may be deemed compatible with the orderly functioning of the common market only if it satisfies the provisions of Articles 2 to 5 of that code.

7 Article 1(2) of the Fifth Code provides that 'the term "aid" also covers the aid elements contained in transfers of State resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisitions of shareholdings or provisions of capital or similar financing... which cannot be regarded as a genuine provision of risk capital according to usual investment practice in a market economy.'

8 Articles 2 to 5 of the Fifth Code provide that the following aid may under certain conditions be deemed compatible with the common market: aid granted to defray expenditure by steel undertakings on research and development projects, aid for bringing into line with new statutory environmental standards plants which entered into service at least two years before the introduction of those standards, aid to steel undertakings which permanently cease production of ECSC iron and steel and aid towards the costs of payments to workers made redundant or accepting early retirement, together with certain aid to undertakings located in Greece, Portugal, and the former German Democratic Republic.

9 The Fifth Code does not permit the grant of operating or restructuring aid, except for aid granted for closure.

10 Article 6(2) of the Fifth Code provides that the Commission is to be informed, in sufficient time, of any plans for transfers of resources by Member States, regional or local authorities or other bodies to steel undertakings in the form of acquisition of shareholdings or provisions of capital or similar financing.

11 Article 6(4) of the Fifth Code states:

'If, after giving notice to the interested parties concerned to submit their comments, the Commission finds that aid in a given case is incompatible with the provisions of this Decision, it shall inform the Member State concerned of its decision. The Commission shall take such a decision not later than three months after receiving the information needed to assess the proposed aid. Article 88 of the Treaty shall apply in the event of a Member State's failing to comply with that decision. The planned measures falling within paragraph 1 or 2 may be put into effect only with the approval of and subject to any conditions laid down by the Commission.'

Background to the dispute and the contested decision

12 The background to the dispute, as set out in paragraphs 6 to 21 of the contested judgment, is as follows.

13 Clabecq was a steel company incorporated under Belgian law which, when operational, produced liquid steel and finished flat products.

14 During the first half of the 1980s a recovery plan was drawn up for Clabecq, under which it was granted several loans by two Belgian companies, the Société nationale de crédit à l'industrie SA (hereinafter 'SNCI') and the Compagnie belge pour le financement de l'industrie (hereinafter 'Belfin').

15 SNCI granted four loans to Clabecq:

— the first loan, for an amount of BEF 1 500 million, included:

— a first instalment of BEF 820 million,

— a second instalment of BEF 680 million;

— the second loan was for BEF 850 million;

— the third loan was for BEF 1 500 million;

— the fourth loan was for BEF 650 million.

16 Those loans were commonly referred to as 'SNCI loans' and, as is clear from the file, they were guaranteed by the Belgian State.

17 By two decisions, of 16 December 1982 (hereinafter 'the 1982 authorisation decision') and of 31 July 1985 (hereinafter 'the 1985 authorisation decision'), and

subject to certain conditions, the Commission authorised guarantees covering a part of those SNCI loans, including the portion relating to the first and fourth loans, for BEF 1 500 million and BEF 650 million respectively.

18 Belfin, which was set up to ensure the financing of investment for the restructuring of the Belgian industrial sector and half of which is in the public sector, also granted Clabecq several loans by means of capital borrowed from financial institutions (hereinafter 'the Belfin loans'):

— the first loan, granted in 1991, which cancelled and replaced two loans granted in 1988 and 1989, was for BEF 300 million;

— the second loan, granted in 1994, which cancelled and replaced a loan granted in 1987, was for BEF 200 million.

19 By a letter dated 25 June 1996, the Belgian authorities notified to the Commission, under Article 6(2) of the Fifth Code, a restructuring plan whose purpose was the continuance of Clabecq's activities. The plan included various measures and, in particular, an injection of capital amounting to BEF 1 500 million and a rescheduling of that company's debts.

20 Following that notification, the Commission, by letter of 5 July 1996, asked the Belgian authorities for further information. In particular, it wished to know whether financial measures other than those notified had been adopted. The Commission pointed out that the notification of 25 June 1996 contained no

information concerning the conditions which applied to the rescheduling of Clabecq's debts and that other measures which had not been notified had been reported in the press. It therefore asked the Belgian authorities to 'inform [it]... whether the measures mentioned above or other possible measures which could constitute assistance to the undertaking had been decided and submit all information which could allow the Commission to evaluate them in the light of Commission Decision No 3855/91/ECSC'.

21 The Belgian authorities replied to the Commission by letter of 23 July 1996. As regards the debt rescheduling, it appended to that letter several documents recording an agreement in principle between SNCI and Belfin to postpone repayment of the loans by three years. That agreement in principle was subject to several conditions including, according to the Court of First Instance, a favourable opinion by the European Community on Clabecq's recapitalisation.

22 In addition, the reply by the Belgian authorities stated that the measures in the restructuring plan did not constitute State aid since they did not draw on public funds and merely reflected the conduct of a prudent private investor in a market economy.

23 By Commission notice 96/C 301/03 pursuant to Article 6(4) of Decision No 3855/91/ECSC to other Member States and interested parties concerning assistance provided by Belgium for the steel undertaking Forges de Clabecq (OJ 1996 C 301, p. 4), published in the *Official Journal of the European Communities* on 11 October 1996 (hereinafter 'the notice of 11 October 1996'), the Commission gave the Belgian Government notice to communicate to it all relevant information for assessing the situation concerning Clabecq and called on it and on the other Member States and any other interested party to submit their comments within one month.

