JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

23 November 2006 *

In Case T-217/02,

Ter Lembeek International NV, established in Wielsbeke (Belgium), represented by J.-P. Vande Maele, F. Wijckmans and F. Tuytschaever, lawyers,

applicant,

v

Commission of the European Communities, represented by G. Rozet and H. van Vliet, acting as Agents,

defendant,

APPLICATION for annulment of Articles 1 and 2 of Commission Decision 2002/825/EC of 24 April 2002 on the State aid implemented by Belgium for the Beaulieu Group (Ter Lembeek International) (OJ 2002 L 296, p. 60),

* Language of the case: Dutch.

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fifth Chamber, Extended Composition),

composed of M. Vilaras, President, M.E. Martins Ribeiro, F. Dehousse, D. Šváby and K. Jürimäe, Judges,

Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 21 February 2006,

gives the following

Judgment

Legal context

Community law

1 Article 87(1) EC provides:

'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to

distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.'

2 Under Article 88 EC:

'1. The Commission shall, in cooperation with Member States, keep under constant review all systems of aid existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the common market.

2. If, after giving notice to the parties concerned to submit their comments, the Commission finds that aid granted by a State or through State resources is not compatible with the common market having regard to Article 87, or that such aid is being misused, it shall decide that the State concerned shall abolish or alter such aid within a period of time to be determined by the Commission.

If the State concerned does not comply with this decision within the prescribed time, the Commission or any other interested State may, in derogation from the provisions of Articles 226 and 227, refer the matter to the Court of Justice direct.

On application by a Member State, the Council may, acting unanimously, decide that aid which that State is granting or intends to grant shall be considered to be compatible with the common market, in derogation from the provisions of Article 87 or from the regulations provided for in Article 89, if such a decision is justified by

exceptional circumstances. If, as regards the aid in question, the Commission has already initiated the procedure provided for in the first subparagraph of this paragraph, the fact that the State concerned has made its application to the Council shall have the effect of suspending that procedure until the Council has made its attitude known.

If, however, the Council has not made its attitude known within three months of the said application being made, the Commission shall give its decision on the case.

3. 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 87, 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.'

3 Article 7 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ 1999 L 83, p. 1), entitled 'Decisions of the Commission to close the formal investigation procedure', provides:

'1. Without prejudice to Article 8, the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.

2. Where the Commission finds that, where appropriate following modification by the Member State concerned, the notified measure does not constitute aid, it shall record that finding by way of a decision.

3. Where the Commission finds that, where appropriate following modification by the Member State concerned, the doubts as to the compatibility of the notified measure with the common market have been removed, it shall decide that the aid is compatible with the common market (hereinafter referred to as a "positive decision"). That decision shall specify which exception under the Treaty has been applied.

4. The Commission may attach to a positive decision conditions subject to which an aid may be considered compatible with the common market and may lay down obligations to enable compliance with the decision to be monitored (hereinafter referred to as a "conditional decision").

5. Where the Commission finds that the notified aid is not compatible with the common market, it shall decide that the aid shall not be put into effect (hereinafter referred to as a "negative decision").

6. Decisions taken pursuant to paragraphs 2, 3, 4 and 5 shall be taken as soon as the doubts referred to in Article 4(4) have been removed. The Commission shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. This time-limit may be extended by common agreement between the Commission and the Member State concerned.

7. Once the time-limit referred to in paragraph 6 has expired, and should the Member State concerned so request, the Commission shall, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission shall take a negative decision.'

4 Article 13 of Regulation No 659/1999, entitled 'Decisions of the Commission', states:

'1. The examination of possible unlawful aid shall result in a decision pursuant to Article 4(2), (3) or (4). In the case of decisions to initiate the formal investigation procedure, proceedings shall be closed by means of a decision pursuant to Article 7. If a Member State fails to comply with an information injunction, that decision shall be taken on the basis of the information available.

2. In cases of possible unlawful aid and without prejudice to Article 11(2), the Commission shall not be bound by the time-limit set out in Articles 4(5), 7(6) and 7(7).

3. Article 9 shall apply mutatis mutandis.'

5 Article 14 of Regulation No 659/1999, which concerns the recovery of aid, states:

'1. Where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (hereinafter referred to as a "recovery decision"). The Commission shall not require recovery of the aid if this would be contrary to a general principle of Community law.

2. The aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its recovery.

3. Without prejudice to any order of the Court of Justice of the European Communities pursuant to Article [242] of the Treaty, recovery shall be effected without delay and in accordance with the procedures under the national law of the Member State concerned, provided that they allow the immediate and effective execution of the Commission's decision. To this effect and in the event of a procedure before national courts, the Member States concerned shall take all necessary steps which are available in their respective legal systems, including provisional measures, without prejudice to Community law.'

National law

6 Article 1 of the Royal Decree of 7 May 1985 concerning the issuing of non-voting preferential shares by public limited companies in national sectors (*Moniteur belge* of 11 May 1985, p. 6873; 'the Royal Decree of 1985') provides:

'Public limited companies in [certain sectors] may, under the conditions laid down in this decree, issue non-voting shares representative of their capital, hereinafter referred to as "non-voting preferential shares"'.

7 Article 2 of the Royal Decree of 1985 provides inter alia that the Société nationale pour la restructuration des secteurs nationaux ('SNRSN') can subscribe for such non-voting preferential shares.

