In Case 84/82

FEDERAL REPUBLIC OF GERMANY, represented by Martin Seidel, Ministerialrat in the Bundesministerium für Wirtschaft [Federal Ministry of Economic Affairs], assisted by Professor Gerhard Fels, acting as Agents, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany,

applicant,

v

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Marie-José Jonczy and Götz zur Hausen, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Legal Department of the Commission, Jean Monnet Building,

defendant,

APPLICATION for (i) the annulment of the authorization, limited to a period of one year, given by the Commission allegedly in breach of Article 92 (1) and (3) (c) and the second sentence of Article 93 (3) of the EEC Treaty to the Government of the Kingdom of Belgium, allowing it to implement the five-year plan for restructuring the Belgian textile and clothing industry, and (ii) a declaration that the Commission, in breach of the second sentence of Article 93 (3) and Article 93 (2) of the Treaty, has wrongfully failed to act,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

gives the following

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Facts and Issues

The facts of the case, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and procedure

A — Background to the case: Crisis and Community context of aid to the textile and clothing industry

The textile and clothing industry has for some time been in particular difficulty owing to various factors such as the partial failure to modernize the structure of the Community industry, the massive increase — from 21% to 44% between 1973 and 1980 — of imports from non-member countries (State-trading countries and South-East Asian countries), the rapid change in the use of raw materials, the use of outward processing arrangements by certain Community undertakings, the difficulty of certain branches of the industry in remaining competitive after a period of restricted development.

Those difficulties were moreover aggravated by the recession which affected the Community economy as a whole.

That combination of problems led to very keen competition between the textile and clothing industries of the Member States, both on the Community market and on other markets. It also brought about increasing unemployment, which apparently cannot be overcome in the short term.

In view of the importance of the textile and clothing industry in the Community as a whole and the difficult situation facing it, the Commission has been induced to take a number of measures intended to facilitate the process of modernization and to make the social cost bearable.

To that end, the Commission has:

(i) concluded agreements with non-member countries within the framework of the multifibre arrangements (Fourteenth General Report on the Activities of the European Communities, 1981 No 566 et seq.), and

(ii) defined, in 1971, a Community framework of aid granted by Member States, which, after being discussed in broad outline with the national experts and brought up to date in 1977, was brought to the knowledge of the Member States.

The Community framework was established to coordinate and guide the measures taken by the Member States, since the Commission had observed that in order to remedy the crisis in the textile industry the Member States tended to grant aid hastily and under the pressure of the economic and social situation for the exclusive purpose of maintaining employment and ensuring the survival of undertakings.

In the Commission's opinion, the multiplication of national intervention measures (lists of sectorial aid to the textile and clothing industry as at March

1981 are to be found in Annex 7 to the application) varying in amount and adopted in a haphazard fashion is likely to affect trade and competition in a way contrary to the common interest if no provision is made for the selective and precise restructuring without which no effective revival of the sector affected by the crisis is possible; such measures would neutralize one another, nullifying the efforts of the Government and the expected results.

The Community framework defines a number of criteria on the basis of which national aid must be granted and which the Commission uses in assessing proposals for aid notified to it. The guidelines laid down by the Commission specify, first, that national proposals for aid must be conceived as measures to accompany a process for restructuring the specific sectors in difficulty and must avoid leading to structural overcapacity in areas where there is already overcapacity or persistent stagnation of the market and, secondly, that Member States must take account of the national and Community situation in the sector affected by the crisis.

The Commission emphasizes that notification of the Community framework to the Member States cannot take the place of the decisions which it must take in exercise of the powers conferred on it by the Treaty.

B — Origin and course of the proceedings

1. From the adoption of the Belgian plan for restructuring the textile and clothing industry to the authorization of that plan

First stage: 1977-80: the aid programme of 1977

By Royal Decree of 20 December 1977 (Moniteur Belge of 24 December 1977) the Kingdom of Belgium established a programme of aid to the textile and clothing industry.

On 5 April 1977 the Commission informed the Belgian Minister for Foreign Affairs that in view of the fact that the obligation to give prior notice, as provided for in Article 93 (3) of the Treaty, had not been observed it had decided to initiate the procedure for reviewing the compatibility of the plan with the common market pursuant to Article 93 (2) of the Treaty.

When however the Belgian Government stated that it was ready to make the alterations required by the Commission and to notify a new restructuring plan by October 1979 the Commission informed the Belgian Government by a letter dated 6 March 1979 that it had decided to terminate the procedure initiated.

Nevertheless by a decision dated 17 April 1980, notified to the Belgian Government on 22 April 1980, the Commission reopened the procedure provided for in Article 93 (2) of the Treaty and requested the Belgian Government to abolish the programme of aid established by Royal Decree of 20 December 1977 by 31 July 1980 at the latest or to submit

a complete new restructuring plan befor that date. That decision was notified to all Member States.

Second stage: the aid programme of 1980 and its examination by the Commission

On 28 July 1980 the Belgian Minister for Economic Affairs, Mr Claes, sent a new restructuring plan to the Commission, which described in outline the programme of aid contemplated. The new system of aid was treated as notified within the meaning of Article 93 (3) of the Treaty.

By a letter dated 15 September 1980 the Commission requested the Belgian Government to supply further information in order to enable it to consider whether the plan was compatible with the common market.

Much correspondence took place over a year between Belgium and the Commission and between the Commission and representatives of the other Member States.

The majority of the Member States criticized the plan and their views were purportedly taken into account by the Commission and the Belgian Government.

Nevertheless, on many occasions, and lastly on 4 December 1981, the Government of the Federal Republic of Germany requested the Commission not to authorize the implementation of an aid programme the sole object of which, in the opinion of that Government, was to unload the problem of the Belgian textile and clothing industry on to the other Member States, who were experiencing the same difficulties.

By letters dated 7 January 1982 the Commission informed all the Member States of its decision of 18 November 1981 not to oppose the implementation for one year of the Belgian plan for restructuring its textile and clothing industry.

2. The object of the restructuring plan

The Belgian Government's decision to grant aid to the textile and clothing industry follows a finding that the number of jobs lost between 1973 and 1980 is estimated at 70 000 and that a policy of *laissez-faire* would lead to an additional loss of 50 000 jobs between 1980 and 1985, thus to the total disappearance of that industry in Belgium. The decline observed and expected in Belgium is puroptedly greater than in the other Member States. The Belgian Government therefore drew up the restructuring plan with the aim of dealing with the emergency without distorting the laws of the market. In the view of the Belgian Government, all the sectors affected by the crisis would continue, even after the implementation of that plan, to see their share of European production decrease from 6.4% in 1978-79 to 6.1% in 1984. Branches of the industry which remain competitive are to some extent excluded from aid, as are undertakings which are not viable.

3. Procedure

The Government of the Federal Republic of Germany lodged an application to the Court on 9 March 1982.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided, pursuant to Article 21 of the Statute of the Court of Justice and Article 45 of the Rules of Procedure, to make preparatory inquiries.

By a letter dated 20 June 1983 the Registrar of the Court requested the Commission to answer eight questions and to produce by 21 July 1983 the complete and final text of the restructuring plan.

The Commission did so on 19 July 1983

II — Conclusions of the parties

The *Government of the Federal Republic of Germany* claims that the Court should:

1. Declare void the authorization, limited to a period of one year, contained in the letter of 18 November 1981 addressed to the Government of the Kingdom of Belgium by the Commission of the European Communities, allowing the Kingdom of Belgium to implement the five-year plan for restructurering the Belgian textile and clothing industry, submitted to the Comission on 28 July 1980, on the ground that it infringes the second sentence of Article 93 (3) and Article 92 (1) and (3) (c) of the EEC Treaty;

   In the event of the Court's dismissing the claim in paragraph 1 as inadmissible or not making the declaration that the authorization contained in the letter of 18 November 1981 is void as an infringement of Article 92 (1) and (3) (c) of the EEC Treaty:

2. Declare, pursuant to Article 175 of the Treaty, that by failing to initiate the procedure laid down in Article 93 (2) and to declare, by means of a formal decision, the Belgian plan to be incompatible with the common market, the Commission of the European Communities has infringed Article 92 (1) and (3) and the second sentence of Article 93 (3) of the EEC Treaty;

3. Order the Commission of the European Communities to pay the costs.

The *Commission* contends that the Court should:

1. Dismiss the action;

2. Order the applicant to pay the costs.

III — Submissions and arguments of the parties

Admissibility

The *Commission* has no objection to the admissibility of the claim for annulment of the letter sent on 18 November 1981 to the Belgian Government in so far as the letter constitutes a binding measure for the purposes of the first paragraph of Article 173 of the Treaty and a "final decision" within the meaning of the third sentence of Article 93 (3) of the Treaty. However, it considers that the claim for a declaration that it wrongfully failed to act is inadmissible since the conditions laid down in that respect in Article in Article 175 of the Treaty are not satisfied in the present case. It is clear from the wording of the second paragraph of Article 175 that such an action is admissible only if the institution concerned has not defined its position after first being called upon to act.

The Commission considers that the declaration of 4 December 1981, in which the German Federal Minister, Otto Graf Lambsdorff, stated to Frans Andriessen, a member of the Commission, that the Government of the Federal Republic of Germany "would not acquiesce in the Commission's approval of the Belgian Government's aid plan" and that it would reserve the possibility of bringing the matter before the Court of Justice, cannot be interpreted as calling upon the Commission to act. In the Commission's view, even if account is taken of "diplomatic usage" any calling upon to act within the meaning of the second paragraph of Article 175 of the Treaty must be clearly worded. Whilst it is apparent from the terms of the abovementioned declaration that the Commission was called upon not to act in a manner contrary to the wishes of the German Government, it was not asked to take a negative decision.