24 On 23 October 1996, the Kingdom of Belgium replied to that letter of formal notice.

25 On 18 December 1996, the Commission adopted the contested decision, whose operative part reads as follows:

'*Article 1*

The measures taken by Belgium to assist Forges de Clabecq, namely:

— ...

— the provision of State guarantees in respect of loans granted by Belfin and SNCI,

— ...

constitute State aid within the meaning of Article 1(2) of Decision No 3855/91/ECSC.

Article 2

The aid measures referred to in Article 1 are incompatible with the common market since they do not satisfy the conditions laid down in Articles 2 to 5 of Decision No 3855/91/ECSC, as provided for in Article 1(2) of that Decision, and are therefore prohibited by Article 4(c) of the [ECSC] Treaty.

...'

26 Under Article 3 of the contested decision, the Commission instructed the Belgian authorities to 'abolish the aid measures referred to in Article 1 and demand that the illegal aid already paid be reimbursed, with interest from the date on which it was paid, within two months of the date of notification of this Decision'.

27 As regards the rescheduling of Clabecq's debts, the Commission found that the SNCI and Belfin loans were covered by a State guarantee. It declared that those guarantees constituted State aid which should have been notified under Article 6(2) of the Fifth Code. The Commission stated that: '[t]he extension of the guarantee in respect of those loans for a further three-year period certainly increases the aid element involved in the guarantee'. It therefore concluded that '[t]he guarantees in respect of the loans granted by Belfin and SNCI and their extension to the postponed due dates constitute State aid' and that '[t]he aid is furthermore illegal since it was granted without [its] prior authorisation'.

The proceedings before the Court of First Instance and the contested judgment

28 By application lodged at the Registry of the Court of First Instance on 25 February 1997, Clabecq brought an action seeking annulment of the contested decision.

29 By a document lodged at the Registry of the Court of First Instance on 21 March 1997, the Commission raised a plea of inadmissibility. Clabecq submitted its observations concerning the plea on 2 May 1997, and on 11 July 1997 the Court ordered joinder of the plea with the substance of the case.

30 By order of 31 October 1997 of the President of the Third Chamber (Extended Composition) of the Court of First Instance, the Société wallonne pour la sidérurgie SA ('SWS'), the Kingdom of Belgium and the Walloon region were granted leave to intervene in support of the form of order sought by Clabecq.

31 Clabecq and the interveners in essence put forward seven pleas in support of annulment before the Court of First Instance, alleging infringement of Articles 4 and 95 of the ECSC Treaty, the 1982 and 1984 authorisation decisions, the requirement to state reasons, the right to a fair hearing, the fundamental right to work, the preambles to and objectives of the EC and ECSC Treaties and the principles of proportionality and of equal treatment.

32 The Kingdom of Belgium fully supported the arguments developed by Clabecq in support of the pleas on which the latter based its action for annulment, but it concentrated its written observations on the four following pleas.

33 First, as regard the plea alleging infringement of Article 4 of the ECSC Treaty, the Kingdom of Belgium maintained that the Commission was wrong to conclude that the loans granted to Clabecq by Belfin were covered by a State guarantee. It pointed out that only amounts borrowed by Belfin from banks were covered by such a guarantee, and not loans by Belfin to recipient undertakings.

34 In the alternative, the Kingdom of Belgium pointed out that the State guarantee for amounts borrowed by Belfin was always subject to a 'counter-guarantee' by the recipients of the loans and was therefore in the end private in nature. Those recipients contributed to a 'guarantee fund' to which loans by Belfin were linked. Under Article 10 of the Belfin shareholders' agreement, actions by the State against Belfin as a result of calls against the guarantee for the amounts borrowed were set against the amounts constituting the guarantee fund. Even if the Court of First Instance considered that loans granted by Belfin were covered by a guarantee, that guarantee was private and therefore did not constitute State aid.

35 The Court of First Instance rejected that plea in paragraph 70 of the contested judgment, ruling as follows:

'As to the SNCI and Belfin loans, it is clear, first, that it was not the loans as such but merely the State guarantees covering them which the Commission deemed to constitute aid. Next, it is clear that the Belgian Government's argument that there was no State guarantee for the Belfin loans is refuted by a letter of 25 June 1996 addressed by Belfin to [Clabecq] and annexed by the SWS to its letter of 23 July 1996 to the Commission stating that the agreement of principle with a deferral of three years in the timetable for repayment of the principal sum of the loans granted to the applicant by Belfin was subject to the condition that "the State agree (public loan) to extend its guarantee to cover that deferral". The fact that State guarantees constitute State aid may also no longer effectively be denied.'

36 Second, the Kingdom of Belgium claimed, by a plea which the Court of First Instance identified as alleging infringement of the principle of legal certainty, that the contested judgment infringed the 1982 and 1985 authorisation decisions as regards guarantees for SNCI loans.

37 The State guarantees criticised by the Commission in the contested decision in fact related, first, to a BEF 680 million instalment of the first investment loan granted to Clabecq at the beginning of the 1980s and, secondly, to the last BEF 650 million loan, granted it in 1985. The Kingdom of Belgium maintained that those two loans had been authorised, subject to certain conditions, by the authorisation decisions of 1982 and 1985 respectively.

38 In those circumstances, the Commission could not have assessed those assistance measures in the light of the Fifth Code, concluded that they were illegal and ordered repayment of the aid which had been obtained except by failing to apply its previous decisions. The Kingdom of Belgium claimed that it had observed the conditions for approval laid down by the Commission in 1982 and 1985 and that, in any event, the Commission had never applied a sanction because of a failure to comply with those conditions.

