JUDGMENT OF THE COURT (Third Chamber)

14 April 2005 *

In Case C-110/03,

ACTION for annulment under Article 230 EC, brought before the Court on 10 March 2003,

Kingdom of Belgium, represented initially by A. Snoecx, and subsequently by E. Dominkovits, acting as Agents, assisted by D. Waelbroeck and D. Brinckman, avocats, with an address for service in Luxembourg,

applicant,

v

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

defendant,

* Language of the case: French.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by K. Manji, acting as Agent, with an address for service in Luxembourg,

intervener,

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. Borg Barthet, J.-P. Puissochet, J. Malenovský (Rapporteur) and U. Lõhmus, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and following the hearing on 29 September 2004,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2004,

gives the following

Judgment

1 By its application, the Kingdom of Belgium seeks the annulment of Commission Regulation (EC) No 2204/2002 of 5 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment (OJ 2002 L 337, p. 3, corrigendum in OJ 2002 L 349, p. 126) ('the contested regulation').

2 By order of the President of the Court of 19 September 2003, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the forms of order sought by the Commission of the European Communities. By letter dated 24 November 2003, that Member State gave notice that it did not intend submitting a statement in intervention.

Legal background

3 Article 89 EC provides:

'The Council, acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament, may make any appropriate regulations for the application of Articles 87 and 88 and may in particular determine the conditions in which Article 88(3) shall apply and the categories of aid exempted from this procedure.'

4 Article 136 EC states:

'The Community and the Member States ... shall have as their objectives the promotion of employment, improved living and working conditions, so as to make possible their harmonisation while the improvement is being maintained, proper social protection, dialogue between management and labour, the development of human resources with a view to lasting high employment and the combating of exclusion.

...'

5 According to Article 137(1) EC, as worded prior to the Treaty of Nice:

'With a view to achieving the objectives of Article 136, the Community shall support and complement the activities of the Member States in the following fields:

— improvement in particular of the working environment to protect workers' health and safety;

— working conditions;

— the information and consultation of workers;

— the integration of persons excluded from the labour market, without prejudice to Article 150;

— equality between men and women with regard to labour market opportunities and treatment at work.'

6 After providing that, in principle, the Council is to act by a qualified majority, Article 137 EC provided, in paragraph 3:

'However, the Council shall act unanimously ... in the following areas:

...

— financial contributions for promotion of employment and job-creation, without prejudice to the provisions relating to the Social Fund.'

7 The fourth recital in the preamble to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles [87] and [88] of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ 1998 L 142, p. 1) states:

'... the Commission has applied Articles [87] and [88] of the Treaty in numerous decisions and has also stated its policy in a number of communications; ... in the

light of the Commission's considerable experience in applying Articles [87] and [88] of the Treaty and the general texts issued by the Commission on the basis of those provisions, it is appropriate, with a view to ensuring efficient supervision and simplifying administration, without weakening Commission monitoring, that the Commission should be enabled to declare by means of regulations, in areas where the Commission has sufficient experience to define general compatibility criteria, that certain categories of aid are compatible with the common market pursuant to one or more of the provisions of Article [87](2) and (3) of the Treaty and are exempted from the procedure provided for in Article [88](3) thereof'.

8 The fifth recital in the preamble to Regulation No 994/98 includes the statement:

'... group exemption regulations will increase transparency and legal certainty ...'.

9 Article 1 of Regulation No 994/98 provides:

'1. The Commission may, by means of regulations adopted in accordance with the procedures laid down in Article 8 of this Regulation and in accordance with Article [87] of the Treaty, declare that the following categories of aid should be compatible with the common market and shall not be subject to the notification requirements of Article [88](3) of the Treaty:

(a) aid in favour of:

...

(iv) employment and training;

...

2. The regulations referred to in paragraph 1 shall specify for each category of aid:

(a) the purpose of the aid;

(b) the categories of beneficiaries;

(c) thresholds expressed either in terms of aid intensities in relation to a set of eligible costs or in terms of maximum aid amounts;

(d) the conditions governing the cumulation of aid;

(e) the conditions of monitoring as specified in Article 3.