8 Article 3 of the Royal Decree of 1985 provides:

'Without prejudice to the conditions laid down in this decree, the rules for issuing non-voting preferential shares, the conditions and procedures relating thereto and the rights attached to those shares shall be the subject of an agreement concluded between the issuing company and the legal persons referred to in Article 2 which subscribe for those shares, and shall be registered in the statutes of the issuing company. The agreement shall also specify the conditions under which non-voting preferential shares can be repurchased by the issuing company or purchased by third parties. The price may not be lower than 80% of the issue price.

The agreement referred to in the first paragraph of this article must be approved in advance by the Minister for Finance, the Minister for Economic Affairs and the Minister for the Budget.'

9 Article 4 of the Royal Decree of 1985 states:

'The following conditions shall apply to the issuing of non-voting preferential shares:

(1) non-voting preferential shares are and shall remain registered;

(2) they shall not represent more than 49% of the subscribed capital;

(3) where profits are distributed, those shares shall give entitlement, notwithstanding any contrary provision in the statutes, to a preferential dividend of 2% of their issue price actually paid up;

(4) notwithstanding any contrary provision in the statutes, those shares shall be preferential as regards reimbursement of the contribution, without prejudice to the right which may be conferred on them by the statutes in the distribution of the surplus upon liquidation.

...'

Facts giving rise to the dispute

Verlipack Group and Beaulieu Group

10 Until it was declared bankrupt on 18 January 1999, the Verlipack Group had been Belgium's largest producer of hollow container glass, with a market share of 20% in Belgium and 2% in the European Union. It employed 735 people at its Ghlin, Jumet and Mol plants (Belgium).

11 The Beaulieu Group, which is the name of the Belgian holding of companies active in the carpeting and synthetic fibres market, is the world's second-largest carpet manufacturer and by far the largest European carpet manufacturer. The group is controlled by the holding company Ter Lembeek International NV.

Period preceding the Beaulieu Group's entry as a shareholder of the Verlipack Group: agreement of 30 April 1985 between the De Backer Group (Adsum) and SNRSN

12 In 1985 Verlipack became bankrupt and its assets, valued at Belgian francs (BEF) 410 million, were taken over by SA Adsum, a company belonging to the De Backer Group, which has no connection with the applicant.

13 Under an agreement of 30 April 1985, Adsum injected those assets into three new companies, NV Verlipack Mol, SA Verlipack Jumet and SA Verlipack Ghlin, in the capital of which SNRSN also held a stake of BEF 620 020 000. As consideration for its contribution to the authorised capital, SNRSN received so-called 'Category B' non-voting shares each with a nominal value of BEF 10 000 and, as consideration for a non-capital contribution, so-called 'Category 1' and 'Category II' profit shares. In 1985 SNRSN held a 49% stake in the capital of the group corresponding solely to the Category B shares (Article 3(1)(a) of the agreement of 30 April 1985). That holding was approved by the Commission.

14 In accordance with a special law of 15 January 1989, the Walloon Region acquired the non-voting shares for the Ghlin and Jumet plants, which are situated within its linguistic region, and the Flemish Region acquired those for the Mol plant.

15 The agreement of 30 April 1985 provided at Article 10:

'Adsum shall endeavour to ensure that the companies reach agreement with [SNRSN] that each year, and for the first time five years after the conclusion of this

agreement, they will make an offer to repurchase at least 10% of the Category B shares and 10% of the Category I profit shares, to the extent that the profits carried forward and the available reserves of the companies allow.

The repurchase price will be equal to the nominal value of those shares and will be BEF 10 000 for Category I profit shares.

In the absence of such agreements between the companies and [SNRSN], Adsum will in any event carry out the obligations provided for in this article.'

16 Article 11 of that agreement also provided:

'Adsum agrees to grant each of the companies an option to purchase the Category B shares and the Category I profit shares and, to that end, to conclude with each of those companies an agreement in the terms set out in Annex 1 to this agreement.'

17 The second paragraph of Article 14 of the agreement of 30 April 1985 stated:

'To the extent that a transfer by Adsum of the shares which it holds in the companies would lead to a change in the control and/or the management of the companies, that transfer shall require the consent of [SNRSN].'

18 Article 16 of the agreement of 30 April 1985 stipulated:

'The statutes of the [Verlipack] companies shall be amended to take account of the clauses of this agreement.'

19 The applicant states, without being contradicted on that point by the Commission, that it was not involved in the drafting of the agreement of 30 April 1985 since it was not a shareholder in the Verlipack companies at that time, contrary to what is mentioned at recital 7 in the preamble to Commission Decision 2002/825/EC of 24 April 2002 on the State aid implemented by Belgium for the Beaulieu Group (Ter Lembeek International) (OJ 2002 L 296, p. 60; 'the contested decision').

Entry of the Beaulieu Group as shareholder of the Verlipack Group and addendum of 18 November 1987 to the agreement of 30 April 1985

20 During the period 1985-87, Adsum transferred its holdings (51%) in the three Verlipack companies to another of its subsidiaries, Imcour NV, which acceded to the agreement of 30 April 1985 and which was put into liquidation on 25 June 1987 for the purpose of being split into three companies, namely Imcour Holding NV, Imcour Lease NV and Patrimcour NV. The shares in Verlipack Jumet, Verlipack Ghlin and Verlipack Mol became part of Imcour Holding's assets.