Even if it is assumed, however, that the declaration of the German Minister may be interpreted as calling upon the Commission to act within the meaning of Article 175 of the Treaty, the Commission considers that it defined its position within two months and informed the applicant thereof in a letter dated 7 January 1982.

In the Commission's view, it is clear from its letter of 7 January 1982 (Annex 24 to the Defence) that it intended to "inform (the applicant) that the Commission had decided not to object for a period of one year to the implementation of the amended aid plan". The fact that the letter refers to the Commission's letter of 18 November 1981 to the Belgian Minister for Economic Affairs does not alter its character as a definition of the Commission's position.

In the Commission's opinion, an action for failure to act is admissible only if the Community institution called upon to act is completely silent or reacts in a way which does not show what view it takes of the invitation to act. The Commission emphasizes that in the judgment of 13 July 1971 in Case 8/71 *(Komponistenverband* v *Commission* [1971] ECR 705) the Court stated in paragraph 2 that the provisions of Article 175 of the Treaty referred to "failure to act in the sense of failure to take a decision or to define a position, and not the adoption of a measure different from that desired or considered necessary by the persons concerned." That view was confirmed by the judgment of 8 March 1972 in Case 42/71 (*Nordgetreide* v *Commission* [1972] ECR 105) and the judgment of 18 October 1979 in Case 125/78 *(GEMA* v *Commission* [1979] ECR 3173).

The Commission considers that it is not possible to accept the applicant's argument to the effect that the action for failure to act must be admissible on the ground that an action for annulment would not necessarily lead to a finding by the Court of Justice that the Belgian plan for restructuring the textile industry is incompatible with the common market, since the contested decision may be declared void on the ground of failure to initiate the review procedure referred to in Article 93 (3) and that in that event the legal protection to which it is entitled would not be ensured.

The Commission considers that the conditions of admissibility laid down by the Treaty for a particular type of action cannot be avoided on the ground that strict observance thereof would prevent the result sought by the action.

In the view of the *German Government,* an action for failure to act is admissible

in so far as the Commission has failed, in breach of the provision of the Treaty, to initiate the review procedure and to declare, by a formal decision, that the Belgian aid plan is incompatible with the common market.

The German Government considers that it called upon the defendant to act to that effect at the meeting on 4 December 1981.

It firmly rejects the argument that the letter of 7 January 1982 constitutes "a definition of the Commission's position" within the meaning of Article 175 of the Treaty and that therefore the action for failure to act is inadmissible.

In that respect, it claims that in its letter of 7 January 1982 the Commission merely stated that it had informed the Belgian Government on 18 November 1981 that it had no objection and did not define its position in response to the invitation to act made on 4 December 1981.

If nevertheless the Court were to see in the communication of 7 January 1982 a negative definition of position and consequently declare the action for failure to act inadmissible, the German Government considers that the legal protection to which it is entitled would not be ensured.

It considers that the principle laid down in the *Komponistenverband* judgment, and referred to by the defendant, to the effect that the adoption of a measure different from that desired or considered necessary excludes the possibility of an action for failure to act, cannot be applied to the present case. Since the measure adopted may be declared void on the basis of the action brought under Article 173 of the Treaty on the ground of infringement of procedural rules, the applicant has a legitimate interest in securing a finding by the Court, on the basis of Article 175 of the Treaty, that the Belgian aid plan is incompatible with the common market and therefore may not be implemented in its present form.

The bringing of an action for failure to act is justified because there is no equivalent in Community law to the German *Anfechtungs- und Verpflichtungsklage* which would enable the Court to order the defendant to adopt the measure claimed by the applicant. Article 176 of the Treaty whereby "the institution whose act has been declared void ... shall be required to take the necessary measures to comply with the judgment of the Court of Justice" does not provide any comparable remedy.

Substance

I — The claim for annulment

(1) The first submission: infringement of the rules governing the procedure for reviewing State aids

In support of this submission the applicant puts forward the following arguments:

A — Failure by the Commission to fulfil its obligation under Article 93 (3) of the EEC Treaty to initiate the procedure provided for in Article 93 (2)

According to the *Government of the Federal Republic of Germany,* it follows from the provisions of Article 93 (3) of the Treaty and previous judgments of the Court (in particular Case 120/73, *Lorens* v *Germany* [1973] ECR 1471; Case 121/73, *Markmann* v *Germany,* [1973] ECR 1495; Case 122/73, *Nordsee* v *Germany.* [1973] ECR 1511; and Case 141/73, *Lohrey* v *Germany,* [1973] ECR 1527)

that if after the end of the preliminary stage of consideration the Commission is still in doubt whether the plan notified to it is compatible with the common market it is bound, pursuant to Article 93 (3) of the Treaty, to initiate the main stage of examination described in Article 93 (2).

The Commission's uncertainty is shown by the fact that it considered it necessary to organize on 17 September 1981 a multilateral meeting between the national experts and the representatives of the Governments of the Member States. It is confirmed by the terms of the statement of no objection to the Belgian plan for restructuring the textile industry, implementation of which was authorized only for a period of one year and subject to observance, which the Belgian Government was asked to confirm, of the conditions set out in the letter challenged by the present action. By making its acquiescence subject to conditions when the doubts which gave rise to them ought to have led to the initiation of the main review procedure, the Commission infringed the terms of the Treaty.

In a letter to the German Minister for Foreign Affairs dated 5 January 1977 the Commission moreover recognized that "if consideration of the substance of a case gives rise to certain doubts whether the aid plan is compatible with the Treaty, the Commission is legally bound to initiate the procedure laid down in Article 93 (2)".

The *Commission* states that contrary to what the applicant says the meeting of 17 September 1981 was not organized on account of the doubts which the Commission still had regarding the compatibility of the Belgian plan with the Treaty. It was a periodical multilateral meeting with the representatives of the Member States devoted to all the cases pending. The Commission emphasizes that the cases thus examined are not solely those in which the approval or authorization to implement is open to question.

B — Disregard by the Commission of the specific features of the two stages of the review procedure

In the view of the *German Government*, the confusion between the preliminary stage and the main stage of the review procedure is shown by the terms of the statement of 18 November 1981, in which the Commission said that it had carried out a very thorough examination of the Belgian plan for restructuring the textile industry. The Commission thereby infringed the Treaty in two ways: on the one hand, it disregarded the object of the preliminary stage of the review and robbed the main stage of its true function and, on the other hand, it disregarded the fact that decisions taken at the end of the preliminary stage have only limited legal effect.

(a) Object of the preliminary examination

According to the *German Government*, it is apparent from the wording, structure and scope of Article 93 of the Treaty that the preliminary stage of the review is confined to cursory consideration of whether the aid plan notified to the Commission is compatible with the common market and that ultimate assessment of the plan is reserved to the final stage of the review.

That interpretation of Article 93 of the Treaty is confirmed by the special features of each of the two stages of the review procedure.

It is clear from the aforesaid judgments of 11 December 1973 that the aim of the preliminary stage is to give the Commission a period for reflection and investigation, so that it may form a preliminary opinion as to whether the plans notified to it are compatible with the Treaty.

The German Government observes in that respect that Article 92 of the Treaty mentions various kinds of aid whose compatibility with the common market it ought to be possible to check without embarking on the main stage of the review. That is so of the types of aid referred to in Article 92 (2), which, when they satisfy the conditions therein specified, are treated as "compatible with the common market".

When, on the other hand, at the preliminary stage of examination it is a question of considering, as in the present case, whether a plan to grant aid notified to the Commission satisfies the conditions laid down in Article 93 (2) of the Treaty and corresponds to one of the types of aid mentioned therein, which, "*may* be considered to be compatible with the common market", the Commission's powers are confined to a cursory examination as to whether the substantive conditions for aid which may be authorized are *prima facie* satisfied and whether a preliminary assessment of the resulting benefits and disadvantages suggests that the aid should be approved.

Only after it has been able to form that opinion is the Commission bound, in the event of doubts about the plan's compatibility with the common market, to initiate the formal procedure provided for in Article 93 (2) of the Treaty.

The *Commission* emphasizes that in the aforesaid judgment in *Lorenz* v *Germany* the Court held that in the interests of good administration the Commission should inform the Member State concerned "when, at the end of the preliminary examination, it considers that the aid conforms with the Treaty" (paragraph 5).

In the Commission's view, it is clear from the words used by the Court that according to Article 93 (2) of the Treaty the Commission may at the end of the preliminary examination decide that aid is compatible with the Treaty and inform the Member State concerned to that effect.

Only if it considers that the plan is not compatible with the common market must it, without delay, initiate the procedure provided for in Article 93 (2).

(b) Limited legal effect of decisions adopted by the Commission at the end of the preliminary examination

The *German Government* submits that at the end of the preliminary stage of examination the Member State concerned may implement the aid plan but that does not mean that it is compatible with the common market.

Even where an aid plan is implemented following a statement of no objection at the end of the preliminary examination it may be re-examined by the Commission as part of the permanent review of aid described in Article 93 (1) of the Treaty.

The compatibility of aid can therefore be definitively established by the Commission only at the end of the main review procedure.