...'

10 The contested regulation was adopted on the basis of Regulation No 994/98.

11 According to Article 1 of the contested regulation:

'1. This Regulation shall apply to schemes which constitute State aid within the meaning of Article 87(1) of the Treaty and which provide aid for the creation of employment, provide aid for the recruitment of disadvantaged and disabled workers or provide aid to cover the additional costs of employing disabled workers.

2. This Regulation shall apply to aid in all sectors...

It shall not apply to any aid granted in the coal or shipbuilding sectors, nor to any aid for the creation of employment, within the meaning of Article 4, granted in the transport sector. Such aid shall remain subject to prior notification to the Commission in accordance with Article 88(3) of the Treaty.

...'

12 Article 2 of the contested regulation provides:

'For the purpose of this Regulation:

...

(f) "disadvantaged worker" means any person who belongs to a category which has difficulty entering the labour market without assistance, namely a person meeting at least one of the following criteria:

(i) any person who is under 25 or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment;

...

(viii) any long-term unemployed person, i.e. any person who has been unemployed for 12 of the previous 16 months, or six of the previous eight months in the case of persons under 25;

...'

13 According to Article 3(1) of the contested regulation:

'Subject to Article 9, aid schemes fulfilling all the conditions of this Regulation shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty provided that:

(a) any aid that could be awarded under such scheme fulfils all the conditions of this Regulation;

(b) the scheme contains an express reference to this Regulation, by citing its title and publication reference in the *Official Journal of the European Communities*.'

14 Paragraphs 1 to 3 of Article 4 of Regulation No 2204/2002, entitled 'Creation of employment', provide:

'1. Aid schemes for the creation of employment and any aid that could be awarded under such scheme shall fulfil the conditions of paragraphs 2, 3 and 4.

2. Where the employment is created in areas or in sectors which do not qualify for regional aid pursuant to Article 87(3)(a) and (c) at the moment the aid is granted, the gross aid intensity shall not exceed:

(a) 15% in the case of small enterprises;

(b) 7.5% in the case of medium-sized enterprises.

3. Where the employment is created in areas and in sectors which qualify for regional aid pursuant to Article 87(3)(a) and (c) at the moment at which the aid is awarded, the net aid intensity shall not exceed the corresponding ceiling of regional investment aid determined in the map applying at the time the aid is granted, as

approved by the Commission for each Member State: for this purpose, regard shall be had, inter alia, to the multisectoral framework for regional aid for large investment projects.

...'

15 The Communication from the Commission — Multisectoral framework on regional aid for large investment projects, of 19 March 2002 (OJ 2002 C 70, p. 8, 'the multisectoral framework'), lays down, inter alia, in point 27, a prohibition of aid for investment projects in the steel industry.

16 According to Article 4(4) and (5) of the contested regulation:

'4. The ceilings fixed in paragraphs 2 and 3 shall apply to the intensity of the aid calculated as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

(a) the employment created must represent a net increase in the number of employees, both in the establishment and in the enterprise concerned, compared with the average over the past 12 months;

(b) the employment created shall be maintained for a minimum period of three years, or two years in the case of SMEs; and

(c) the new workers employed as a result of the creation of employment must have never had a job or have lost or be losing their previous job.

5. Where aid is granted for the creation of employment under a scheme exempted under this Article, additional aid may be granted in case of recruitment of a disadvantaged or disabled worker in accordance with the terms of Articles 5 or 6.'

17 Article 5 of the contested regulation, entitled 'Recruitment of disadvantaged and disabled workers', provides:

'1. Aid schemes for the recruitment by any enterprise of disadvantaged and disabled workers and any aid that could be awarded under such scheme shall fulfil the conditions of paragraphs 2 and 3.

2. The gross intensity of all aid relating to the employment of the disadvantaged or disabled worker or workers concerned, calculated as a percentage of the wage costs over a period of one year following recruitment, shall not exceed 50% for disadvantaged workers or 60% for disabled workers.