39 If the Commission considered that the various repayment reschedulings which took place with regard to the two SNCI loans had modified the approved aid to such an extent that the approval decisions could no longer reasonably cover the guarantees authorised in 1982 and 1985, it was for the Commission to make that clear in the contested decision.

40 The Court of First Instance rejected that plea for the following reasons:

> '99 In the present case it is clear that in 1996 none of the State guarantees of the SNCI and Belfin loans still came within the terms of the authorisation given by the Commission in its decisions of 1982 and 1985. In fact in the years following those decisions the Belgian authorities made certain major modifications to the conditions under which those loans were to be repaid, and these were particularly favourable to [Clabecq]. It is clear in particular from the explanations given in that connection by the Belgian Government... that the Belgian State took over the sum of BEF 198 million out of the total loan of BEF 680 million and allowed the expiry dates on various SNCI loans and the relevant State guarantees to be deferred by several years.
>
> 100 These modifications were not notified to the Commission and cannot be regarded as compatible with the conditions to which the 1982 and 1985 authorisations were subject. In the 1982 decision the Commission had stated to the Belgian Government that authorisation of the measure notified was to be the applicant's final chance of seeking solutions for its problems in financial assistance from the State. That condition was clearly disregarded by the modifications subsequently made by the Belgian authorities to the measure authorised. In the 1985 decision the Commission stated that the aid authorised was to be put in place by 31 December 1985; that precluded the substantial modifications made subsequently in the applicant's favour to the loan arrangements which had been authorised. In any event, it is plain that Commission authorisations in matters of State aid can relate only to the measures as notified and cannot be regarded as retaining their effects beyond the period initially laid down for implementation of those measures.'

41 Third, the Kingdom of Belgium stated, as regards a final extension of the guarantees attaching to the SNCI loans to the postponed due dates which was

linked to the rescheduling of the debts referred to in the notification of 25 June 1996, that the contested decision was vitiated by an error in the statement of reasons resulting from an incorrect assessment of the facts and infringement of Article 6 of the Fifth Code.

42 It pointed out that the Commission had stated in the contested decision that a further three-year extension of the State guarantees attaching to the SNCI and Belfin loans constituted illegal aid on the ground that it had been granted without the Commission's prior authorisation. It submitted that that assessment was incorrect since the contested extension of the State guarantee had been duly notified to the Commission on 25 June 1996 and had never been implemented, in accordance with Article 6(2) and (4) of the Fifth Code. The Commission was therefore wrong to state in that decision that the aid was illegal 'since it was granted without the prior authorisation of the Commission'.

43 The Court of First Instance did not rule on that plea.

44 Fourth, the Kingdom of Belgium claimed that the contested decision was vitiated by an inadequate statement of reasons inasmuch as the Commission criticised the SNCI and Belfin loans without stating which precise loans were being referred to or what the aid element was in the State guarantees attaching to those loans. It considered that in those circumstances it was impossible to grasp the scope of Article 3 of the operative part of the contested decision, which states that 'Belgium is... required to abolish the aid measures referred to in Article 1 and demand that the illegal aid already paid be reimbursed, with interest from the date on which it was paid'.

45 In paragraph 110 of the contested judgment, the Court of First Instance rejected that plea, ruling as follows:

'... the Belgian Government cannot claim that it is unable to ascertain which loans are concerned. The contested decision clearly refers to all the guarantees attaching to all the Belfin and SNCI loans.'

46 The Court of First Instance found that the pleas put forward by Clabecq and the intervening parties were similarly unfounded and therefore rejected the application in its entirety.

The appeal

Forms of order sought

47 The Kingdom of Belgium claims that the Court should:

— set aside the contested judgment in so far as it rejects, as to their substance, its submissions in support of the forms of order sought by Clabecq in the proceedings at first instance as regards 'State guarantees in respect of the Belfin and SNCI loans';

— uphold its submissions made in the proceedings at first instance as regards 'State guarantees in respect of the Belfin and SNCI loans' and accordingly annul the contested decision in so far as it refers to those guarantees;

— order the Commission to pay the costs.

48 The Commission claims that the Court should:

— dismiss the appeal as unfounded;

— in the alternative, dismiss as unfounded the application to annul the contested decision, and

— order the Kingdom of Belgium to pay the costs.

49 By application lodged at the Registry of the Court of Justice on 17 September 1999, Belfin asked leave to intervene in support of the form of order sought by the Kingdom of Belgium.

50 By order of the President of the Court of 24 January 2000, that application was granted.

51 Belfin claims that the contested judgment should be set aside and the contested decision accordingly be annulled and that the Commission should be ordered to pay the costs.

Pleas of the appeal

52 In support of its appeal, the Kingdom of Belgium puts forward seven pleas in law. The first two pleas, which relate to both the SNCI and Belfin loans, allege infringement of the obligation to state reasons laid down in Article 30 and the first paragraph of Article 46 of the ECSC Statue of the Court of Justice. The third and fourth pleas, which specifically refer to the SNCI loans, allege infringement of the principle of legal certainty and of the obligation to state reasons. The fifth, sixth and seventh pleas, which relate specifically to the Belfin loans, allege a distortion of the clear sense of the evidence submitted to the Court of First Instance, a failure to state grounds for the contested judgment and an error in law.