Because of the limited legal effect of the preliminary stage of examination the Court held in the judgments of 11 December 1973 that the Commission did not have to take a decision within the meaning of Article 189 of the EEC Treaty if during that stage it came to the conclusion that there was no need to initiate the formal procedure. For that reason it is not possible to accept the defendant's argument to the effect that the provisions of the Treaty do not distinguish between the statement of no objection at the end of the preliminary review procedure and the final decision within the meaning of the third sentence of Article 93 (3) of the Treaty.

In the *Commission's* view, the effect of a decision finding that aid is compatible with the common market is always the same, regardless of the stage of the procedure at which the decision is taken.

In the first place, the Treaty makes no distinction in that respect and, secondly, any system of aid remains subject to the permanent review carried out under Article 93 (1) and (2).

That interpretation of the provisions of the Treaty is confirmed by the judgment of 22 March 1977 in Case 78/76 (*Steinike und Weinlig* v *Germany* [1977] ECR 595), which states "in judging ... whether State aid is compatible with the common market complex economic factors subject to rapid change must be taken into account and assessed." Thus a system of aid originally regarded as compatible with the common market may at any time be reviewed by the Commission.

C — Unreasonable extension of the period for the preliminary examination

The *German Government* notes that in the aforesaid judgments of 11 December 1973 the Court held that in the absence of specific provisions in the Treaty the period for the preliminary examination of plans to grant aid notified to the Commission ought not as a rule exceed two months unless the Commission and the Member States concerned decided otherwise. In the present case that period was not observed.

The *Commission* argues that according to the aforesaid judgments it must have sufficient time to consider aid notified to it but must act with the requisite expedition in order to take account of the interest of the Member States in having the matter speedily settled; that means that in the preliminary examination it must do precisely that which the applicant objects to: it must carefully consider the various aspects of the aids notified to it in order not to prolong the suspensory effect of Article 93 (3) more than is necessary for considering whether the aids are compatible with the common market.

D — Disregard by the Commission of its obligation to consult the other Member States and the economic and social sectors of the Community

The *German Government* argues that it is particularly important to initiate the formal review procedure when the proper exercise by the Commission of its discretion in relation to the aids referred to in Article 92 (3) (b) and (c) makes it

necessary to inform and give a hearing to the other Member States and to the economic and social circles concerned, especially to competitors in the other Member States. There is provision for such consultations only in the main stage of the examination.

Contrary to the defendant's contention, that view does not mean that the Commission must automatically initiate the main review procedure whenever the types of aid referred to in the aforesaid provision are involved; that is necessary only if at the end of a cursory examination of the plan in question there are doubts about its compatibility with the common market.

Although the German Government does not deny that the Commission alone is responsible for determining whether a plan to grant aid is compatible with the common market, it cannot accept the Commission's argument to the effect that the invitation to the parties concerned to submit their comments pursuant to the first sentence of Article 93 (2) translates not so much their fundamental right to be heard as the Commission's right to obtain information and that the Commission is free to decide the proper time and method for consulting the Member States or the social, economic and trade circles involved.

The Commission has no power to waive the procedural rules on the subject of aid. The right of the Member States and the circles concerned to be heard is a matter of public policy. That right, which in no way impinges upon the Commission's decision-making powers, rests on the "recognition that only a comprehensive clarification of the facts ensures an optimal surveillance, corresponding to the interests of the common market, of Member States' policy in relation to aid".

The defendant cannot contend that by proposing the meeting of experts held on 17 September 1981 it in fact initiated the main review procedure and that the statement of no objection of 18 November 1981 was made at the end thereof, for initiation of the main stage of the procedure requires, according to the aforementioned judgments of 11 December 1973, a formal decision notified both to the applicant Member State and to the other Member States.

The *Commission* rejects the applicant's argument to the effect that the notice to the parties concerned, as referred to in Article 93 (2), must be treated as entailing their obligatory and formal involvment in the examination of the aid's compatibility with the common market; such an argument would lead to the automatic initiation of the main review procedure in respect of every aid which might qualify for exemption under Article 92 (3).

It is clear from the wording of Article 93 (2) that the application of the procedural rules depends to some extent on the view which the Commission takes as to the compatibility of the aid with the common market.

According to the judgment of 12 July 1973 in Case 70/72 *(Commission* v *Germany* [1973] ECR 813), the notice to

the parties under the first sentence of Article 93 (2) "aims solely to obtain from persons concerned all information required for the guidance of the Commission with regard to its future action".

It is clear from the terms of the Treaty that the Commission, subject to the powers of the Council under the third subparagraph of Article 93 (2), is the sole body responsible for determining whether aid is compatible with the common market. That responsibility has often been confirmed by the Court. In the judgments of 22 March 1977 in Case 74/76 *(Iannelli* v *Meroni* [1977] ECR 557) and in Case 78/76 *(Steinike und Weinlig,* cited above) the Court held that "the intention of the Treaty in providing through Article 93 for aid to be kept under constant review and supervised by the Commission, is that the finding that an aid may be incompatible with the common market is to be determined, subject to review by the Court, by means of an appropriate procedure which it is the Commission's responsibility to set in motion".

Although the Commission pointed out in its letter of 5 January 1977 to the German Minister for Foreign Affairs that the Commission was responsible for determining the time and form of contacts with third parties, the notice to those concerned to submit their comments is not within the Commission's discretion since any decision to prohibit the implementation of the plan notified to the Commission can be taken only after the parties have been heard.

In the present case the consultations with the other Member States and the relevant economic circles did not necessarily have the consequences expected by the applicant. The result which the Commission reached would therefore have been the same even if it had initiated the procedure under Article 93 (2) of the Treaty.

From the foregoing it is apparent that the question whether the Commission should or should not have initiated the main review procedure provided for in Article 93 (2) of the Treaty in relation to the Belgian plan for restructuring the textile industry ultimately depends solely on whether the plan may be considered compatible with the common market.

(2) The second submission: the Commission, in stating that it had no objection, authorized the implementation of a system of aid incompatible with the common market

Before examining the substantive conditions on which the compatibility of State aid with the common market depends, the German Government emphasizes the importance of the judicial review which the Court is called upon to effect in an area where the Commission has a wide discretion.

A — Necessity of review by the Court; the scope of that review

The *German Government* observes that the circumstances make effective review of State aid necessary; it also arises as a result of recognized rules of international law and in particular the basic principles of the common market.

(i) The circumstances

According to the 10th Report on Competition Policy (1980, p. 120), the number of Commission decisions prohibiting implementation of aid planned by Member States is proportionately decreasing in relation to the number of plans notified and the proportion of plans definitively examined under the preliminary procedure is relatively large.

Review by the Court seems all the more necessary in the present case since the Commission has never before approved the implementation of a plan for aid to a particular sector on a scale comparable to the Belgian plan for restructuring the textile industry.

(ii) The rules recognized in international law

The fact that the Member States may not have recourse to the measures allowed them under GATT (in particular, the levying of compensatory duties on subsidized imports) argues in favour of the Court's having jurisdiction to review the Commission's exercise of its powers in relation to State aids.

Member States are not allowed by the Treaty to adopt such measures precisely because of the existence of the special procedure for reviewing national policies on State aids; that procedure is intended to prevent the transfer from one Member State to another of the economic problems which national policies seek to remedy.

(iii) The essential principles of the common market

Since the Court has recognized that it has jurisdiction to verify whether the terms of the Treaty have been observed when applications come before it challenging the Commission's refusal to authorize the implementation of plans for aid notified to it, then *a fortiori* it has similar jurisdiction in relation to an application directed against authorization to implement an aid scheme as important as the Belgian plan for restructuring the textile industry. In other comparable areas, such as protective measures, the Court has ruled on the compatibility with the common market of authorizations given by the Commission under Article 115 of the Treaty. Thus in the judgment of 23 November 1971 in Case 62/70 (*Bock* v *Commission* [1971] ECR 897) the Court held that although the Commission has a certain discretion in relation to the necessity of a protective measure it is considerably restricted by the obligation to observe the basic principle of free movement of goods.

The prohibition of aid is a fundamental feature of the common market comparable to the prohibition on agreements restricting competition and trade within the Community or the prohibition on the retention or re-introduction of customs duties and quantitative restrictions in trade between Member States.

It would be contrary to Article 164 of the Treaty, whereby in the last resort it is the Court, rather than the Commission or the Council, which must ensure "that in the interpretation and application of this Treaty the law is observed", to accept that in an area relating to

competition and intra-Community trade Community law, instead of having its application and proper development ensured, may be left to the hazard of political forces.

Thus the Court of Justice must have jurisdiction to verify observance of the substantive conditions under which the Commission may, pursuant to Article 92 (3) (a) to (c) of the Treaty, declare that State aid is compatible with the common market. In the judgment of 17 September 1980 in Case 730/79 *(Philip Morris* v *Commission* [1980] ECR 2671) the Court, while admitting that in the application of Article 92 (3) of the Treaty the Commission has a discretion the exercise of which involves economic and social assessments, held that the Court had full jurisdiction to ensure observance of the conditions to which Article 92 (3) (a) to (c) subjects compatibility of a system of aid with the common market.

Finally, the German Government observes that, although in areas where the Commission has a wide discretion exercised in accordance with economic and social criteria the Court's judisdiction is necessarily restricted, the Court nevertheless reviews the existence of the facts and the legal inferences drawn from them. In that respect it cites the following judgments: Joined Cases 56 and 58/64, *Consten and Grundig* v *Commission,* [1966] ECR 299; Case 71/74, *Frubo* v *Commission,* [1975] ECR 563; and Case 26/76, *Metro* v *Commission,* [1977] ECR 1875.