21 When Imcour was divided in 1987, the Beaulieu Group purchased from the De Backer Group Imcour Holding's shares for BEF 425 million and thus became indirect owner of Verlipack Jumet, Verlipack Ghlin and Verlipack Mol.

22 In addition, by addendum of 18 November 1987 to the agreement of 30 April 1985 and in accordance with the second paragraph of Article 14 of the agreement of 30 April 1985, SNRSN approved the (indirect) transfer of the three Verlipack companies to the Beaulieu Group on condition that Imcour Holding and Mr De Clerck adhered to the agreement of 30 April 1985. Moreover, SNRSN required the Beaulieu Group to undertake also to keep the three Verlipack companies operational for two more years. That addendum was signed by all the parties concerned, namely Adsum, SNRSN, Imcour Holding, Mr De Clerck and Mr De Backer.

23 Under Article 3 of the addendum of 18 November 1987:

'From 1 October 1987 the undersigned Imcour NV and Mr R. De Clerck undertake irrevocably to take over and carry out all the rights and obligations, as set out in the agreement of 30 April 1985 and the annex thereto, of Adsum NV and Mr De Backer on that date.'

24 Article 4 of that addendum stated:

'In the light of Articles 1 and 3, from 1 October 1987, all references in the agreement of 30 April 1985 and its annex to "Adsum NV" shall be read as "Imcour NV" and all references to "Mr W. De Backer" shall be read as "Mr R. De Clerck" ...'

25 Article 5 of that addendum stated:

'Entitlement to the repurchase option shall subsist in accordance with the rules laid down in the annex to the agreement of 30 April 1985 as regards SA Verlipack Ghlin, Mol and Jumet.'

Obligation to repurchase the shares and profit shares of SNRSN by the three Verlipack companies contained in the agreement of 30 April 1985

26 On 1 May 1990, as the period of five years provided for in Article 10 of the agreement of 30 April 1985 had expired, the annual obligation to repurchase 10% of the Category B shares and the Category I profit shares started to run. According to the applicant, which was not contradicted on that point by the Commission, the Belgian public authorities required the three Verlipack companies to carry out the obligation to repurchase their Category B shares and their Category I profit shares. On account of their financial incapacity, the Beaulieu Group had to carry out that obligation in accordance with a very precise timetable. Between April 1991 and April 1994, the Beaulieu Group paid BEF 213 100 000 to the public shareholder in five instalments (April 1991, May 1991, April 1992, April 1993 and April 1994).

27 Following that repurchase, SNRSN (which became, for the Walloon Region, the Société de gestion des participations de la Région wallonne dans des sociétés commerciales (management company for the holdings of the Walloon Region in commercial firms) ('Sowagep')) still held (i) 5 087 Category B non-voting shares and 3 937 Category I profit shares in SA Verlipack Ghlin, that is to say a total of 9 024 shares which were to be repurchased over a period of five years at the nominal unit price of BEF 10 000 provided for in the agreement of 30 April 1985, that is to say for a total price of BEF 90 240 000 and (ii) 2 923 Category B non-voting shares and 2 267 Category I profit shares in SA Verlipack Jumet, that is to say a total of 5 190 shares which were to be repurchased over a period of five years at the nominal unit price of BEF 10 000 provided for in the agreement of 30 April 1985, that is to say for a total price of BEF 51 900 000. The overall price of those 14 214 shares and profit shares was therefore BEF 142 140 000.

28 Following a number of capital increases by the private shareholders (Imcour Holding, which became SA Imcopack Wallonie, owner of the Ghlin and Jumet sites,

and NV Imcopack Vlaanderen, owner of the Mol site), the share of the public financing in the Verlipack Group was gradually reduced to the point that, at the end of this gradual disengagement, the public authorities held no more than 20.7% of the capital of that group.

Aid to the Verlipack Group in 1992

29 In 1992 the Verlipack Group received two investment grants totalling BEF 502 122 500 under a regional aid scheme. The decision by Société régionale d'investissement (set up by the Law of 2 April 1962) to grant a BEF 500 million convertible equity loan (*prêt participatif*) was also the subject of a Commission decision of 25 November 1992 not to raise any objections (OJ 1993 C 83, p. 3). That loan was not however released.

30 According to the explanations of the Belgian Government given in the course of the procedure resulting in Commission Decision 2001/856/EC of 4 October 2000 concerning State aid to Verlipack, Belgium (OJ 2001 L 320, p. 28), the Verlipack Group was experiencing problems due to the quality of its management and, in particular, its production, so that the Beaulieu Group could not alone assume the burden and management of its BEF 5 500 million investment programme, which explains why the Walloon Region did not pay the aid authorised.

Entry of the Heye-Glas Group as shareholder of the Verlipack Group

31 In 1996 the losses of the three Verlipack companies continued to accumulate, which meant that they would have been unable to honour the end-of-1996 repayment

deadlines for bank loans. In those circumstances, the Beaulieu Group decided to restructure the shareholding and negotiate with the German group Heye-Glas ('Heye'), one of the leading German glass manufacturers.