...'

18 Article 6 of the contested regulation, entitled 'Additional costs of employment of disabled workers', provides:

'1. Aid schemes for the employment of disabled workers and any aid that could be awarded under such a scheme shall fulfil the conditions of paragraphs 2 and 3.

2. The aid, together with any aid provided under Article 5, shall not exceed the level needed to compensate for any reduced productivity resulting from the disabilities of the worker or workers, and for any of the following costs:

(a) costs of adapting premises;

(b) costs of employing staff for time spent solely on the assistance of the disabled worker or workers;

(c) costs of adapting or acquiring equipment for their use,

which are additional to those which the beneficiary would have incurred if employing workers who are not disabled, over any period for which the disabled worker or workers are actually employed.

...'

19 Article 8(2) and (3) of the contested regulation states that aid under regimes exempted by Article 4 may not, as a matter of principle, be cumulated with any other State aid within the meaning of Article 87 EC, while Article 8(4) provides:

'By way of derogation from paragraphs 2 and 3, aid under schemes exempted by Articles 5 and 6 of this Regulation may be cumulated with other State aid within the meaning of Article 87(1) of the Treaty, or with other Community funding, in relation to the same costs, including with aid under schemes exempted by Article 4 of this Regulation which complies with paragraphs 2 and 3, provided that such cumulation does not result in a gross aid intensity exceeding 100% of the wage costs over any period for which the worker or workers are employed.'

20 Article 9(4) of the contested regulation states:

'Aid schemes to promote the recruitment of categories of worker who are not disadvantaged within the meaning of Article 2(f) shall remain subject to the notification requirement of Article 88(3) of the Treaty unless exempted under Article 4. On notification, Member States shall submit, for appraisal by the Commission, arguments showing that the workers concerned are disadvantaged. In this respect, Article 5 shall apply.'

21 Article 3(2) of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises (OJ 2001 L 10, p. 33) contains a provision analogous to Article 3(1) of the contested regulation, the terms of which are set out in paragraph 13 of the present judgment.

22 With regard to State aid for small and medium-sized enterprises, Article 4 of Regulation No 70/2001 provides:

'1. Aid for investment in tangible and intangible assets inside or outside the Community shall be compatible with the common market within the meaning of Article 87(3) of the Treaty and shall be exempt from the notification requirement of Article 88(3) of the Treaty if it fulfils the conditions of paragraphs 2 to 6.

...

6. In cases where the aid is calculated on the basis of jobs created, the amount of the aid shall be expressed as a percentage of the wage costs over a period of two years relating to the employment created under the following conditions:

(a) job creation shall be linked to the carrying-out of a project of investment in tangible or intangible assets. Jobs shall be created within three years of the investment's completion;

(b) the investment project shall lead to a net increase in the number of employees in the establishment concerned, compared with the average over the previous twelve months; and

(c) the employment created shall be maintained during a minimum period of five years.'

The application

23 In support of its application for annulment of the contested regulation, the Kingdom of Belgium puts forward three pleas in law.

24 The first plea alleges failure to comply with the limits of the authority conferred by Regulation No 994/98 in that the contested regulation does not ensure attainment of the objective of transparency and legal certainty imposed by the fifth recital in the preamble to Regulation No 994/98 (first limb) and makes the scheme for aid for employment stricter whereas, under Regulation No 994/98, the Commission was empowered only to codify existing practice (second limb).

25 The second plea alleges infringement of general principles of Community law, namely the principles of subsidiarity, of proportionality, of coherence of Community action and of non-discrimination.

26 The third plea alleges infringement of the Treaty, in that, following the entry into force of Article 137(3) EC, which was incorporated in the Treaty by the Treaty of Amsterdam, the contested regulation could no longer be adopted on the basis of Regulation No 994/98.