The *Commission* states that it fully shares the applicant's point of view and emphasizes that the discretion which it has in the matter of aid is due to the fact, as the Court recognized in the aforesaid judgment in *Philip Morris* v *Commission,* that it has to make complex judgments involving economic, industrial, technical and social considerations.

In that regard there is no ground for distinguishing between the prohibition and authorization of aid. Its decisions should therefore be declared void only if it has exceeded or misused its discretion.

B — The compatibility of the Belgian restructuring plan with the common market

The *German Government* considers that in order to determine whether the aid was likely "to facilitate the development of certain economic activities" and to judge the "common interest" within the meaning of Article 92 (3) (c) of the Treaty the Commission had to ensure that the conditions which aid must satisfy in order to be regarded as compatible with the common market were in fact satisfied and that the plan in question did not adversely affect trading conditions in a manner contrary to the common interest.

1. Fulfilment of the conditions under which aid may be regarded as compatible with the common market under article 92 (3) (c) of the Treaty

(a) The appropriate criteria

In the view of the *German Government*, it is clear from a number of documents written by the Commission (First Report on Competition Policy 1971 — Aid Schemes for Particular Sectors; Eighth Report on Competition Policy 1978, p. 131, No 173; Proposal for the Fifth Programme of Medium-term Policy, which appeared in "Europäische Wirtschaft", No 9, July 1981, p. 19 et seq.), that aid in favour of a particular branch of activitiy may be granted only in exceptional cases and subject to particularly strict conditions and in any event must be abolished when it delays the adaptation of weak sectors.

The criteria governing the compatibility of this kind of aid with the common market, as laid down by the Community context and corresponding to a large extent to the general "directives" and "guidelines" adopted by the Council of Ministers of the Organization for Economic Cooperation and Development (communiqué of the Council of Ministers of the Organization for Economic Cooperation and Development of 15 June 1978) are as follows:

The object of the measure contemplated must in no case be to ensure the survival of undertakings nor the effect be to delay their structural re-organization.

The aid in question must be granted solely " in so far as necessary", that is to say on the basis of a balance between the purpose of the aid and regard for the fundamentals of the common market.

The aid must be confined to undertakings which are competitive on a long-term basis.

It must be gradually reduced and subject to a time-limit.

Since its aim is to encourage individual effort the aid must be so arranged that the economic risk is not borne mainly by the State but also by the undertakings benefiting from the aid.

The *Commission* states that it agrees with the criteria referred to by the German Government but that they should be considered in the following order:

The aid contemplated must benefit viable undertakings or such as will become competitive within a certain period. In the Commission's view observance of that single criterion excludes the possibility of aid solely to ensure survival.

The temporary and decreasing nature of aid must be ensured.

The amount of aid must be restricted to what is strictly necessary.

The grant of aid must be accompanied by a financial effort from the undertaking benefiting therefrom.

The aid must be transparent so that its effects may be monitored accurately.

As regards the textile sector, which throughout the world has considerable surplus production capacity, a sixth criterion should be added: the aid must not lead to an increase in capacity.

(b) Observance of the criteria

1. In the view of the *German Government,* the Commission was wrong to consider that the Belgian plan satisfied the above conditions.

(i) The effect of the aid would be to preserve the status quo

In the view of the German Government, the Belgian plan for restructuring the textile industry is intended more to maintain the structure of the textile and clothing industry than to ensure in due course its competitiveness.

It is apparent from the declaration of the Belgian delegation at the meeting of 17 September 1981 that, although the plan is founded on the abolition of some 24 000 jobs, its main aim is to maintain 100 000 other jobs threatened by the crisis.

The main defect of the plan is the fact that it makes no attempt to abolish surplus capacity or to create jobs in sectors of the economy outside the textile and clothing industry.

Finally, the applicant emphasizes that according to the report drawn up by the McKinsey company, Brussels, at the request of the Belgian Government, on the basis of which the five-year plan for restructuring was based, stabilization of the number of people occupied in the Belgian textile and clothing industry at 100 000 can be achieved only if the Belgian textile and clothing industry's share in total Community production increases from 5 to 6%.

(ii) Necessity of the restructuring plan

The second condition is not satisfied in the present case for the following reasons:

First, the difficulties which the Belgian textile and clothing industry faces are not appreciably greater than those faced in the same industry in the other Member States, especially the Federal Republic of Germany.

That is supported by the following comparative figures:

As regards employment, between 1973 and 1980 and between 1979 and 1981 employment in the Belgian textile and clothing industry declined by 40 % and 7% respectively, whereas for the German textile and clothing industry the figures were 31% and 11% respectively.

As regards external trade in textile and clothing products, Belgium had a surplus amounting on average:

From 1978 to 1980, to DM 907 000 000 as against DM 396 000 000 for the Federal Republic of Germany;

For the first three quarters of 1981, to DM 431 000 000 as against DM 203 000 000 for the Federal Republic of Germany (Monthly Bulletin of External Trade, Eurostat).

Between 1975 and 1979 investments were assessed per workers as DM 2 300 in Belgium and DM 2 600 in the Federal Republic of Germany (GATT, Document COM.TEX (21), of 23 April 1981, p. 45).

Secondly, the Commission recognized in its notice of no objection of 18 November 1981 that there were "very competitive" sectors.

Those sectors are carpets, plush velvets, bouclé, chenille fabrics, terry towelling and similar fabrics. The Commission did not exclude those sectors from the aid programme, whereas obviously those sectors did not need aid. The Commission itself found that Belgium had a surplus in this area in trade with other Member State.

(iii) The undertakings affected by the plan

The Belgien restructuring plan does not satisfy the requirements designed to ensure that only competitive undertakings are helped.

Although based on the principle of "back the winner" since it provides that only viable undertakings may receive aid, the plan contains no guidelines for implementation and no criterion allowing the competitive potential of undertakings to be assessed.

Moreover, in its statement of no objection the Commission reserved the right to prohibit application of the plan to undertakings employing more than 50 peoble. That reservation in particular cases has no effect for the following three reasons:

It is apparent from the documents of the Institut National de Statistique (Publication Mensuelle, Statistiques Industrielles 4/81 and 9/81) that the proportion of undertakings with more than 50 employees in the textile and clothing industry in general, and in the aforementioned highly competitive sectors in particular, is limited.

The products of the "highly competitive" sectors are mainly manufactured by undertakings with a diversified production so that they would escape the controls of the Commission, which apply only to large undertakings for which those products represent an essential part of the manufacturing programme.

Implementation of the Belgian plan is the responsibility of two bodies created for that purpose, namely the "Institut du Textile et de la Confection de Belgique" and the Société Nationale pour la Restructuration de l'Industrie et de la Confection et du Textile". In the absence of a strict proviso concerning approval in individual cases there seems no guarantee that those two bodies will in practice observe the principle that aid should be granted mainly to competitive undertakings. The retrospective monitoring which the Commission proposes to perform seems inadequate.

(iv) Progressive reduction

Observance of the condition that aid should gradually decrease over a period of time is essential if priority is to be given to helping undertakings which are competitive. The progressive reduction in financial aid, which is calculated to ensure smooth re-organization of the production of undertakings with the aim of restoring their competitiveness, encourages the stronger undertakings because of the competition in which they have to engage while undergoing reorganization.

As regards aid for particular sectors, the requirement that the aid should decrease over a period of time applies both to the plan as a whole and to the grants in individual cases and to the means employed. The Belgian plan for restructuring, as submitted to the Com-

mission, contains no guidelines in that respect.

The Commission has not attempted to ensure that the aid should gradually diminish because it has confined itself to authorizing the implementation of the plan for a year without making any extension thereof subject to a gradual reduction to zero of the measures provided thereby.

(v) Limitation of the amount of aid

* Object of the limitation

The restriction of aid to a particular ratio in relation to the beneficiaries' own contribution is intended to ensure that State aids encourage individual effort. If the State's share is too high there is a risk that the measure will become one of maintenance and that further subsidies will have to be granted and political grounds come into play.

In its role of monitoring aid the Commission has previously ensured that State aids do not exceed a particular level. Thus, as regards environmental aids, the Commission has regarded 15 % as the maximum level permissible. Only in view of the urgent need to convert to ecologically sounder production procedures has the Commission allowed, by way of exception, aids at a higher level, namely 45% for investments in 1975-76 and 30% for the investments in 1977-78. As regards regional aids the level of aid approved has not exceeded 20 %.

As regards aid for particular sectors the level allowed by the Commission has never previously reached that of the Belgian restructuring plan. The applicant refers for example to a Netherlands plan to grant aid to a cigarette manufacturer: on that occasion the Commission declared aid of a level of 4% to be inadmissible.

* Especially high level of the aid envisaged under the Belgian plan

The funds made available to the Belgian textile and clothing industry for the first year for which the Claes Plan applied are estimated at BFR 6 800 000 000, namely DM 400 000 000; that corresponds to a financial contribution from the State of some 40 to 50% of the investments contemplated and loans from the State of up to 30% of those investment with an interest reduction of 7% for a maximum period of 5 years. The contribution from the undertakings concerned is fixed at 30% and in exceptional cases 25%.