Substance of the appeal

First plea, concerning the guarantees attaching to the SNCI and Belfin loans, alleging infringement of the obligation to state reasons

Arguments of the parties

53 The Belgian Government claims that the Court of First Instance did not identify the SNCI and Belfin loans or the State guarantees attaching to them which were

referred to by the Commission, and in particular the SNCI loans at issue, although Clabecq had specifically complained of the inadequacy of the reasons provided for the contested decision in that regard.

54 It maintains that, following the Commission's example, the Court of First Instance refers to those loans as 'the SNCI and Belfin loans' without specifying which loans are being referred to. It states that such identification is necessary since several loans were granted to Clabecq and all those loans were covered by a State guarantee, without prejudice to the Belfin loans.

55 According to the Belgian Government, the Court of First Instance ought to have ruled on the failure to identify the loans covered by the contested decision. The Court's finding that the Commission identified those loans clearly enough is not based on sufficient reasons and the contested judgment is accordingly vitiated by a failure to state reasons.

56 The Commission submits that the statement of reasons for a decision must be assessed in context and that, in the context both of the procedure relating to ECSC aid and that concerning EC aid, the statement of reasons for the decision which concludes that procedure can and must be assessed in the light of the decision which initiated it. The Commission contends that it cannot be charged with having failed to provide sufficient reasons for the contested decision since the Member State failed to observe its duty of cooperation, *inter alia* in respect of notifications.

57 The Commission contends that there was no need for the contested judgment to go into greater detail since it was clear that it applied settled case-law and also the principle of good faith on the part of a Member State called upon to cooperate with the Commission.

Findings of the Court

58 First of all, it is appropriate to observe that the first plea can be interpreted as covering both failure to comply with the formal requirement to state reasons for the contested judgment and an incorrect statement of reasons as regards the identification of the loans at issue in the present case.

59 As regards the formal requirement to state reasons, it should be pointed out that the Court of First Instance described the SNCI loans as follows in paragraph 8 of the contested judgment:

'During the first half of the 1980s a recovery plan was drawn up for [Clabecq] under which it was granted several investment loans. Essentially, those loans were covered by a State guarantee. An initial loan was in the amount of BEF 1 500 million, a second was for BEF 850 million and a third was for BEF 1 500 million. The fourth and final loan in that series was granted in 1985 and amounted to BEF 650 million. This line of credit under State guarantee is commonly referred to as the "SNCI loans".'

60 It is apparent from paragraph 9 of the contested judgment that Belfin had granted Clabecq several loans by means of capital borrowed from financial institutions, namely 'lines of credit of BEF 300 million in 1991 and BEF 200 million in 1994...'.

61 The Court of First Instance found, in paragraph 110 of the contested judgment, that '[t]he contested decision clearly refers to all the guarantees attaching to all the Belfin and SNCI loans'.

62 The Court of First Instance therefore held that the Commission had applied its sanction to the State guarantees attaching to the four SNCI loans and the guarantees attaching to the two Belfin loans, as described in the contested judgment.

63 It follows that the Court of First Instance satisfied the formal obligation to state reasons imposed by Article 30 of the ECSC Statute of the Court of Justice, applicable to the Court of First Instance by virtue of the first paragraph of Article 46 thereof, which provides that judgments must state the reasons on which they are based.

64 However, as regards the identification of the loans, and as the Advocate General pointed out in points 49 to 61 of his Opinion, while the contested decision merely stated that the guarantees for 'SNCI and Belfin loans' and their extension constitute illegal aid, it is clear that that decision, read in the light of the notice of 11 October 1996 and seen in its original context, only referred to the State guarantees which were attached to the second instalment of BEF 680 million of the first SNCI loan, the fourth SNCI loan of BEF 650 million and the two Belfin loans, in the amount of BEF 300 million and 200 million respectively.

65 After the State aid measures at issue in the present case had been found in the contested decision to be incompatible with the common market, Article 3 of the operative part of the decision required the Kingdom of Belgium to abolish those aid measures and to demand that the aid already paid be reimbursed, the elimination of illegal aid by means of its recovery being the logical consequence of such a finding of incompatibility, inasmuch as it allows the former situation to be re-established.

66 Nevertheless, by incorrectly identifying the SNCI and Belfin loans covered by the contested decision and the guarantees attaching to them, the contested judgment misleadingly suggests that the SNCI and Belfin loans in their entirety, and therefore the implementing measures as a whole, are covered by Article 3 of the operative part of the contested decision.

67 By incorrectly identifying the SNCI and Belfin loans covered by the contested decision, the Court of First Instance therefore distorted the scope of the decision. The contested judgment must therefore be set aside in that regard.

Proceedings before the Court of First Instance

68 According to the first paragraph of Article 61 of the Statute of the Court of Justice, if the Court sets aside the decision of the Court of First Instance, it may itself give final judgment in the matter where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment.

69 In the present case, the state of the proceedings permits a judgment to be given on this point, and it is appropriate to consider the plea relied on at first instance by the Kingdom of Belgium, alleging infringement of the obligation to state reasons as regards the identification of the SNCI and Belfin loans and the State guarantees attaching to them, in order to ascertain whether the form of order sought at first instance by Clabecq can be granted or whether the rejection of that plea means that the other pleas in the appeal will have to be considered.

Arguments of the parties

70 The Belgian Government claimed before the Court of First Instance that the statement of reasons for the contested decision was inadequate under the first paragraph of Article 15 of the ECSC Treaty, in so far as the Commission had applied a sanction in respect of the guarantees attaching to the SNCI and Belfin loans without specifying exactly which loans it was referring to or what the aid element was which related to those loans. In the absence of those details, it is impossible to grasp the scope of Article 3 of the operative part of the decision, which states that 'Belgium is... required to abolish the aid measures referred to in Article 1 and demand that the illegal aid already paid be reimbursed'.