The first plea

The first limb of the first plea

27 By the first limb of the first plea, the Belgian Government criticises the contested regulation for lack of clarity. In that connection, it must be observed that although it is true that the applicant does, according to the heading and the text of the plea alleging infringement of Regulation No 994/98, refer to lack of clarity, this plea is in reality concerned with breach of the general principle of legal certainty. It is clear from the actual content of the application that the Belgian Government explicitly criticises the contested regulation for 'infringing the principle of legal certainty' and, moreover, introduces this complaint by referring to the case-law of the Court concerning that general principle. Finally, in introducing the next plea, the Belgian Government alleges infringement of several 'other' general principles of law.

28 In that context, whilst the Belgian Government relies on the fifth recital in the preamble to Regulation No 994/98 which states that 'group exemption regulations will increase transparency and legal certainty', it does so only in order to invoke that general principle.

29 It is therefore necessary to examine that complaint on the basis that it is concerned with the general principle of legal certainty.

30 It must be borne in mind that the principle of legal certainty is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly (see Case 169/80 *Gondrand Frères and Garancini* [1981] ECR 1931 and Case C-143/93 *Van Es Douane Agenten* [1996] ECR I-431, paragraph 27).

31 However, where a degree of uncertainty regarding the meaning and scope of a rule of law is inherent in that rule, it is necessary, in the context of an action of the present kind, in which the Kingdom of Belgium bases its complaints essentially on hypothetical situations, for the examination of it to be confined to the question whether the legal measure at issue displays such ambiguity as to make it difficult for that Member State to resolve with sufficient certainty any doubts as to the scope or meaning of the contested regulation.

32 First, according to the Belgian Government, the lack of clarity derives from the partial overlap of the provisions of the contested regulation with those of other Community instruments, such as the Guidelines on national regional aid of 10 March 1998 (OJ 1998 C 74, p. 9, hereinafter 'the guidelines'), the multisectoral framework and Regulation No 70/2001.

33 It must be stated first of all that the contested regulation was adopted on the basis of Regulation No 994/98 and that, pursuant to Article 249 EC, it is binding and of general application. The guidelines and the multisectoral framework, on the contrary, have no legal basis either in the Treaty or in any legal act adopted under it. It follows that in the event of any overlap, the provisions of the contested regulation take precedence over those of the guidelines or the multisectoral framework (see, with regard to the scope of guidelines as compared with Treaty provisions, Case C-288/96 *Germany* v *Commission* [2000] ECR I-8237, paragraph 62, and Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 52).

34 Nor is the clarity of the contested regulation undermined by the partial overlap between its scope and the conditions for the compatibility of aid with the common market which it lays down, on the one hand, and, on the other, the scope of Regulation No 70/2001 and the conditions for compatibility which the latter contains.

35 The Belgian Government submits that the confusion derives in particular from a difference relating to one of the said conditions for compatibility contained in both regulations, concerning the period for which the jobs created must be maintained in the case of an aid scheme established for small and medium-sized enterprises. Article 4(4)(b) of the contested regulation requires a period of two years, whereas that period is set at five years in Article 4(6)(c) of Regulation No 70/2001.

36 It must be stated at the outset that those regulations are independent of each other and pursue different objectives. Thus, neither the other conditions for compatibility which they lay down, having regard in particular to Article 4(4)(c) of the contested regulation and Article 4(6)(a) of Regulation No 70/2001, nor their respective fields of application coincide entirely. In those circumstances, it is clear from Article 3(1) of the contested regulation and from Article 3(2) of Regulation No 70/2001 that an aid scheme is compatible with the common market and exempt from the obligation of notification if it complies either with the scope and all the conditions of the contested regulation, including those of Article 4(4)(b) thereof, or with the scope and all the conditions of Regulation No 70/2001, including those of Article 4(6)(c) thereof.

37 Accordingly, it must be held that the Belgian Government has not shown that the coexistence of the abovementioned Community texts, which, moreover, complement each other, detracts from the clarity of the contested regulation itself.

38 Second, the Belgian Government takes the view that the definition of the scope of the contested regulation lacks clarity because the economic sectors not qualifying for aid for employment creation under Article 4(3) of that regulation differ from those given in Article 1 thereof, which determines the scope of that regulation and excludes some of those sectors from it.