The proportion of State funds, which in the present case amounts to 70% and is sometimes described as the level of aid, does not however represent the so-called "net grant equivalent", that is to say, the amount of financial assistance provided as a non-repayable investment premium. To calculate the net grant equivalent it is therefore necessary to ascertain to what extent the funds made available by the Belgian Government to the undertakings represent actual aid for restructuring the textile industry and not merely maintenance funds.

On the basis of the method of calculation adopted by the defendant the State funds made available to those concerned in the first year of the five-year plan amounted to DM 308 000 000. That is 54% of the investment costs contemplated for the five years. For the years 1975 to 1979 the total investments of the Belgian textile and clothing industry amounted on average to BFR 3 900 000 000, that is DM 253 000 000.

The so-called standard method of assessment used by the Commission, according to which the net grant equivalent to the State's participation in the capital of the undertaking is set at nought, is not appropriate in the case of the textile and clothing industry since it takes no account of the fact — recorded in a letter of 28 July 1980 from Mr Claes, the Belgian Minister for Economic Affairs, to the Commission — that the financial resources of the Belgian textile and clothing industry are inadequate owing to its lack of creditworthiness. In the view of the applicant, the computation of the net grant equivalent must lead to considering the State's share, contrary to the position with profit-making and sufficiently creditworthy undertakings, as equivalent to a subsidy in the form of a 10 year loan at a reduced rate of interest.

* Contribution from the undertakings concerned

Notwithstanding the financial difficulties of the Belgian undertaking, their 30% contribution to the financing of the restructuring programme is too low. Only if the undertakings concerned contributed the greater share to the financing of the investments would it be possible to ensure that the State subsidies retained their character of an aid to self-help.

2. The *Commission* contends, on the other hand, that, in view of all the conditions and requirements stipulated in its decision of 18 November 1981 and accepted by the Belgian Government, the plan for restructuring the textile industry meets in every respect the minimum requirements mentioned by the applicant.

Before discussing these various issues the Commission gives its opinion on the German Government's claims in relation to one of those requirements, namely the "necessity" of the Belgian plan.

(i) Reply to the applicant's comments on the "necessity" of the Belgian Plan

The Commission does not share the German Government's view that all Member States are affected in the same way by the crisis in the textile sector. In support it makes the following observations:

From the figures which the German Government itself has put forward it is apparent that the loss of jobs between 1973 and 1980 in Belgium (40%) is considerably higher than in the Community as a whole (27%) and also considerably higher than in the Federal Republic of Germany (31%).

It is apparent from the McKinsey Report that the textile and clothing industry is responsible for a larger share of the value added by the manufacturing industry in Belgium than in the other Member States, with the exception of Italy.

In the opinion from the Kieler Institut für Weltwirtschaft produced by the applicant it is stated that the textile and clothing industry in Belgium "represents a much larger part of the industrial sector than in most other countries".

Secondly, the Commission observes that even if it is shown that the German and Belgian textile and clothing industries are experiencing the same difficulties, it cannot therefore be inferred that the authorization to implement the Belgian restructuring plan is incompatible with the common interest within the meaning of Article 92 (3) (c) of the EEC Treaty.

The Commission's discretion must be exercised "in a Community context" (judgment of 17 September 1980 in Case 730/79, *Philip Morris* v *Commission).*

The Commission examines not only whether the plan put forward may adversely affect trade between Member States but also whether it is in accord with the aims and measures of industrial policy as defined at a Community level.

The Belgian restructuring plan accords precisely with the guidelines which the Commission laid down in its notice to the Council on the present situation and future prospects of the textile and clothing industry in the Community (COM(81) 388 Final of 20 August 1981).

Thirdly, the Commission counters the view expressed in the opinion of Kieler Institut für Weltwirtschaft, according to which the Belgian textile and clothing industry has "a good position in international competition".

The Commission makes three observations in this regard:

The experts relied solely on the criterion of the revealed comparative advantage. The revealed comparative advantage, which simply looks at net exports of a particular branch in relation to the net exports of the whole economy, can give no precise picture of the situation of an industrial sector, for it may seem particularly competitive only because it has been able to get a stronger foothold abroad than competitors at home.

A comparison on the basis of the revealed comparative advantage is possible only if the economic structures of the various countries and the importance of the industrial sector in question are very similar; there can be no question of that in the present case.

The contention that the Belgian textile industry has a genuine advantage over competitors in Germany is incorrect, for the exports from Belgium into the Federal Republic of Germany are mainly accounted for by competitive products, such as carpets, for which aid may be given only subject to the strict conditions laid down by the Commission.

Moreover, a comparison of the exports and imports of products of the industrial sector in question for the whole Community shows that the Belgian industry has no competitive advantage at a Community level.

(ii) Undertakings affected by the plan

The aids granted on the basis of the Belgian plan are genuine aids for restructuring and not aids for maintaining undertakings that are not viable in the long run. Although the maintenance of jobs after the considerable reduction therein following restructuring may be described as one of the aims of the plan, that in no way means that it is intended to help undertakings that are not viable.

The aids in question are granted selectively and only on application. For that purpose the Belgian Government, as required by the Commission, has defined a number of criteria for examining the viability of the applicant undertaking. On the basis of those criteria each undertaking is required to apply forecast techniques and to provide economic data which are in accordance with modern management methods and reduce the risk of erroneous decisions.

A condition for the granting of aid is moreover the production of a restructuring programme by and for the applicant undertaking. Although the programmes are checked by the bodies mentioned by the applicant, there is no reason to believe that those bodies have not the capacity or will to restrict the granting of aid to restructuring programmes.

The Commission observes that its acceptance of a global plan for restructuring the sector in question without reserving the right to consider the granting of aid to each particular undertaking is due to the fact that a comprehensive examination of each application is administratively not possible. That is why prior notification of an application for aid has been required only in respect of the various sectors said to be highly competitive and in respect of large undertakings.

In that respect the Commission makes two observations:

Although it is true that the majority of Belgian textile undertakings employ less than 50 people the majority of people employed in the sector in question work in large undertakings.

Further, the fact a large undertaking has diversified production does not in any way release it from the obligation of prior notification.

Moreover, the Commission emphasizes that, with the object of ensuring that the Belgian plan retains its character as aid for restructuring, it imposed an additional requirement to the effect that an undertaking receiving aid for the specific sector may not be granted any other State aid as an alternative or an addition. The refusal of any other aid is of considerable importance from the point of view of intra-Community competition.

(iii) Limited duration and progressive reduction

The Commission has taken into account the requirement of restricting the duration of the aid by approving for only one year a plan originally contemplated for five years. In its final decision it in no way committed itself to any extension of the plan beyond 1982 but reserved its right to decide subsequently on any application for an extension.

The Commission considers that in a programme of such short duration the question of the gradual reduction of aid is not of great importance.

The defendant observes in that respect that the form of aid adopted, namely a 7% interest subsidy on loans borrowed at market rates necessarily implies a certain gradual reduction in so far as the unrepaid principal decreases gradually.

The German Government is not right in claiming that the Commission has never approved an aid programme for a particular sector on such a large scale as the five-year plan for restructuring the Belgian textile and clothing industry. The Commission refers for example to aid granted by the Federal Republic of Germany for a programme for restructuring an iron and steel undertaking in the Saarland.

(iv) Restriction of the level of aid to the absolutely necessary

In assessing the amount of aid the German Government assumes that the net grant equivalent must be calculated according to the methods worked out for the steel sector. That special method of calculation was however worked out in conjunction with experts from the Member States with the express stipulation that it should be applied only to the sphere for which it was conceived; it cannot be applied to the textile sector since if it were applied to firms which are basically viable it would lead to a considerable over-valuation of the amount of aid.

In assessing the amount of aid in the textile sector the Commission applies the standard formula, namely the net grant equivalent with which it also calculates the level of aid for regions and sectors. That method allows the calculation of all aid as a net figure, that is after deduction of tax. The main part of aid granted in that manner consists of grants towards interest on loans.

On the basis of a maximum capital contribution of 30% towards the investment costs and a grant towards interest of 7% for a maximum period of five years there is a net grant equivalent of 4.2% of the total investment.

In that connection the Commission makes some observations concerning the possibility provided for in the restructuring plan, of State participation in the capital of the undertaking. The Commission shares the German Government's view that it depends on the particular economic circumstances whether such participation constitutes aid or is the nature of aid. In resolving that question the Commission looks at the position of the undertaking as a whole. If the undertaking is in difficulty or already insolvent the Commission considers that the State's contribution is in fact in the nature of aid. State participation in a viable undertaking cannot, on the other hand, be regarded as aid.

(v) The beneficiaries' own contribution

The Commission considers that the aid granted under the Belgian restructuring plan is truly in the nature of aid and is intended to support the undertakings' own efforts.

The fact that the Commission accepted a rate of 30% whereas the first Belgian proposals provided in general for a maximum contribution of 25% by the undertakings in receipt of aid cannot be regarded as a wrongful exercise of

discretion by the Commission. That rate is moreover appreciably higher than the rate generally adopted in the Community textile and clothing industry; it is in line with the normal practice in the financing of investment projects.

Moreover, it is apparent from reactions hitherto from a large part of the Belgian textile and clothing industry that only a small number of undertakings are prepared to accept State participation in their capital. The absence or the reduced level of State participation increases the undertaking's own contribution. Accordingly, the risk of possible supplementary payments diminishes.