32 On 1 September 1996 the Verlipack Group and Heye signed a technical cooperation agreement which was extended, on 11 April 1997, to cover managerial and financial assistance, with Heye becoming directly involved in the management and running of the Verlipack Group.

Agreement of 18 December 1996

33 By agreement of 18 December 1996 concluded between the applicant and Sowagep, the shares and profit shares held by Sowagep in Verlipack Ghlin and Verlipack Jumet were repurchased by the Beaulieu Group. According to that agreement, the applicant acquired from Sowagep the following holdings: 5 087 Category B non-voting shares and 3 937 Category I profit shares in Verlipack Ghlin in consideration for payment of the sum of BEF 72 192 000, and 2 923 Category B non-voting shares and 2 267 Category I profit shares in Verlipack Jumet in consideration for payment of the sum of BEF 41 520 000, that is to say a total of 14 214 shares and profit shares representing the sum of BEF 113 712 000 payable to Sowagep 'on 31 December 2001, net-net, without interest'.

Formation of Verlipack Holding I and Verlipack Holding II

34 On 24 January 1997 the Beaulieu Group and Heye formed an umbrella holding, Verlipack Holding I. The latter had equity capital of BEF 1 030 500 000, of which

BEF 515 500 000 was contributed by Heye, with the rest comprising all of the equipment of the three operating sites contributed by the Beaulieu Group and valued at BEF 515 million. On 11 April 1997 a second holding, Verlipack Holding II, was formed, with a capital of BEF 1 230 500 000 (Verlipack Holding I holding 100 000 shares worth BEF 1 030 500 000 and Sowagep holding 19 408 shares worth BEF 200 million). The management bodies for the whole of the new industrial group were concentrated at the level of Verlipack Holding II, in which Heye held a majority, and there was single management of the group's various departments.

Position of the companies in the Verlipack Group in 1997

35 The results announced by Heye and Verlipack worsened significantly in 1997. On 30 November of that year the provisional and unaudited consolidated position revealed a net loss for that year of BEF 828 592 044.

Relaunch agreement (Heads of Agreement) of 5 June 1998

36 On 5 June 1998 a relaunch agreement (Heads of Agreement) was concluded by the partners (banks, Beaulieu Group, Heye and Sowagep) on account of the deterioration in the position of the companies in the Verlipack Group. That agreement provided, as regards Heye, for a capital contribution of BEF 200 million and, as regards the Walloon Region, first, for the conversion into capital of the BEF 150 million subordinated loan granted to Verlipack Holding II by that region in 1997 and, second, for an increase of BEF 100 million in the capital of Verlipack Holding II, for which the Walloon Region was to find a private investor. According to the Belgian authorities (letter of 11 January 2001, registered as received on 15 January

2001), as regards the search for a new investor, and in order to ensure that the relaunch plan could be implemented immediately, the Beaulieu Group offered to put up the necessary funds 'provided that this was only a temporary measure and that the funds would be repaid to it by the new investor which Sowagep was to find'. They add that the Beaulieu Group, which the Heads of Agreement provided would waive a debt of BEF 600 million, had every interest in ensuring that the relaunch plan would produce the anticipated results.

37 According to the minutes of the extraordinary general meeting of the shareholders of Verlipack Holding II of 26 June 1998, it was decided to increase Verlipack's capital with a contribution from Heye of BEF 200 million for 19 408 new shares and a BEF 100 million injection by Worldwide Investors Luxembourg ('Worldwide Investors') in exchange for 9 704 new shares. According to the Belgian Government, Worldwide Investors, which was found by the Beaulieu Group, carried out the increase in the capital on behalf of that group.

Addendum of 20 November 1998 to the agreement of 18 December 1996

38 Since the new relaunch plan did not achieve the expected results and the Walloon Region had not yet been able to find a new private investor, that region and the Beaulieu Group decided, on 20 November 1998, to amend the terms of the agreement of 18 December 1996 by an addendum ('the addendum of 20 November 1998') which provides that payment for the shares acquired by Beaulieu in Verlipack Ghlin and Verlipack Jumet in the sum of BEF 113 712 000 pursuant to the agreement of 18 December 1996 'could be made either by bank transfer to the account [of the Walloon Region] or by the transfer in lieu of payment of 9 704 shares in the capital of SA Verlipack Holding II' at the latest by 31 December 2001.

39 On 21 December 1998 Worldwide Investors transferred 9 704 shares in Verlipack Holding II to the Beaulieu Group. In return, the Beaulieu Group transferred 9 704 shares in Verlipack Holding I to Worldwide Investors. Between 21 and 31 December 1998, the Beaulieu Group then transferred 9 704 shares in Verlipack Holding II to the Walloon Region 'in exchange for the waiver of the Beaulieu [Group's] debt to the region'.

40 That last transfer, which is the subject of the addendum of 20 November 1998, took place several weeks before Verlipack filed for bankruptcy. It took the form of a transfer in lieu of payment to clear the Beaulieu Group's debt to the Walloon Region resulting from that group's acquisition in December 1996 of the Verlipack shares held by the Walloon Region, valued at BEF 113 712 000, repayment of which, without interest, was not to begin until 31 December 2001.