39 In that connection it must be observed that Article 1 of the contested regulation defines its general scope, whereas Article 4(3) thereof concerns only schemes for employment creation in the regions and sectors eligible for aid for regional purposes. It follows that Article 4(3) must be regarded as a *lex specialis* as compared with Article 1, with the result that Article 4 takes precedence over Article 1 in the situations which it is intended specifically to govern. The scope of the contested regulation is not therefore subject to any ambiguity.

40 Third, the Belgian Government alleges lack of clarity regarding the definition of disadvantaged workers in Article 2(f)(i) of the contested regulation, according to which that category of workers includes 'any person who is under 25 or is within two years after completing full-time education and who has not previously obtained his or her first regular paid employment'. That definition does not, in its view, make it clear whether young people aged under 25 years are disadvantaged as such or whether they must fulfil the further criterion relating to the lack of first regular paid employment.

41 It is necessary to view that provision as being intended to make State aid available to people who encounter difficulties in entering the labour market for the first time on completion of their full-time education in so far as such people are liable to be regarded by employers as less productive in view of their total lack of work experience.

42 It follows therefore from the aim of that provision that a person falls within the category of disadvantaged workers only if he meets both those criteria. First, he must either not be over the age of 25 years or, in the alternative, if he is older, he must have completed his full-time education no more than two years earlier. Second, he must not yet have found his first regular paid employment.

43 That interpretation is confirmed by an examination of the other provisions of Article 2 of the contested regulation. The definition of disadvantaged worker in Article 2(f)(viii) of that regulation also refers to people under 25 years of age but presupposes earlier employment followed by a long period without employment which creates difficulties for those young workers in their efforts to return to the labour market. Thus, that other definition brings young people under 25 years of age into the category of the long-term unemployed. If the Commission had intended to treat young people under 25 years of age as being disadvantaged by reason solely of their age, they would not have been covered by another definition which specifically includes them within the category of the long-term unemployed.

44 Thus, Article 2(f)(i) of the contested regulation cannot be regarded as being vitiated by a lack of clarity of such a kind as to contravene the principle of legal certainty.

45 Fourth, the Belgian Government criticises the contested regulation for lack of clarity as regards the relationship between Article 4 governing aid for employment creation, Article 5 governing aid for the recruitment of disadvantaged and disabled workers and Article 6 concerning aid on a continuing basis for the employment of disabled workers. According to the Belgian Government, that regulation does not make it clear which conditions apply in the case of aid which simultaneously fulfils the criteria laid down by two of those articles.

46 It must be pointed out that it is clear from the general scheme and the purpose of the contested regulation that the exemptions provided for in those articles pursue different objectives and that the conditions for compatibility laid down therein are, in principle, independent of each other. Thus, provided that aid satisfies the

conditions of one of those articles, it will be compatible with the common market regardless of the fact that it may also fulfil the conditions of another of those articles. As regards Article 8(4) of the contested regulation, although under certain circumstances it allows cumulation of aid satisfying the criteria laid down by more than one provision, it does not thereby change the conditions for granting such aid contained in each of them. There is accordingly no ambiguity whatsoever in the relationship between Articles 4, 5 and 6 of the contested regulation.

47 Fifth, the Belgian Government alleges that the first subparagraph of Article 8(4) of the contested regulation lacks clarity. First, that provision does not state whether aid for regional purposes to foster the creation of employment may constitute 'other State aid' within the meaning of the first subparagraph of Article 8(4) and thus be cumulated with aid granted under Articles 5 and 6 of that regulation up to a gross intensity of 100% of the wage costs or whether it must be regarded as aid for employment within the meaning of Article 5 and be cumulated up to a gross intensity of 50% or 60% of the wage costs, as provided by the latter provision. Second, it is not clear whether the expression 'any period for which the worker or workers are employed' refers, in the case of disabled or disadvantaged workers, to the entire period of their employment or only to the periods for which the undertaking must maintain the job, namely the period of two or three years mentioned in Article 4(4)(b) of the contested regulation or that of 12 months referred to in Article 5(3)(b) thereof.