(vi) Transparency

To ensure the transparency of the scheme of aid contemplated for the Belgian industry the Commission approved the application of the plan on condition, first, that no other State aid of whatsoever kind should be granted to the sector concerned and, secondly, that the Belgian Government should regularly and comprehensively report on the application of the aid programme. Thus, monthly particulars of Belgian trade in the textile and clothing sector in accordance with the Nimexe Nomenclature must be supplied, as must a quarterly report subdivided according to nine main branches on the application and effects of the plan and an account in the form of a table showing a breakdown of figures on all applications on which there has been a decision. The Belgian Government has so far complied with those obligations.

In the Commission's view, the exclusive nature of aid granted under the restructuring plan and the monitoring carried out *ex post facto* fully satisfy the requirement of transparency.

(vii) Avoidance of an increase in capacity

The Commission's decision of 18 November 1981 states clearly that the Belgian restructuring plan must not lead to an increase in production capacity.

The fact that according to the McKinsey Report, cited by the German Government, the restructuring plan aims to increase the Belgian industry's share of Community production cannot be treated as an increase in capacity.

2. Adverse effect on trading conditions to an extent contrary to the common interest

In the view of the *German Government*, the Belgian aid plan affects the conditions of intra-Community trade in a manner contrary to the common interest. Although it may not be possible to produce statistics comparing the structure and development of intra-Community trade before and after implementation of the Belgian restructuring plan, the extent of the adverse effect upon trade may be judged on the basis of various factors.

First, the Belgian textile and clothing industry exports a considerable part of its production to other countries and mainly to countries in the Community. In 1980 exports amounted to 3 335 000 000 ECU (DM 8 210 000 000) of which 2 733 000 000 ECU (DM 6 730 000 000),

that is 82% of the total exports, went to other Member States. Belgian textile and clothing products represents 8.2% and 3.5% respectively of total German imports in that field.

The textile and clothing industries of the other Member States, especially the Netherlands, France and Germany, compete with the Belgian industry on the markets of the Community and on the markets of non-member countries.

Without the financial help from the plan in issue, the amount and extent of which are considerable, the Belgian textile and clothing industry would not be able to maintain its sales strength at home, in the other Member States or in non-member countries and in no event would it be able to increase that strength.

The reason for the distorting effect is that the Belgian industry receives financial aid intended simply to maintain undertakings. Even if it is assumed that the restructuring plan induces those concerned to seek new sub-markets and to manufacture products of better quality, its effect would be to displace from the market competitors from other Member States who do not receive similar subsidies and who finance alterations in their production from their own resources and at their own risk.

The fact that the Commission has initially approved the plan for only one year in no way reduces its negative effects, for the Commission thereby contributes to greater insecurity among the competing undertakings, who, in view of the risk that an extension of the plan may be approved, are deterred from making investments from their own resources for necessary structural changes.

The Belgian textile and clothing industry thereby receives an artificial and unjustified competitive advantage. The alleged special significance of that industry in Belgium cannot justify unloading economic problems, and unemployment in particular, on to other Member States. Only 3.7% of all employed persons in Belgium or 10.5% of persons employed in industry were engaged in the textile and clothing industry in 1979 (Eurostat — Employment and Unemployment, 1973-79).

It is incompatible with the common interest that because of its size and repercussions the Belgian restructuring plan obliges the other Member States either to accept the disadvantages attached thereto or to grant subsidies. In view of the size of the aid granted by Belgium there is a risk that other Member States may seek to neutralize its effect by similar measures. France and the Netherlands have announced the adoption of restructuring plans.

The support measures adopted by the German textile industry cannot be compared with the aid granted by the Belgian Government. In fact it is regional aid from which the German textile and

clothing industry benefits, not specific aid for that branch of activity.

The German industry is not able to face subsidized competition from the Belgian industry. In view of the increase in the number of insolvencies in the past two years (Federal Statistical Office — November 1981) Germany too will soon be forced to support its industry. In view of the number of persons occupied in the German industry, almost five times more than in the Belgian industry, the effort of the German public authorities will have to be considerable. It would however be contrary to the Treaty and would endanger the common market itself if the Member States were to vie with one another in offering aid in an endeavour to secure a share of the common market which does not result from free competition.

The German Government refers in addition to the conclusions in the opinion of the Kieler Institut für Weltwirtschaft, which form an integral part of its case. It is clear from that opinion that in essence the Belgian plan pursues a strategy of maintenance and random scattering of funds which is incompatible with the common market.

The *Commission* considers that the Belgian restructuring plan meets the requirements of Article 92 (3) (c) of the Treaty inasmuch as it does not adversely affect trading conditions to an extent contrary to the common interest.

The German Gonvernment's claim to the contrary cannot in any event be supported by the scale of the bilateral trade between Belgium and Germany since the Commission decisions on State aids must be adopted on the basis of intra-Community trade as a whole.

The German textile and clothing industry also receives considerable aid. It is apparent from documents which the German Government forwarded to the Commission in connection with an inquiry conducted by the Commission that in 1977 42.6% of all investments in the textile and clothing industry were supported by State aid granted in various forms. In 1978 the proportion increased to 47.6%. Moreover, the Länder also intervene in favour of this industrial sector in order to save cerain undertakings in difficulty. The position is not fundamentally different in the other Member States.

The Commission considers that by restricting the extent of aid allowed it limited the adverse effects upon trade which necessarily arise from any system of aid. It excluded from the aid scheme the production of synthetic fribres and insisted on a special procedure for men's outerwear, women's stockings and tights, worsted products — sectors in which there are problems of competition and over-capacity throughout the Community — and for carpets, woven-pile fabrics and chenille fabrics, in which the Belgian industry is particularly competitive. Under that special procedure proposals for aid to undertakings employing more than 50 people require the Commission's prior approval.

In conclusion, the Commission makes the following two observations:

According to inspections carried out so far the individual programmes supported by the Claes Plan and authorized by the Commission improve the range of products of the undertaking concerned and must therefore be regarded as active measures for placing the undertakings on a sounder footing, as recommended by the Kieler Institut für Weltwirtschaft in its report on the Belgian Government's programme of aid to the textile and clothing industry.

As for the complaint of unloading economic problems on to the other Member States, the Commission observes that the loss of jobs which, according to the applicant, may be caused in the German textile industry by application of the Belgian plan has been estimated in the aforementioned expert's report by means of the model calculations described on pages 69 to 84 of the report. According to that report the plan represents a strategy of sprinkling aid and maintenance. Obviously, as the expert's report (p.21) concedes, "there is no empirical evidence of the real consequences of the Claes plan. Accordingly, the results of the model calculations are, at least in part, only of a speculative nature.

II — The claim for a declaration that the Commission wrongfully failed to act

In the view of the *German Government* it follows from the submissions made in support of the claim for a declaration of nullity that the Commission has failed to fulfil its obligation under the Treaty to keep competition and aid under constant review. The fact that it did not initiate the main procedure for examining aid and did not prohibit implementation of the Belgian restructuring plan constitutes a failure by the Commission in so far as it had no discretion in that respect.

The *Commission* states that, in so far as the claim for a declaration of nullity and the claim for a declaration that it has failed to fulfil its obligations are based on the same arguments, it has seen fit to set out its views on the validity of the two claims without making any distinction between them.

IV — Answers by the Commission to questions put by the Court

Question 1: How far does the Belgian plan really seek restructuring of the industry affected by the crisis and not simply maintenance of employment?

The Commission states that the Belgian restructuring plan was worked out on the basis of a report made by McKinsey & Co. which makes a thorough and objective analysis of the situation and of the development of the Belgian textile and clothing industry. It is apparent from the report that the only strategy capable of re-establishing the competitivity of the Belgian industry on an international basis lies in a comprehensive restructuring thereof. The McKinsey Report above all contemplates the adaptation of production to trends in the international markets, the modernization of machinery, implementation of new techniques and technology, diversification in branches threatened by competition from non-member countries and an intensification of efforts in relation to innovation.

In the Commission's opinion, the aid granted under the plan is genuine aid for

restructuring and is not in the nature of subsidies designed to ensure the maintenance of non-viable undertakings. In that respect the Commission says:

First, pursuant to its decision of 18 November 1981 the aid is granted selectively and upon application; the granting of aid is subject to the submission of a programme for restructuring by the undertaking concerned and the approval of the review bodies, namely the *Institut du Textile et de la Confection de Belgique* and the *Société Nationale pour la Restructuration de l'Industrie de la Confection et du Textile.* Those two bodies carry out their review on the basis of fixed criteria and within certain quantitative limits.

Further, according to particulars given at the time of notification of the restructuring plan, the Belgian Government contemplated in any event and in spite of the intended aid the closure of a considerable number of undertakings and the elimination of more than 25 000 jobs (McKinsey Report pp. 1 to 15, letter from the Belgian authorities of 16 January 1981 and letter of 4 May 1980 from the Belgian Minister for Economic Affairs to the Commission). Having regard to the number of people employed in the sector on 31 December 1979 that forecast involved a 21% reduction in employment over a period of five years, namely the period over which the plan was originally intended to extend.

Question 2: Why have certain highly competitive branches of the textile and clothing industry (carpets, woven-pile fabrics and chenille fabrics and terry towelling) not been excluded from aid granted under the plan?

The Commission observes that even if a branch of the textile and clothing industry of a Member State is regarded as relatively competitive at the Community level that does not mean that each of the undertakings in that branch has a strong position at the international level.

The structure in the textile and clothing industry of the Member States differs so much from one undertaking to another that a description of the sector based on average values necessarily implies gross generalizations.