71 In that regard, the Commission used the same arguments as those set out in paragraph 56 of the present judgment.

Findings of the Court

72 It is settled case-law relating to Article 253 EC, which is transposable to Article 15 ECSC, that the statement of reasons required by that provision must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the Court to exercise its power of review. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see, *inter alia*, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 63, and Case C-5/01 *Belgium* v *Commission* [2002] ECR I-11991, paragraph 68).

73 In the present case, as has already been observed in paragraph 64 of the present judgment, the contested decision, read in the light of the notice of 11 October 1996 and seen in its original context, makes it possible to identify the aid elements as comprising the State guarantees attaching to certain SNCI and Belfin loans, namely the second instalment of BEF 680 million of the first SNCI loan, the fourth SNCI loan of BEF 650 million and the two Belfin loans in the amount of BEF 300 million and 200 million respectively.

74 Moreover, paragraph 5 of the appeal makes it clear that the Kingdom of Belgium had precisely identified the loans covered by the contested decision and the aid element criticised in relation to them.

75 Therefore, since the plea relied on at first instance alleging a failure to state reasons as regards the identification of the SNCI and Belfin loans and the State guarantees attaching to them cannot succeed, it is appropriate to consider the other pleas under the appeal.

The second plea, concerning the guarantees for the SNCI and Belfin loans, also alleging infringement of the obligation to state reasons

Arguments of the parties

76 By its second plea, the Kingdom of Belgium alleges that the contested judgment is vitiated by a further failure to state reasons.

77 The Belgian Government claims that it challenged the lawfulness of the contested decision before the Court of First Instance in so far as the decision stated that the extension of the State guarantees attaching to the SNCI and Belfin loans constituted illegal aid. In fact, the measures extending the guarantees had been duly notified in accordance with Article 6(2) of the Fifth Code and had not been implemented or granted at any time during the Commission's examination of Clabecq's situation. Since that examination resulted in a negative decision, those measures were never implemented (see paragraphs 41 and 42 of the present judgment).

78 However, according to the Belgian Government, the Court of First Instance did not rule on that plea and thereby failed to satisfy its obligation to state reasons.

79 The Commission states that the sole claim put forward in the Kingdom of Belgium's statement in intervention at first instance, to which the appeal specifically refers, disputes the finding in the contested decision that the extensions to the guarantees attaching to the SNCI and Belfin loans were illegal. According to the Commission, the Belgian Government cannot criticise the contested judgment for failing to rule on an argument which was not raised in the statement in intervention. It considers that that part of the plea invoked in the appeal should therefore be declared inadmissible.

Findings of the Court

80 In the present case, it is common ground that the Court of First Instance did not rule on the plea that the extension of the State guarantees attaching to the SNCI and Belfin loans did not constitute illegal aid inasmuch as that extension was duly notified on 25 June 1996 and was neither implemented nor granted at any time during the Commission's examination of Clabecq's situation, an argument which was expressly raised by the Kingdom of Belgium in paragraphs 30 to 32 and 45 of its statement in intervention at first instance.

81 It is true that, although the Court of First Instance is required to give reasons for its decisions, it is not obliged to respond in detail to every single argument advanced by a party, particularly if the argument is not sufficiently clear and precise and was not adequately supported by evidence (see to that effect Case C-274/99 P *Connolly* v *Commission* [2001] ECR I-1611, paragraph 121).

82 In the present case, however, the plea at issue was sufficiently clear and precise to allow the Court of First Instance to rule on it. Moreover, while the parties disagreed as to the evidence relating to the alleged notification of 25 June 1996, that did not relieve the Court of First Instance of its obligation to rule on such a

plea, since the documents before it contained sufficient information to allow it to determine whether the extension of the State guarantees attaching to the SNCI and Belfin loans had been duly notified on 25 June 1996 or, at the least, to determine whether, in the light of the context in which it was adopted, the contested decision was vitiated by error.

83 The second plea relied on by the Kingdom of Belgium, alleging a failure to state reasons for the contested judgment, is therefore well founded and, accordingly, that judgment must be set aside in so far as it confirms the contested decision as regards the State guarantees for SNCI and Belfin loans.

Proceedings before the Court of First Instance

84 Since the state of the proceedings so permits, it is appropriate, pursuant to the first paragraph of Article 61 of the Statute of the Court of Justice, to consider the plea invoked at first instance by the Kingdom of Belgium alleging an error in law on the basis of infringement of Article 6 of the Fifth Code.

85 Having considered the file, the Court of Justice must, however, reject that plea at first instance.

86 The legality of a decision concerning State aid must be assessed in the light of the information available to the Commission when the decision was adopted (Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 34, and Case C-74/00 *Falck and Acciaierie Di Bolzano* v *Commission* [2002] ECR I-7869, paragraph 168).

87 A Member State cannot rely on information which it failed to provide to the Commission during the administrative procedure in order to challenge the legality of a decision concerning State aid (Joined Cases C-278/92 to C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 31, and Case C-382/99 *Netherlands* v *Commission* [2002] ECR I-5163, paragraph 76).

88 Since the decision to initiate the procedure provided for by Article 6(4) of the Fifth Code contains an adequate preliminary analysis by the Commission setting out the reasons for the doubts it entertained regarding the compatibility of the aid in question with the common market, it is for the Member State concerned and, where appropriate, the recipient of the aid to put forward arguments to show that the aid is compatible with the common market (*Falck and Acciaierie Di Bolzano* v *Commission*, paragraph 170).