48 As regards, first, the expression 'other State aid', this contains no restriction and the aid referred to may therefore be aid for regional purposes fostering the creation of employment. Next, as regards the expression 'any period for which the worker or workers are employed', it must be pointed out that the Belgian Government has not put forward any argument to support the view that that expression may also cover the period for which the undertaking must maintain the job. Moreover, such an interpretation must be excluded in the light of a comparison of the relevant wording

of the various language versions of the text at issue, in particular the English ('period for which the worker or workers are employed'), the French ('toute période d'emploi'), the German ('während der Beschäftigung des oder der betreffenden Arbeitnehmer'), the Spanish ('período de contratación de los trabajadores'), and the Italian ('periodo di occupazione dei lavoratori considerati'). That expression therefore refers unambiguously to the period for which the disabled or disadvantaged worker is actually employed.

49 Sixth, the Belgian Government takes the view that the contested regulation creates confusion by referring in Article 4(3) to the concept of net aid intensity whereas it uses, in principle, the concept of gross intensity. It is, it claims, difficult to translate the latter into net intensity.

50 It must be pointed out, however, that the Belgian Government has adduced no specific argument to establish in concrete terms what that difficulty is. Consequently, its complaint cannot be upheld.

The second limb of the first plea

51 The Belgian Government submits that the contested regulation did not respect either the terms of Article 1 of Regulation No 994/98 or the purpose of that regulation, which require, so far as the criteria for the compatibility of aid with the common market are concerned, simple codification by the Commission of its pre-existing practice and consequently exclude the adoption of new, stricter criteria.

52 It must be observed in the first place that the wording of Article 1 provides no basis for stating that the Commission was required to lay down criteria for compatibility that were in total conformity with its pre-existing practice, and could not change them. Article 1 does no more than state in general terms that the exemption regulation relating to aid for employment must specify the thresholds for aid and the conditions for cumulation of aid, but does not in fact go into specific detail concerning those criteria.

53 Moreover, it is clear from the fourth recital in the preamble to that regulation that the Commission's considerable experience in the field of State aid for employment simply prompted the Council to authorise it to define compatibility criteria. Admittedly, the Commission was thus implicitly called on to use that practice when determining their content. However, the authority given under the regulation by the Council cannot thereby be interpreted as calling on the Commission to confine itself to simple codification of its previous practice and not to use its experience to lay down new criteria, including even stricter criteria than the existing ones.

54 Furthermore, the fact that no provision is made in Regulation No 994/98 for the adoption of transitional adjustment measures to ensure that the existing aid schemes are brought into line with the new criteria resulting from the contested regulation cannot, contrary to the Belgian Government's contention, entail a limitation of the powers entrusted to the Commission. The adoption of new rules applicable to new aid has no repercussions on the existing aid schemes, and therefore transitional measures would be pointless. Moreover, there is no special relationship between the scope of implementing powers and the existence or absence of transitional adjustment provisions in an enabling regulation.

55 The first plea must therefore be rejected.

The second plea

The first limb of the second plea

56 The Belgian Government claims, albeit confining itself to asserting that the contested regulation applies to schemes which constitute State aid within the meaning of Article 87(1) EC without defining the concept of State aid, that that regulation infringes the principle of legal certainty which implies that a legal act must be clear and foreseeable. Moreover, since the lack of such a definition has the result of making measures favouring employment subject to the obligation to notify the Commission, and in so far as account is not thereby taken of the specific constitutional features of the Member States, and in particular of the regionalisation of some of them, the contested regulation also contravenes the principle of subsidiarity and the principle of proportionality.

57 In that connection it must be borne in mind that the second subparagraph of Article 7(1) EC requires each institution to act within the limits of the powers conferred upon it by the Treaty.