41 On 8 January 1999 Verlipack sought a court-approved arrangement with creditors for the Jumet and Ghlin plants and announced the closure of the Mol plant. On 11 January 1999 the Tribunal de commerce, Turnhout (Belgium) (Turnhout Commercial Court), declared Verlipack Mol bankrupt and on 18 January 1999 the Tribunal de commerce, Mons (Belgium) (Mons Commercial Court), declared bankrupt the six companies in the glassmaking Verlipack Group (the Ghlin and Jumet plants, Verlipack Belgium, Verlipack Engineering, Verlimo and Imcour Lease).

42 Recognising that it no longer had enough liquidity or assets to meet its debts, Verlipack Holding II filed for bankruptcy before the Mons Commercial Court on 11 February 1999, that court stipulating that the suspension of payments was effective from June 1998. Sowagep announced to the Mons Commercial Court that it did not intend to pursue recovery of its claim, which had the effect of granting a

credit to its debtor. Consequently, the Mons Commercial Court found, by judgment of 31 May 1999, that the conditions of bankruptcy on the part of Verlipack Holding II were not met even though, now that its object no longer existed, it was destined merely to be put into liquidation.

Decision 2001/856 and the formal investigation procedure which resulted in the contested decision

43 By Decision 2001/856, the Commission terminated the Article 88(2) EC procedure in respect of some of the aid granted by the Kingdom of Belgium to the Verlipack Group. By that same decision, it revoked its decision of 16 September 1998 not to raise any objections to part of the aid (OJ 1999 C 29, p. 13) on the ground that it was based on incorrect information, declared part of that aid incompatible with the common market and ordered its recovery.

44 The Kingdom of Belgium brought an action for annulment of that decision before the Court of Justice, which dismissed the action by judgment of 3 July 2003 in Case C-457/00 *Belgium* v *Commission* [2003] ECR I-6931.

45 During the examination of the aid which resulted in Decision 2001/856, the Commission was informed of other measures that could constitute aid for the Verlipack Group or the Beaulieu Group.

46 In its response to the initiation of the formal investigation procedure which resulted in the adoption of Decision 2001/856, the Kingdom of Belgium had indicated to the

Commission by letter of 28 September 1999 that the transfer in lieu of payment that took place in December 1998 to clear the Beaulieu Group's debts to the Walloon Region could be regarded as a 'further increase in Verlipack's capital financed by the Beaulieu Group, which has been repaid by having its debt to the Walloon Region cleared'.

47 By letter of 5 July 2000 addressed to the Kingdom of Belgium, the Commission stated inter alia that it had doubts concerning possible aid granted to the Beaulieu Group by the Walloon Region on the ground that that group had secured payment terms when buying the shares in the Jumet and Ghlin plants in December 1996 which would not have been acceptable to a private financial institution. Moreover, it questioned whether the transfer in lieu of payment which had taken place a few weeks before Verlipack filed for bankruptcy did not constitute aid to the Beaulieu Group.

48 In those circumstances, the Commission requested the Kingdom of Belgium to provide it with information on the following aspects: 'the activities of Worldwide Investors; the steps taken by Sowagep to find a private investor; the use made of the BEF 100 million subscribed by Worldwide Investors in June 1998; an explanation of the difference in the value of the 14 214 shares acquired by the Beaulieu Group in 1996; an explanation of the Heye Group's ignorance of these transactions involving intervention by the Walloon authorities; an explanation of the four-year grace period granted by the Walloon Region to the Beaulieu Group for payment for the 14 214 shares and of the circumstances which, several weeks before Verlipack filed for bankruptcy and therefore at a time when it was fully aware of the fact that Verlipack was making losses, prompted the Walloon Region to accept early repayment of this debt'. In that same letter, the Commission queried who was the real beneficiary of the increase in Verlipack's capital subscribed in June 1998 by Worldwide Investors.

49 In the absence of any reply by the Belgian authorities to that letter of 5 July 2000, the Commission sent a reminder on 29 September 2000. Since the Kingdom of Belgium

failed to submit the information requested within the period prescribed, the Commission, by letter of 19 January 2001, in accordance with Article 10(3) of Regulation No 659/1999, ordered the Kingdom of Belgium to provide it with all the documents, information and data necessary to enable it to examine the compatibility of the measures in favour of Verlipack or the Beaulieu Group in the light of Article 87 EC.

50 However, before that notification, the Kingdom of Belgium replied, by letter of 11 January 2001 registered as received on 15 January 2001, to the Commission's letter of 5 July 2000, stating that, despite Verlipack's poor results during 1997, a reduction in the scale of losses was observed after March 1998 as a result of a marked increase in productivity. The Belgian authorities also stated that, by agreement (Heads of Agreement) of 5 June 1998, the private and public partners had decided to adopt a new relaunch plan. Those authorities stated that their reply to the Commission's request was necessarily incomplete on account of the Beaulieu Group's lack of cooperation.

51 In the light of the information available, the Commission concluded on 6 June 2001 that the abovementioned debt waiver involved a transfer of public resources on the part of the Belgian State that constituted prima facie State aid within the meaning of Article 87 EC. It also took the view that doubts existed as to the compatibility with Article 87 EC and Article 61 of the Agreement on the European Economic Area of the aid received by the Verlipack or Beaulieu Group, and therefore initiated the formal investigation procedure laid down in Article 88(2) EC in respect of that aid. The Kingdom of Belgium was informed of this by letter of 8 June 2001, and the Commission requested the parties concerned to submit their comments to it (OJ 2001 C 313, p. 2).