To take account of those circumstances and the real situation of each undertaking in the branches considered the Commission decided to subject certain branches to an obligation to give prior notice (bouclé and chenille fabrics, including terry towelling, woven-pile fabrics and carpets).

The Commission considers that that decision made it possible, on the one hand, to take into consideration the particular risk of distorting competition by granting aid in those branches and, on the other hand, to avoid general discrimination against the undertakings in quesiton, as might have resulted from an absolute prohibition of aid to the said branches.

The Commission states that of the 12 proposals for aid notified in 1982 it approved only four. In another four cases its decision was only partially positive and approved only aid which represented genuine investment in re-

structuring. In the remaining four cases it formally refused approval.

Question 3: Has the authorization, originally restricted to one year, to implement the Belgian plan for restructuring been extended?

The Commission states that in a letter dated 10 March 1982 the Belgian Government informed it of a plan intended to supplement the scheme approved for 1982 and to be proposed to the undertakings as an alternative.

On 18 May 1982 the Commission decided to initiate the procedure laid down in Article 92 (2) of the Treaty with regard to the alternative aid scheme (Official Journal 1982, C 166, p. 2).

On 9 February 1983 the Commission decided to authorize the implementation of the new plan subject to observance of the following conditions, which the Belgian Government agreed to accept:

(i) Undertakings in the particularly sensitive areas of worsted, ladies' tights, woven-pile fabrics, tufted carpets and synthetic fibres must be excluded from the plan.

(ii) As regards 11 other branches, of which the Commission has supplied a list, there must be prior notification of aid where the undertaking in question employs more than 150 workers.

(iii) The budget for aid to be granted in 1983 should not exceed BFR 4 000 000 000.

(iv) Investments for restructuring may be financed with the aid of loans from public funds up to 50% (maximum period: 10 years) and an interest rebate of 7% may be granted for five years.

(v) When the loan comes from the capital marked the aid consists solely in the interest rebate. A State guarantee may in such cases be granted to cover as much as 50% of the funds obtained from the capital market.

The conditions imposed for 1983 are more restrictive than those for 1982, especially as regards:

The total budget;

The terms of financing;

The choice of sectors.

The Commission has moreover approved transitional rules relating to the aid programme expiring on 31 December 1982.

In view of the fact that certain applications from undertakings which had to work out a restructuring plan did not reach the Belgian authorities until the end of 1982, it was not always possible, for administrative reasons, to rule on such applications before the end of the year. The Commission therefore accepted that applications for aid duly submitted before the end of the year might be subject until 31 March 1983 to examination, decision and, if necessary, notification pursuant to the terms and conditions in force in 1982.

The Commission has a complete list of the applications in question. The aid which might be granted to the undertakings concerned was restricted to BFR 1 000 000 000, payable out of the budget of BFR 4 000 000 000 allocated for the 1983 programme.

Question 4: Has the volume of exports of Belgian products to the other Member States appreciably increased since the implementation of the plan?

The Commission cites figures from the Statistical Office in Luxembourg to the effect that Belgian exports of products of the textile and clothing industry to other Member States increased in 1982 by 5.8% over the previous year. In the same period imports into Belgium from the other Member States increased by 5.7%.

The Belgian balance of trade in textile products with the other Member States thus improved only very slightly in 1982.

Question 5: What is the proportion of State aid, restricted to BFR 6 800 000 000 in relation to the whole investment costs originally programmed over five years?

The Commission states that "according to the five-year plan originally proposed by Belgium, which provided for investments amounting to BFR 45 700 000 000 but was not approved by the Commission in its original form, the State aid, restricted to BFR 6 800 000 000, amounts to 14.87% of the whole investment costs envisaged for a period of five years."

Question 6: What are the precise terms of the State's financial participation?

The Commission states that in accordance with its decision of 18 November 1981 participation by the Belgian State in a company's capital must not exceed 45% of the investments for restructuring recognized as eligible for aid and approved by the Belgian bodies appointed for that purpose.

Participation is effected by a contribution of capital from the *Société Nationale pour la Restructuration du Textile et de la Confection en Belgique*, a subsidiary of the *Société Nationale d'Investissement*, a State financing agency. It represents normal company capital and gives rise to the same return as private capital.

In view of the fact that the ratio between the capital participation of the State (45% at most of the total investment of the undertaking) and loans (30% at most) is 60 to 40 in the total budget in the aid programme, it follows that the budget fixed for participation in the capital of undertakings is a maximum of 60% of BFR 6 800 000 000, namely BFR 4 080 000 000. The necessary capital is raised as follows:

Long-term borrowings by two bodies — the ITCB and the STCB — from private and public banks at market rates;

Annual grant by the State;

Income arising from payments for specific services supplied to undertakings in the textile and clothing industry (in the field of research, technology and sales promotion);

Sundry other income.

Question 7: What methods for assessing the level of State aid have been adopted in the present case by the Commission and what is the total amount of public, non-repayable aid provided for by the Belgian plan?

The Commission refers to pages 28 and 29 of its defence and says that in the present case it has used the so-called net

grant equivalent method to calculate the level of State aid.

That standard formula is used by the Commission in agreement with all the Member States, especially in assessing regional and sectorial aid schemes.

(a) As regards loans at a reduced rate of interest, they have been treated as aid in accordance with the rules on financing approved by the Commission.

Since the loans are limited to a maximum of 30% of the total investment and enjoy a 7% reduction in interest for a maximum period of five years, the net grant equivalent amounts to 4.2% of the total investment.

Since the total of such loans, including the interest rebate, must not exceed the sum of BFR 2 720 000 000 (the total budget of 6 800 000 000 less the State holdings of 4 080 000 000) the interest rebate represents BFR 177 900 000.

(b) The Belgian State's participation in the capital of undertakings, which is limited to 45% of the total investment costs, relates only to financially, industrially and commercially viable undertakings which are facing problems of re-organization only in the short term. Such participation by the State cannot therefore be regarded as being in the nature of aid.

Question 8: Has the Commission already authorized implementation of an aid scheme of a size comparable to that of the Belgian restructuring plan?

The Commission states that the level of aid, expressed in the budgetary means provided for that purpose, must normally be assessed in relation to certain reference values such as the objective of the programme, the scale of the investments or other entrepreneurial measures, the terms on which aid is granted, the number of jobs directly or indirectly benefiting from the aid and so forth.

Subject to that reservation, the aid for the textile and clothing industry amounts to 150 500 000 ECU. For the sake of comparison the Commission lists a number of sectorial aids approved by it between 1977 and 1982.

In answer to the request by the Court to forward the complete text of the restructuring plan to which the contested decision of 18 November 1981 relates, in the amended version resulting from the negotiations with the Belgian Government, the Commission states that there is no single, complete text of the definitive version of the restructuring plan.

The items making up the programme are shown in documents before the Court, in particular the following:

Notification of the Belgian plan of 28 July 1980;

Extensive correspondence between the Commission and the Government following the notification of 28 July 1980;

Notification of the new plan of 5 August 1981;

Supplement to that notification made by the letter from the Belgian authorities of 10 September 1981 and the letter from the Belgian Minister for Economic Affairs of 1 October 1981;

The contested decision of 18 November 1981 setting out the conditions subject to

which implementation of the Belgian restructuring plan was authorized;

Letter of 9 December 1981 in which the Belgian Minister for Economic Affairs agreed to the conditions fixed by the Commission.

The Commission concludes its observations by stating that subsequently the Belgian Government presumably sent a definitive version of the plan in the form of administrative provisions addressed to the two bodies responsible for implementing and monitoring the plan.

V — Oral procedure

The Government of the Federal Republic of Germany, represented by Dr Martin Seidel and Professor G. Fels, acting as Agents, and the Commission of the European Communities, represented by Mr Götz zur Hausen and Mrs Marie-Josée Jonczy, acting as Agents, presented oral argument at the sitting on 15 November 1983.

The Advocate General delivered his opinion at the sitting on 25 January 1984.

Decision

1 By an application lodged on 9 March 1982 the Government of the Federal Republic of Germany claimed that the Court should:

(i) Pursuant to the first paragraph of Article 173 of the EEC Treaty, declare the authorization, limited to a period of one year, given on 18 November 1981 by the Commission to the Government of the Kingdom of Belgium to implement the plan for restructuring the Belgian textile and clothing industry submitted to the Commission on 28 July 1980 to be void on the ground that it infringes the second sentence of Article 93 (3) and Article 92 (1) and (3) (c) of the Treaty;

(ii) In the alternative, declare, pursuant to Article 175 of the Treaty, that the Commission has infringed Article 92 (1) and (3) and the second sentence of Article 93 (3) of the Treaty by failing to initiate the main review procedure referred to in Article 93 (2) and by failing to adopt a formal decision declaring the Belgian plan incompatible with the common market.

2 By letters dated 22 July and 11 August 1980 the Belgian Government notified the Commission of the general outline of a plan for restructuring the Belgian textile and clothing industry. The Commission treated that plan as

having been notified pursuant to Article 93 (3) of the Treaty and by a letter dated 15 September 1980 requested the Belgian Government to supply additional information, which it received only at the beginning of 1981.

3 It is apparent from the documents before the Court that the preliminary examination of the plan in question gave rise to much correspondence between the Commission and the Belgian Government which led to the drafting of a new plan on 5 August 1981. By a letter of 18 November 1981, addressed to the Belgian Government, the Commission stated that it did not object to implementation of the restructuring plan for one year, subject to observance of the limits and conditions laid down by it and accepted by the Belgian Government.