58 In this case, the Council, by means of Regulation No 994/98, conferred on the Commission the power to declare that certain categories of aid are compatible with the common market and are not subject to the obligation of notification. Having regard to Article 87 EC, the Council thus confined itself to empowering the Commission to give effect to paragraph 3 of that article by laying down exceptions to the principle of incompatibility of aid enunciated in paragraph 1 thereof. By contrast, it did not confer on the Commission any power to interpret Article 87(1) EC, which defines the concept of State aid. The Commission therefore had no power to lay down a binding and general definition of the concept of State aid. It thus acted within the limits of its powers and, accordingly, did not contravene the general principles of legal certainty, subsidiarity and proportionality.

The second limb of the second plea

59 The Belgian Government maintains that, by setting out in Article 2(f) an exhaustive list of the categories of disadvantaged workers eligible for aid granted on the basis of Article 5 thereof, the contested regulation, first, infringed the principle of proportionality. The national authorities, it argues, are thereby deprived of the opportunity to conduct a genuine policy of reintegration of all disadvantaged workers in so far as some of them belong to those categories by reason of particular local features but do not come within the definition contained in the contested regulation.

60 That definition states that a disadvantaged worker is 'any person who belongs to a category which has difficulty entering the labour market without assistance, namely a person meeting at least one of [11] criteria' which are listed exhaustively and cover, for example, young people, migrant workers and the long-term unemployed.

61 A breach of the principle of proportionality presupposes that the Community measure imposes on those to whom it is addressed an obligation which goes further than is appropriate and necessary in order to attain the aim pursued by that measure.

62 The contested regulation does not make measures for workers not covered by the definition which it gives of disadvantaged workers subject to any new obligation. By not mentioning such measures, it keeps them subject to the obligation of notification already imposed by Article 88(3) EC. Consequently, the Commission has not infringed the principle of proportionality.

63 Next, the Belgian Government takes the view that, by adopting that exhaustive list of categories of disadvantaged workers, the Commission also infringed the principle that Community action should be consistent, inasmuch as the contested regulation severely obstructs national labour market policies which in fact the Community seeks to promote.

64 It must be pointed out that the Commission is required to ensure that Articles 87 EC and 88 EC are applied consistently with other provisions of the Treaty (see, to that effect, Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraph 42).

65 Those provisions included Article 127 EC, which provides that the Community is to contribute to a high level of employment by encouraging cooperation between Member States and by supporting and, if necessary, complementing their action. Similarly, by virtue of that provision, the objective of a high level of employment is to be taken into consideration in the formulation and implementation of Community policies and activities.

66 Consequently, the Commission is required to ensure the necessary consistency between its aid policy and Community action relating to employment.

67 Nevertheless, in the sphere of State aid, the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context (see Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 34, and Case C-156/98 *Germany* v *Commission* [2000] ECR I-6857, paragraph 67). That will in particular be the case when the Commission

wishes to reconcile the objective of ensuring undistorted competition in the common market with other Community objectives such as the promotion of employment.

68 When the Commission enjoys a wide discretion of that kind, the Court, in reviewing the legality of exercise of that power, cannot substitute its own assessment in that matter for that of the competent authority but must confine itself to examining whether the latter assessment contains a manifest error or constitutes a misuse of powers or whether the authority in question clearly exceeded the bounds of its discretion (see Case C-288/96 *Germany* v *Commission*, cited above, paragraph 26, and Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 64).

69 In this case, the Belgian Government has not provided any evidence to show that the Commission's assessment is vitiated by such defects. Consequently, the complaint cannot be upheld.

The third limb of the second plea

70 The Belgian Government argues that, by maintaining the earlier aid schemes previously authorised by the Commission but introducing a significantly stricter regime for new aid schemes, the contested regulation infringes the principle of non-discrimination. If the Commission wished to make the compatibility criteria stricter,

it would have been required by virtue of that principle to take the appropriate steps to ensure that existing aid was made to conform with the contested regulation.

71 It must be pointed out that, according to settled case-law, the principle of equal treatment and non-discrimination requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Case C-304/01 *Spain* v *Commission* [2004] ECR I-7655, paragraph 31, and Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 70).