52 The Collectif de défense des travailleurs licenciés de Verlipack à Jumet et à Ghlin (an association of workers laid off at Verlipack's Jumet and Ghlin plants), by letter of 3 December 2001, the United Kingdom, by letter of 7 December 2001, and the Kingdom of Belgium, by letter received at the Commission on 16 January 2002, submitted comments.

53 By letter of 23 July 2001, the applicant's legal adviser was informed of the decision to initiate the formal investigation procedure. The Commission did not receive any comments from the applicant.

54 By letter received by the Commission on 26 July 2001, the Kingdom of Belgium replied to the Commission by repeating the comments which it had submitted in response to the order that it had received.

55 The Commission adopted the contested decision on 24 April 2002.

Contested decision

56 The Commission stated in the contested decision that 'leaving aside the complexity of the legal and financial arrangements behind the intervention in June 1998 of Worldwide Investors, ... in December 1998 the Beaulieu Group settled a debt of BEF 113 712 000 towards the Walloon Region by transferring, in lieu of payment, 9 704 shares in Verlipack Holding II, the nominal value of which was BEF 100 million but the real value of which was to prove significantly lower given the assets position of the company'.

57 As regards the price at which, by the agreement of 18 December 1996, the applicant repurchased certain shares held by the Walloon Region in the Verlipack companies, the Commission found inter alia that, in such a case of repurchase, the requirement to set a price equivalent to 80% of the issue price was a statutory one under Belgian law imposed without distinction on anyone wishing to purchase such preferential shares.

58 The Commission concluded that 'the debt of BEF 113 712 000 of the Beaulieu Group to the Walloon Region was a definite debt the repayment of which was in no way linked to the financial situation of the Verlipack Group'.

59 The Commission therefore found that by accepting shares in Verlipack Holding II which were of no value in clearance of a definite debt of BEF 113 712 000, the Walloon Region effectively waived a debt of that amount vis-à-vis the Beaulieu Group.

60 The Kingdom of Belgium claimed, however, that the Beaulieu Group had not derived any economic benefit from that operation; by waiving the debt, the Kingdom of Belgium was compensating the Beaulieu Group for the 'capital contribution made in June 1998'.

61 The Commission none the less noted in the contested decision that the 'Heads of Agreement' of 5 June 1998 provided only that the Walloon authorities would undertake to introduce an investor, and not that it would contribute BEF 100 million to the capital of Verlipack Holding II.

62 The Commission also found that the Kingdom of Belgium had not demonstrated, first, that an agreement actually existed under which the Beaulieu Group took over the undertaking made by the Walloon Region to find an investor that would put up BEF 100 million and, second, that there was also another, separate and more extensive agreement under which the Walloon Region guaranteed to the Beaulieu Group repayment of the BEF 100 million that a private investor should have contributed.

63 The Commission found that the only incontrovertible aspect was the fact that on 20 November 1998 the Walloon Region had waived a definite debt of BEF 113 712 000 owed to it by the Beaulieu Group in exchange for 9 704 shares in a company, Verlipack Holding II, whose situation had worsened to the extent that in June 1998 it had required a new refinancing plan in the context of which it had not been possible to find a private investor willing to contribute BEF 100 million to its capital. The Commission observed that that company's capital had been valued on 11 February 1999 at BEF 1.

64 As regards the possible compatibility of the State aid with the common market, although the Kingdom of Belgium has not put forward any ground asserting that it is compatible, the Commission none the less considered that point and found, in essence, that the aid granted to the Beaulieu Group was simply operating aid which relieved the Beaulieu Group of the costs it would have had to bear on its own under the normal conditions of its day-to-day operation or activities. It observed that such aid was incompatible with the Community rules since the Beaulieu Group's production plants were not situated in one of the regions referred to in Article 87(3)(a) EC.

65 Lastly, the Commission, drawing attention to Article 14 of Regulation No 659/1999, found that, '[i]n order to restore the economic conditions with which the company would have had to contend if it had not been granted incompatible aid, the Belgian authorities [should ...] recover it from the beneficiary'.

66 Article 1 of the contested decision provides:

'The State aid which Belgium has implemented for the Beaulieu Group (Ter Lembeek International) in the form of the waiver of a debt of BEF 113 712 000 is incompatible with the common market.'

67 Article 2 of the contested decision provides:

'1. Belgium shall take all necessary steps to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.'

Procedure and forms of order sought by the parties

68 The applicant brought the present action by application lodged at the Registry of the Court of First Instance on 22 July 2002.

69 The applicant claims that the Court should:

— declare the application for annulment admissible and well founded;

— order the Commission to pay the costs of the proceedings.

70 The Commission contends that the Court should:

— declare the action inadmissible or dismiss it;

— order the applicant to pay the costs.

71 The composition of the Chambers of the Court of First Instance changed at the beginning of the new judicial year and the Judge-Rapporteur was assigned to the Fifth Chamber. This case was therefore assigned to the Fifth Chamber (Extended Composition).

72 On hearing the report of the Judge-Rapporteur, the Court of First Instance (Fifth Chamber, Extended Composition) decided to open the oral procedure without any preparatory inquiry. However, by way of measures of organisation of procedure, it requested the Commission to lodge certain documents and the list of documents in its possession relating to the procedure which gave rise to this case. The Commission complied with that request within the period prescribed.

