OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 26 February 1987 *

Mr President,
Members of the Court,

I — 1. In this action the Kingdom of Belgium is charged with having failed to implement the uncontested decision of 27 June 1984 [1] by which the Commission of the European Communities declared that aid granted in the form of a participation in the capital of a private undertaking was incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

II — 2. The dispute is therefore about the way in which that participation is to be repaid. In the written procedure the point was raised whether the necessity to wind up the undertaking concerned meant that it was impossible to implement the Commission's decision.

3. As regards that point the Court has held in a similar case that:

'The fact that, on account of the undertaking's financial position, the Belgian authorities could not recover the sum paid does not constitute proof that implementation was impossible, because the Commission's objective was to abolish the aid, and, as the Belgian Government itself admits, that objective could be attained by proceedings for winding up the company, which the Belgian authorities could institute in their capacity as shareholder or creditor'. [2]

4. The Belgian Government took cognizance of the Court's decision. It had commenced winding-up proceedings but its representative has just informed us at the hearing that a more desirable solution — the buying-back by the undertaking of the Belgian State's holding — was about to be reached.

5. Nevertheless, the fact remains that the aid in question has still not been returned. Therefore the Kingdom of Belgium is still in breach of its obligations.

III — 6. Consequently, I propose that:

(i) it is declared that, by not complying with the decision ordering the withdrawal of aid granted to an undertaking, the Kingdom of Belgium has failed to fulfil an obligation under Articles 5, 92 and 93 and the fourth paragraph of Article 189 of the Treaty;

(ii) the defendant State is ordered to pay the costs.

* Translated from the French.

1 — OJ L 283 of 27.10.1984, p. 42.

2 — Judgment of 15 January 1986 in Case 52/84 *Commission of the European Communities* v *Kingdom of Belgium* [1986] ECR 89, paragraph 14.