72 In the present case, the contested regulation treats in the same way grants of aid under schemes established after its entry into force. On the other hand, it gives rise to unequal treatment as between the grant of aid under schemes declared compatible by the Commission before its entry into force and the grant of aid on the basis of schemes established in accordance with the new conditions for compatibility laid down in that regulation. The Commission itself does not dispute that the latter lays down certain conditions for compatibility which are stricter than those existing in its earlier practice.

73 Nevertheless, such treatment is objectively justified. First, the Commission cannot be deprived of the opportunity to lay down stricter conditions for compatibility if developments in the common market and the objective of ensuring undistorted competition on that market so require. Second, it cannot bring existing aid schemes into line with the new conditions for compatibility under the contested regulation unilaterally, disregarding the procedure under Article 88(1) and (2) EC. Recourse to such an approach would be tantamount to conferring retroactive effect on the regulation. It would thus undermine the principle of legal certainty and the principle of protection of the legitimate expectations of the persons concerned.

74 Consequently, the Commission did not infringe the principle of non-discrimination.

75 The second plea must for those reasons be rejected.

The third plea

76 The Belgian Government submits that the contested regulation infringes the Treaty in that it has a legal basis which has ceased to be valid. After the adoption of Regulation No 994/98, the Treaty of Amsterdam introduced a new Article 137(3), which entrusts to the Council the adoption of measures concerning financial contributions for the promotion of employment. It follows that the authority granted to the Commission by Regulation No 994/98 ceased to exist as regards the matters covered by that article. So far as necessary, the Belgian Government raises an objection of illegality of Regulation No 994/98 in so far as it served as a legal basis for the contested regulation, contrary to the provisions of the Treaty of Amsterdam, which do not allow such delegation by means of a Council regulation. For the same reasons, Article 137(1) EC excluded the adoption of measures concerning the integration of workers excluded from the labour market.

77 It must be pointed out, first, that, even if the objective of the authorisation given by the Council to the Commission is the promotion of employment, such authorisation under a regulation would not pursue the aim of depriving the Council of its powers under Article 137 EC.

78 Furthermore, the amendment of the latter provision by the Treaty of Amsterdam has no ramifications for this case. It must be borne in mind that, according to settled

case-law, in the context of the organisation of the powers of the Community the choice of the legal basis for a measure must rest on objective factors which are amenable to judicial review. Those factors include in particular the aim and content of the measure (see, in particular, Case C-269/97 *Commission* v *Council* [2000] ECR I-2257, paragraph 43, and Case C-36/98 *Spain* v *Council* [2001] ECR I-779, paragraph 58).

79 If examination of a Community measure shows that it pursues a twofold purpose or that it has a twofold component, and if one of these is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, the act must be based on a single legal basis, namely that required by the main or predominant purpose or component (see, in particular, Case C-42/97 *Parliament* v *Council* [1999] ECR I-869, paragraphs 39 and 40, and Case C-36/98 *Spain* v *Council*, cited above, paragraph 59).

80 In the present case, even if Regulation No 994/98 and the contested regulation have an impact on the promotion of employment, their main purpose is to determine which aid is compatible with the common market and to exempt it from the obligation of notification. Thus, they implement in particular Article 87(3) EC, which states that certain aid, conducive to objectives in the public interest, may be found to be compatible with the common market in so far as its objectives justify distortion of competition.

81 It follows that the Council validly adopted Regulation No 994/98 on the basis of Article 94 of the EC Treaty (now Article 89 EC) and that that regulation could constitute a legal basis for the contested regulation even after the introduction of Article 137 EC by the Treaty of Amsterdam.

82 The third plea in law must therefore be rejected.

83 Since none of the pleas in law put forward by the Kingdom of Belgium has been upheld, the action must be dismissed.

Costs

84 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. The Commission has applied for costs against the Kingdom of Belgium and the latter, having been unsuccessful, should accordingly be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. Dismisses the action;

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

[Signatures]