4 It is not denied that the contested decision was taken after the other Member States had been consulted in multilateral meetings held periodically and devoted to all the cases pending. Within that framework the German Government had requested the Commission not to authorize implementation of the plan on the ground that its sole effect would be to unload the problems of the Belgian industry onto the corresponding industry of the other Member States.

The claim for a declaration that the Commission decision of 18 November 1981 is void

5 In support of its claim for a declaration that the decision is void the Government of the Federal Republic of Germany makes two submissions, namely that the procedural rules laid down in Article 93 (2) and (3) of the Treaty for the review of aids were infringed and that the Belgian restructuring plan is incompatible with the common market.

Infringement of the procedural rules

6 In the view of the German Government, the Commission was bound to initiate the procedure for the review of aid referred to in Article 93 (2) of the Treaty and could not, as it did, confine itself to the preliminary stage of review provided for in Article 93 (3).

7 In support of that submission the German Government contends that the various steps in the preliminary examination conducted by the Commission and the terms of its declaration of 18 November 1981 show that it entertained doubts about the compatibility of the scheme in question with the common market. In disregarding the obligation laid down in such a case by the second sentence of Article 93 (3) of the Treaty to initiate the procedure referred to in Article 93 (2) the Commission confused the object and nature of the two stages of the procedure for reviewing aid, excessively extended the period for the investigation which it could undertake in the preliminary stage and failed to fulfil its obligation under Article 93 (2) to consult the other Member States and the economic and social sectors concerned.

8 The Commission argues as follows: According to Article 93 (3), it is necessary to initiate the main stage of the procedure only if at the end of the preliminary examination the plan notified is considered incompatible with the common market. However, the period within which it is required to carry out that examination begins to run only from the time when it is in a position to form a view on the plan notified, that is to say after it has obtained necessary supplementary information and established appropriate contacts with the Member State concerned capable, perhaps, of leading to the preparation of an amended aid scheme. However, the aforesaid period begins to run from notification of the plan if the Commission maintains silence.

9 Article 93 (3) of the Treaty provides:

"The Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. If it considers that any such plan is not compatible with the common market having regard to Article 92, it shall without delay initiate the procedure provided for in paragraph 2. The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision."

10 In the absence of the implementing regulations which Article 94 of the Treaty empowers the Council to adopt, the Court has already had occasion to explain the object and scope of Article 93 (3).

11 Thus in judgments of 11 December 1973 (Case 120/73, *Lorenz* v *Germany*, [1973] ECR 1471; Case 121/73, *Markmann* v *Germany*, [1973] ECR 1495; Case 122/73, *Nordsee* v *Germany*, [1973] ECR 1511; and Case 141/73 *Lohrey* v *Germany*, [1973] ECR 1527) the Court recognized that the preliminary stage of the procedure for reviewing aids under Article 93 (3) is intended merely to allow the Commission to form a *prima facie* opinion on the partial or complete conformity with the Treaty of the aid schemes notified to it. The purpose of that provision, which seeks to prevent the implementation of aid contrary to the Treaty, requires that the prohibition laid down in that respect by the last sentence of Article 93 (3) should be effective during the whole of the preliminary stage. Therefore the Commission must act with due expedition in order to take account of the interest of the Member States in obtaining clarification in cases in which there may be an urgent need to take action; otherwise, after the expiry of an appropriate period, which the Court set at two months, the Member State concerned may implement the measures in question after giving the Commission prior notice thereof.

12 According to those same judgments, the Commission must inform the Member State concerned if, after the preliminary examination, it comes to the conclusion that the system of aid notified is compatible with the Treaty. If, after notification of a positive decision by the Commission, the aid in question is implemented it becomes as an "existing aid" and as such is subject to the constant review provided for in Article 93 (1). If, on the other hand, the Commission considers that the aid is not compatible with the common market it must without delay initiate the procedure provided for in Article 93 (2), which involves the obligation to give the parties concerned notice to submit their comments.

13 The arguments put forward in the present case by the German Government lead the Court to add that one of the main characteristics distinguishing the examination under Article 93 (2) from the preliminary examination under Article 93 (3) resides in the fact that the Commission is under no obligation at the preliminary stage to give notice to the parties concerned to submit their comments. However, such a procedure, which guarantees the other Member States and the sectors concerned an opportunity to make their views known and allows the Commission to be fully informed of all the facts of the case before taking its decision, is essential whenever the Commission has serious difficulties in determining whether a plan to grant aid is compatible

with the common market. It follows that the Commission may restrict itself to the preliminary examination under Article 93 (3) when taking a decision in favour of a plan to grant aid only if it is convinced after the preliminary examination that the plan is compatible with the Treaty. If, on the other hand, the initial examination leads the Commission to the opposite conclusion or if it does not enable it to overcome all the difficulties involved in determining whether the plan is compatible with the common market, the Commission is under a duty to obtain all the requisite opinions and for that purpose to initiate the procedure provided for in Article 93 (2).

14 The application of those principles to the facts of the present case leads to the conclusion that, in the first place, the Commission was not able to accept the Belgian plan as notified to it and was led to enter into extensive bilateral negotiations with the Belgian Government aimed at making substantial amendments to the original plan in order to make it compatible with the common market. Thus the Belgian Government agreed *inter alia* to amend all the rules governing the financing of its plan, not to allow the beneficiaries of the plan to receive any other form of aid, to exclude certain branches of the Belgian textile and clothing industry from its scope and to give prior notice to the Commission of any measures of aid contemplated in favour of undertakings belonging to certain other branches, a list of which was drawn up by common agreement.

15 In the second place, it must be pointed out that by reason of those very negotiations 16 months elapsed between notification of the plan and the favourable decision of the Commission; that well exceeds the period normally required for a preliminary examination under Article 93 (3).

16 Finally, it must be observed that although the Commission ultimately agreed to recognize the amended Belgian plan as compatible with the common market, subject to compliance with the conditions laid down, it did not consider that all the difficulties raised by the case had been resolved. In the contested decision of 18 November 1981 the Commission stated that despite the important amendments made to the original plan it "remains very concerned about the effects which application of the plan may have on competition within the Community" and therefore restricted the duration of its application to a single year.

17 The various factors referred to above lead to the conclusion that the Commission encountered serious difficulties in considering whether the plan for restructuring the Belgian textile and clothing industry notified to it on 28 July and 11 August 1980 was compatible with the Treaty. The Commission was therefore under an obligation to initiate the consultation procedure provided for in Article 93 (2) before taking its decision.

18 Although it is true that the Commission kept the other Member States informed through multilateral meetings of the negotiations with the Belgian Government, it is clear from the argument before the Court that those consultations did not offer those concerned or the Commission itself the same guarantees and advantages which the formal consultations provided for in Article 93 (2) offer.

19 In view of the foregoing it must be recognized that the Commission's decision of 18 November 1981 infringed an essential procedural requirement and must be declared void on that ground without its being necessary to consider the other submission pleaded in the application.

The alternative claim for a declaration that the Commission wrongfully failed to act

20 It must be observed that the alternative claim was made in view of the possibility that the Court might declare the contested decision of 18 November 1981 void for infringement of procedural rules without ruling on the submission that the Belgian restructuring plan is incompatible with the common market. Since that is precisely what has happened it is necessary to give a ruling on that claim in spite of the declaration that the contested decision is void.

21 The Commission considers that the claim is inadmissible since the conditions laid down by Article 175 of the Treaty are not satisfied.

22 The German Government points out that at a meeting on 4 December 1981 between the German Federal Minister for the Economy and the member of the Commission responsible for competition matters it informed the latter

that it expected the Belgian plan for restructuring to be declared incompatible with the common market; it also contends that the letter of 7 January 1982 with which the Commission forwarded to the other Member States a copy of the letter sent on 18 November 1981 to the Belgian Government cannot be regarded as a definition of its position within the meaning of Article 175 of the Treaty.

23 The second paragraph of Article 175 provides that an action for failure to act "shall be admissible only if the institution concerned has first been called upon to act". Although it is apparent from the documents before the Court that the German Government expressed the opinion that the Belgian plan was incompatible with the common market, it did not expressly call upon the Commission to act. The first condition required by Article 175 is therefore not satisfied.

24 Accordingly, the alternative claim for a declaration that the Commission wrongfully failed to act is inadmissible and must be dismissed.

Costs

25 Pursuant to Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

26 Since the defendant has been unsuccessful it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares void the Commission decision of 18 November 1981;**

2. **Dismisses the remaining claims in the action brought by the Government of the Federal Republic of Germany;**

3. **Orders the Commission to pay the costs.**

Mertens de Wilmars Koopmans Bahlmann

Galmot Pescatore Mackenzie Stuart O'Keeffe

Bosco Due Everling Kakouris

Delivered in open court in Luxembourg on 20 March 1984.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President

OPINION OF ADVOCATE GENERAL SIR GORDON SLYNN DELIVERED ON 25 JANUARY 1984

My Lords,

As is well known, the textile and clothing industries in the Community have been widely affected both by the recession and by the increase of relatively inexpensive products from third countries. Those industries are an important sector of the economy of the Kingdom of Belgium, and the Belgian Government has for some years been concerned to take steps to assist them. What it could do was obviously affected by the qualified prohibition on State aids, contained in Article 92 of the EEC Treaty and subject to the powers of supervision conferred by Article 93 of that Treaty on the Commission.

After a long series of discussions, the terms of a five-year plan for restruc-