73 The parties presented oral argument and replied to the Court's oral questions at the hearing on 21 February 2006.

Admissibility

Arguments of the parties

74 The Commission states as a preliminary point that the applicant did not at any point submit any comments either in the formal investigation procedure which resulted in

the contested decision or in that which resulted in Decision 2001/856, even though Decision 2001/856 had already announced that there would be an investigation concerning the aid in question.

75 The Commission asserts that all the pleas raised by the applicant are inadmissible on the ground that they are based on assertions as to the facts which the applicant did not at any point put forward in the formal investigation procedure and that a large proportion of the documents attached to the application were not, except where expressly indicated to the contrary, known to the Commission at the time when it adopted the contested decision. As regards the assertion as to the facts relating to the first plea, that is the case, first, in respect of the claim that the applicant was 'forced' by the Walloon Region to enter into the agreement of 18 December 1996 so that the de facto waiver of that debt by the addendum of 20 November 1998 does not constitute State aid. The same is true as regards the assertion that the applicant is not the recipient of the aid on the ground that it held the shares only for a limited period of time. Second, the Commission contends that the applicant's argument disputing the interpretation of the Royal Decree of 1985 is inadmissible since it was not put forward in the formal investigation procedure. Third, the applicant cannot call in question the contested decision in respect of the finding that the aid in question is liable to affect trade, in particular in the textile market, and distort competition, since those elements were set out in the decision to initiate the formal investigation procedure. The Commission contends that the second plea is inadmissible on the ground that it is based on the incorrect proposition that the aid served to compensate the purported loss arising from an alleged forced purchase of shares. The Commission also contends that the third plea is inadmissible since it amounts to an assertion that the applicant derived no benefit from the addendum of 20 November 1998 since it was merely a kind of compensation for the forced purchase of the shares and profit shares in 1996.

76 As regards the documents attached to the application, the Commission states that, apart from the statutes and the authority granted to the lawyers, and as is apparent from its letter of 20 December 2002, 11 of the annexes attached to the application, namely Annexes 4, 4a, 5, 7, 8, 9, 10, 13, 18, 20a and 21, were not in its possession. It

follows that to the extent that the applicant's pleas and arguments are based on those annexes they must be declared inadmissible.

77 Moreover, contrary to what the applicant claims, certain documents which were not in the Commission's possession at the time of the adoption of the contested decision are significant from the point of view of the applicant's arguments. That is true of the annexes relating to the agreement of 29 September 1987 concluded between Mr De Backer and Mr De Clerck (paragraph 11 of the application), the Beaulieu Group's contribution to Verlipack (paragraphs 17 and 18 of the application), the annual repurchase by the Beaulieu Group (paragraph 20 of the application) and the agreement of 26 December 1996 concluded between Imcopack Vlaanderen NV and Imcopack Wallonie on the one hand and Heye on the other (paragraph 30 of the application). In the Commission's submission, it is therefore incorrect to assert that those documents concern only secondary aspects of the history of this case.

78 The applicant asserts that the pleas which it has put forward are admissible since they are based exclusively on documents of which the Commission was aware at the time of the adoption of the contested decision and that, although the Commission does not set out in that decision all the relevant facts essential to a correct analysis of this case in the light of State aid law, it does have detailed knowledge of the facts relating to the file in question which forms the basis of Decision 2001/856 and even produces documents which are not in the applicant's possession, such as Annex IV to the defence.

79 The applicant states that, by letter of 6 December and e-mail of 11 December 2002, it requested an inventory of the documents in the Commission's possession at the time of the adoption of the contested decision and clarification on the assertions as to the facts which had not been submitted during the pre-litigation stage. As regards those assertions, the Commission replied, by letter of 20 December 2002, that it was not its responsibility to do the work of the applicant's lawyers and, concerning the documents, it merely referred vaguely to those documents listed by the applicant

which were not in its possession, but did not supply it with an inventory. It is for the Commission to show that it did not possess that information, since, by giving an incomplete response to the applicant's request in its letter of 20 December 2002, by which it refused to disclose the documents in its file, the Commission made it impossible both for the applicant and the Court to determine whether, in the light of the facts in its possession, the Commission was entitled to adopt the contested decision.

80 As regards the documents which the Commission states expressly that it did not have in its possession at the time of the adoption of the contested decision, the applicant asserts that, apart from those documents which merely illustrate and express in concrete form a number of aspects of secondary importance relating to the history of that case (such as the report of the general meeting of Imcour or the various loans granted by the Beaulieu Group to the Verlipack Group), all the documents which it put before the Court were in the possession of the Commission at the time of the adoption of the contested decision and the Commission cannot therefore argue that the pleas put forward by the applicant are inadmissible.

81 As regards the assertions as to the facts of which the Commission states that it was not aware at the time of the adoption of the contested decision, the applicant observes that, apart from the claim that Sowagep promised in December 1997 to make a fresh capital contribution of BEF 100 million to Verlipack, which is moreover irrelevant in this case, the Commission challenges only one of those assertions on the ground that it was not aware of it, namely that the purchase of the shares and the profit shares pursuant to the agreement of 18 December 1996 was not voluntary. The applicant claims that, notwithstanding the economic considerations which of themselves demonstrate that that purchase was forced, that pressure to purchase the shares is quite clearly evident in the note of the Walloon Region of 25 May 1998 sent to the Commission and which was therefore in its possession.