89 The notification which the Belgian authorities sent to the Commission on 25 June 1996 concerning the restructuring plan merely specified that SNCI and Belfin had agreed in principle to the rescheduling of long-term debts and revisions of interest rates. That notification contained no additional information concerning the guarantees.

90 Moreover, during the written procedure before the Court of Justice, the Kingdom of Belgium maintained that 'the appellant never saw the need to point out that the three-year postponement for the due dates of the loans had not been effected, since that assertion had never been made by the European Commission itself, nor become apparent from any of the documents exchanged between the Belgian authorities and it'.

91 In its notice of 11 October 1996, however, the Commission had expressly stated that the renegotiation of the long-term debts had led to all due dates being extended by three years and to the interest rates being revised downwards and that those measures had been implemented, without contradiction on the part of the Belgian authorities.

92 The reply by the Belgian authorities to that notice did not rectify or clarify the information relating to the rescheduling of Clabecq's debts.

93 Moreover, neither Clabecq nor the Kingdom of Belgium at any time claimed that the statement of reasons for the notice of 11 October 1996 was not sufficient to allow them effectively to exercise their rights.

94 It follows from the foregoing that, in the light of the information which the Belgian authorities sent to the Commission during the administrative procedure, the Commission was entitled to assume that the State guarantees had been extended without its prior authorisation.

95 Therefore, the plea invoked by the Kingdom of Belgium at first instance, alleging an error of law on the basis of infringement of Article 6 of the Fifth Code, must be rejected and the further pleas in the appeal considered.

Third and fourth pleas, relating to guarantees for the SNCI loans, alleging infringement of the principle of legal certainty and of the obligation to state reasons

96 In light of the fact that both these pleas relate to the guarantees attaching to SNCI loans and apply to the authorisation decisions of 1982 and 1985 in particular, it is appropriate to consider them together.

Arguments of the parties

97 The Belgian Government points out that the State guarantees criticised by the Commission in the contested decision relate, first, to the second instalment of BEF 680 million of the first loan granted to Clabecq by SNCI at the beginning of the 1980s and, secondly, to the last loan of BEF 650 million, granted to it by SNCI in 1985.

98 The Belgian Government states that those two loans had been authorised, subject to specific conditions, by the authorisation decisions of 1982 and 1985, respectively, and it criticises the Court of First Instance for holding that the Belgian authorities could not rely on those two decisions.

99 The Belgian Government maintains that the reasoning of the Court of First Instance is erroneous inasmuch as it held that the authorisation decision of 1982 made authorisation of the State guarantee attaching to the second instalment of BEF 680 million of the first SNCI loan conditional on Clabecq not receiving any subsequent financial support from the Belgian State. That condition does not appear among the conditions imposed by the Commission for approval of that guarantee. That error in treatment was in breach of the principle of legal certainty, since it led the Court of First Instance to refuse to allow the Belgian authorities to rely on the 1982 authorisation decision.

100 In addition, the Court of First Instance was wrong to hold that the modifications made to the fourth SNCI loan, namely the loan of BEF 650 million, infringed the conditions laid down in the 1985 authorisation decision, whereas, on the

contrary, those modifications merely postponed some of the due dates for the loan, without altering the time allowed for repayment.

101 In any event, the Belgian Government claims that the Court of First Instance failed to explain why the changes made to the repayment plans amounted to significant modifications to the State guarantees approved in 1982 and 1985. The contested judgment is therefore vitiated by a failure to state reasons.

102 The Commission states that the Belgian authorities did not at any time during the procedure which led to the contested decision claim that the rescheduling of debts included elements of State aid which were already covered by the authorisation decision that it had adopted. It was only at the stage of the statement in intervention before the Court of First Instance that the Kingdom of Belgium claimed that the guarantees provided for the two loans granted by SNCI to Clabecq had been authorised under the authorisation decisions of 1982 and 1985.

103 The Commission states that SNCI sought an additional guarantee from the State and made the rescheduling of repayment of its loans conditional on that assurance, which would clearly not be the case if the guarantee in question could not be considered a significant modification. Both for the lending bank, namely SNCI, and for the State acting as guarantor, the rescheduling of debts and the additional contribution represented by the State guarantee in respect of the new repayment dates constituted substantive issues, which affected the transaction and required a decision at Government level.

104 According to the Commission, the Kingdom of Belgium fails to appreciate that the circumstances in which the various successive loan renegotiations at issue took place substantially altered the circumstances and aims in the light of which the *ad hoc* aid had originally been authorised.

105 Given those circumstances, the Commission considers that the Court of First Instance was fully entitled not to declare the contested decision unlawful on the basis of an alleged disregard of the authorisation decisions of 1982 and 1985 and to find that the contested decision did not infringe the principle of legal certainty.

Findings of the Court

106 First of all, as is clear from paragraph 17 of the present judgment, under the authorisation decisions of 1982 and 1985 the Commission had, subject to certain conditions, authorised guarantees covering part of the SNCI loans, including the portion relating to the first loan, for BEF 1 500 million, made up of two instalments, of BEF 820 million and BEF 680 million, and the fourth loan, for BEF 650 million.

107 In the contested decision, the Commission first recalled that State guarantees on financial loans in principle constitute State aid which must be notified to the Commission and may not be implemented without its approval. It then pointed out that '[t]he extension of the guarantee in respect of those loans for a further three-year period certainly increases the aid element involved in the guarantee'. Finally, it concluded that guarantees in respect of the Belfin and SNCI loans and their extension to the postponed due dates constituted State aid and, furthermore, aid which was '... illegal, since it was granted without the Commission's prior authorisation'.

108 In order to ascertain whether the Court of First Instance infringed the principle of legal certainty and the obligation to state reasons by failing to find fault with the

contested decision in that regard, it is necessary to consider whether the reasons put forward by the Commission for holding that the extension of the guarantees was not covered by the authorisation decisions of 1982 and 1985 were justified and whether the Court of First Instance gave sufficient reasons for its judgment in that respect.

109 As the Court of First Instance stated in paragraph 99 and the first sentence of paragraph 100 of the contested judgment, the extension of the guarantees attaching to the SNCI loans for a further three-year period served to modify the aid which had been approved, so that the authorisation decisions of 1982 and 1985, which the Belgian authorities did not cite during the administrative procedure, could no longer in any case legitimately cover the guarantees which had been agreed. That significant modification of the procedure for repaying the SNCI loans should therefore have been notified to the Commission in accordance with Article 6(2) of the Fifth Code and, in the absence of such a notification, the extension of those guarantees constituted illegal aid. The reasons set out in paragraph 99 and the first sentence of paragraph 100 of the contested judgment are therefore sufficient to justify the finding that the Commission treated the aid at issue as illegal aid which was not authorised under earlier decisions.

110 It is therefore not necessary to rule on the merits of the additional and superfluous statement of reasons, set out in the second to fourth sentences of paragraph 100 of the contested judgment, which interprets the content of the authorisation decisions of 1982 and 1985.

111 In the light of the foregoing, it must be held that the Court of First Instance did not, in this case, fail to comply with the obligation to state reasons for the contested judgment as regards the merits of the contested decision in so far as that decision did not allow the Belgian authorities to rely on the authorisation decisions of 1982 and 1985, nor did it infringe the principle of legal certainty.

112 The third and fourth pleas must therefore be rejected.

Fifth, sixth and seventh pleas, relating to the guarantees for the Belfin loans, alleging distortion of the clear sense of the evidence presented to the Court of First Instance, failure to state reasons as regards the existence of a guarantee fund and error in law

113 Since these pleas concern the Belfin loans and the finding of the Court of First Instance that the State guarantee covered the loans which that company made to Clabecq, they should be considered jointly.

Arguments of the parties

114 The Belgian Government claims that the contested judgment is vitiated by a failure to state reasons and misinterpretation of the concept of State aid, inasmuch as it held that the State guarantee covered the loans which Belfin had made to Clabecq.

115 Both Belfin and the Belgian Government state that the letter of 25 June 1996 sent by Belfin to Clabecq and referring to a meeting of Belfin's board of directors on 24 June 1996, which the Court of First Instance mentions in paragraph 70 of the contested judgment, in no way demonstrates that the guarantee granted by the

Belgian State was attached to the Belfin loans. They state that the letter merely confirms that State agreement was required in order to postpone the due dates for the loans obtained by Belfin from its own lenders.

116 Belfin takes the view that it provided the Court of First Instance with detailed evidence which showed that only the amounts borrowed by Belfin itself were guaranteed by the Belgian State.

117 In the alternative, the Belgian Government complains that the Court of First Instance failed to rule on the existence of a 'counter-guarantee' mechanism when it considered the State guarantee attaching to the amounts borrowed by Belfin from financial institutions.

118 The Commission states that the Belgian authorities did not submit to it any information able to justify an interpretation of the meeting of Belfin's board of directors on 24 June 1996 other than that suggested by the terms used at that meeting. Moreover, in paragraph 19 of its statement in intervention before the Court of First Instance, the Kingdom of Belgium observed that '[t]he loan agreements between Belfin and the Forges de Clabecq were not submitted to the Commission for an initial examination'.

119 The Commission contends that the only information which it had in that regard was that resulting from the inquiry leading to the contested decision at the end of the procedure laid down in Article 6(4) of the Fifth Code. The Court of First Instance had to assess the failure to state reasons alleged by the Belgian Government in the light of that information.

120 As regards the alleged failure to rule on the argument put forward by the Kingdom of Belgium concerning the existence of a 'counter-guarantee' fund, the Commission also maintains that the Court of First Instance had to assess the merits of such a plea only in the light of the information available to it at the time the contested decision was adopted. The Court was therefore fully entitled not to uphold that plea, since the only information which the Commission possessed was that available to it at the time of the notice of 11 October 1996.

Findings of the Court

121 Although it is for the Court of First Instance alone to assess the value which should be attached to the evidence produced (Case C-185/95 P *Baustahlgewebe* v *Commission* [1998] ECR I-8417, paragraph 24), a plea alleging distortion of the clear sense of that evidence is admissible in an appeal (Case C-53/92 P *Hilti* v *Commission* [1994] ECR I-667, paragraph 42).

122 However, there is no indication that the clear sense of the evidence was distorted in the present case. Even if the documents presented to the Court of First Instance by the Belgian Government, set out in point 110 of the Advocate General's Opinion, could establish that the guarantee by the Belgian State did not cover the Belfin loans, they were not sent to the Commission in sufficient time, namely before the contested decision was adopted.

123 In the light of the information available to the Commission, the Court of First Instance was fully entitled, in paragraph 70 of the contested judgment, to rely on the letter of 25 June 1996, which was sent by Belfin to Clabecq and annexed to the letter of 23 July 1996 sent by SWS to the Commission in reply to its request for information of 5 July 1996, in rejecting the argument by the Belgian Government that the Belfin loans did not receive a State guarantee.

124 Having regard to the above, in assessing the lawfulness of the contested decision on the basis of the information which the Commission was able to obtain at the time it adopted that decision, the Court of First Instance did not distort the clear sense of the evidence presented to it. Moreover, no error in law can be discerned in its reasoning.

125 The fifth and seventh pleas must therefore be rejected.

126 The sixth plea refers to a failure to state the reasons for the contested judgment as regards the argument which was raised at first instance by the Kingdom of Belgium relating to the existence of a 'counter-guarantee' mechanism within Belfin which precluded the guarantees at issue from being classified as aid. In that regard, the Court of First Instance merely observed, in paragraph 70 of that judgment, that '[t]he fact that State guarantees constitute State aid may also no longer effectively be denied'.

127 That response by the Court of First Instance does not really rule on the important argument put forward by the Kingdom of Belgium and certainly does not satisfy the requirements of a statement of reasons.

128 The Court of First Instance did not give specific reasons to explain why the guarantees which the Belgian State allegedly granted to cover amounts borrowed by Belfin from financial institutions were advantages directly or indirectly granted through State resources, notwithstanding the existence of the 'counter-guarantee' mechanism within Belfin, and merely made the general observation that the fact that a State guarantee constitutes State aid cannot be denied.

129 In addition, while it is true that the Court of First Instance had to assess the merits of that plea only in the light of the information available to the Commission at the time it adopted the contested decision, the wording of the contested judgment does not indicate whether the Kingdom of Belgium and Belfin had in fact submitted relevant information to the Commission before that decision was adopted or whether the Court of First Instance ruled as it did because such information was unavailable.

130 In those circumstances, the Court of First Instance failed to comply with the obligation to state reasons pursuant to Article 30 and the first paragraph of Article 46 of the ECSC Statute of the Court of Justice, and the contested judgment must therefore be set aside in that regard.

Proceedings before the Court of First Instance

131 Since the state of the proceedings so permits, it is appropriate to consider the plea relied on at first instance by the Kingdom of Belgium which alleges infringement of Article 4(c) of the ECSC Treaty and Article 1(2) of the Fifth Code.

132 The Belgian Government observed at first instance that the State guarantee for amounts borrowed by Belfin from financial institutions is always covered by a 'counter-guarantee' from the final recipients of the loans. According to Article 11 of the Belfin shareholders' agreement, recipients are required to contribute to a guarantee fund set up within Belfin. In addition, under Article 10 of that agreement, actions by the State against Belfin on the ground of calls against the guarantee for amounts borrowed are brought up to the amounts constituting the guarantee fund. Therefore, even if the Belfin loans are considered to be covered by a State guarantee, which the Belgian Government denies, that guarantee is private in character and cannot constitute State aid.

133 However, at no time during the administrative procedure which preceded the adoption of the contested decision did the Belgian authorities describe either the existence or functioning of the 'counter-guarantee' mechanism set up by the Belfin shareholders' agreement, and as the Commission has rightly pointed out, the merits of such a plea must be assessed only in the light of the information available to it at the time it adopted the contested decision.

134 Consequently, the Belgian Government, which failed to provide the information which was essential in that regard during the administrative procedure, cannot subsequently complain that the Commission infringed Article 4(c) of the ECSC Treaty and Article 1(2) of the Fifth Code.

135 The plea relied on at first instance by the Kingdom of Belgium, alleging infringement of Article 4(c) of the ECSC Treaty and Article 1(2) of the Fifth Code, must therefore be rejected.

Costs

136 Under the first paragraph of Article 122 of the Rules of Procedure of the Court of Justice, where the appeal is well founded and the Court of Justice itself gives final judgment in the case, it is to make a decision as to costs.

137 Under Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 of those Rules, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

138 None the less, under Article 69(3) of those Rules, where each party succeeds on some or fails on other heads, or where the circumstances are exceptional, the Court may order that the costs be shared or that the parties bear their own costs.

139 In the present case, although the Kingdom of Belgium has not been entirely unsuccessful in the appeal proceedings, none of its pleas for annulment of the contested decision is well founded. In those circumstances, both the Kingdom of Belgium and the Commission must bear the costs which they incurred before the Court.

140 Under the third subparagraph of Article 69(4) of the Rules of Procedure, which also apply to the appeal proceedings by virtue of Article 118, the Court may order an intervener other than a State or institution to bear its own costs. Pursuant to that provision, it is appropriate to order Belfin to bear its own costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. Sets aside the judgment of the Court of First Instance of 25 March 1999 in Case T-37/97 *Forges de Clabecq* v *Commission*, in so far as:

— it distorted the scope of Commission Decision 97/271/ECSC of 18 December 1996, ECSC steel — Forges de Clabecq declaring that certain financial assistance granted to Forges de Clabecq was incompatible with the internal market,

— it is vitiated by a failure to state reasons, in breach of Article 30 and the first paragraph of Article 46 of the ECSC Statute of the Court of Justice;

2. Dismisses the remainder of the appeal;

3. Dismisses the action for annulment brought by Forges de Clabecq SA;

4. Orders the Kingdom of Belgium, the Commission of the European Communities and the Compagnie belge pour le financement de l'industrie SA to bear the costs they incurred before the Court of Justice.

Puissochet Gulmann Macken

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 11 September 2003.

R. Grass

Registrar

J.-P. Puissochet

President of the Sixth Chamber