Findings of the Court

82 As regards determining, first, whether the recipient of aid can rely on facts and documents which have not been brought to the attention of the Commission prior to the adoption of its decision and, second, whether pleas based on such facts and documents are admissible, it must be borne in mind that, according to settled case-law, in an action for annulment brought under Article 230 EC, the legality of a Community measure must be assessed on the basis of the information existing at the time when the measure was adopted. In particular, the complex assessments made by the Commission must be examined solely on the basis of the information available to it at the time when the assessments were made (Joined Cases 15/76 and 16/76 *France* v *Commission* [1979] ECR 321, paragraph 7; Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, paragraph 16; Case C-241/94 *France* v *Commission* [1996] ECR I-4551, paragraph 33, and Case C-197/99 P *Belgium* v *Commission* [2003] ECR I-8461, paragraph 86; Joined Cases T-371/94 and T-394/94 *British Airways and Others and British Midland Airways* v *Commission* [1998] ECR II-2405, paragraph 81; Joined Cases T-126/96 and T-127/96 *BFM and EFIM* v *Commission* [1998] ECR II-3437, paragraph 88; Case T-110/97 *Kneissl Dachstein* v *Commission* [1999] ECR II-2881, paragraph 47; Case T-123/97 *Salomon* v *Commission* [1999] ECR II-2925, paragraph 48, and Joined Cases T-111/01 and T-133/01 *Saxonia Edelmetalle and ZEMAG* v *Commission* [2005] ECR II-1579, paragraph 67).

83 In this respect, it cannot be complained that the Commission failed to take into account information which could have been submitted to it during the administrative procedure but which was not, since it is under no obligation to consider, of its own motion and on the basis of prediction, what information might have been submitted to it (see, to that effect, Case C-367/95 P *Commission* v *Sytraval and Brink's France* [1998] ECR I-1719, paragraph 60, and Case C-197/99 *Belgium* v *Commission*, paragraph 82 above, paragraph 87; Case T-109/01 *Fleuren Compost* v *Commission* [2004] ECR II-127, paragraph 49).

84 The Court of First Instance has concluded that where an applicant has participated in the formal investigation procedure provided for in Article 88(2) EC, it may not rely on factual arguments which are unknown to the Commission and which it has not notified to the latter during the formal investigation procedure. On the other hand, there is nothing to prevent the interested party from raising against the final decision a plea in law not raised at the stage of the administrative procedure (see *Saxonia Edelmetalle and ZEMAG* v *Commission*, paragraph 82 above, paragraph 68, and the case-law cited).

85 That case-law can be extended, save in entirely exceptional cases, to the situation, as in this case, in which an undertaking did not participate in the investigation procedure provided for in Article 88(2) EC (see, to that effect, *Saxonia Edelmetalle and ZEMAG* v *Commission*, paragraph 82 above, paragraph 69).

86 It is common ground that the applicant did not make use of its right to participate in the formal investigation procedure even though, as is apparent from the letter of 11 January 2001 sent to the Commission by the Kingdom of Belgium, registered as received on 15 January 2001, the Walloon authorities had specifically requested it to cooperate actively in the preparation of their reply to the request for information sent by the Commission to the Kingdom of Belgium on 5 July 2000. Furthermore, notwithstanding the repeated requests and in the absence of any reply to the Commission's request, the Kingdom of Belgium's legal adviser had, by letter of 28 September 2000, asked the applicant to provide it with the information in order to enable it to give a useful reply to the Commission. The two final paragraphs of that letter read:

'In the light of the foregoing, my client draws the attention of your client to the risk that, in its next decision, it is likely that the European Commission will order the Belgian authorities to recover from your client the sum of BEF 113 712 000 plus interest.

Notwithstanding that the time-limit has expired, it is none the less highly desirable that your client cooperates as a matter of urgency with the case investigation by providing all the information requested of it, which will perhaps still enable the Walloon Region to put forward its point of view to the European Commission before a decision is adopted.'

87 Further, in the abovementioned letter of 11 January 2001, the Walloon authorities informed the Commission that their legal adviser had impressed upon the legal adviser of the Beaulieu Group the importance of the procedure initiated by the Commission and the risks inherent in such a procedure for that group, but to no avail, and that their reply to the Commission's request for information would be incomplete unless they secured the cooperation of the Beaulieu Group.

88 Moreover, by letter of 23 July 2001, the applicant's legal adviser was informed of the Commission's decision of 6 June 2001 to initiate the formal investigation procedure, a copy of which he received.

89 Lastly, it is undisputed that the applicant was named in the decision to initiate the formal investigation procedure — in particular at Section II.2 which relates specifically to the Beaulieu Group, which, as stated at paragraph 20, is controlled by the applicant — and that that decision voiced concerns, in particular at paragraphs 29 to 43 and 70 to 75 and in footnote 4, regarding the fact that on 20 November 1998 the Walloon Region waived a definite debt of BEF 113 712 000 owed to it by the Beaulieu Group in exchange for 9 704 shares in Verlipack Holding II whose situation had worsened to such an extent that its assets were valued on 11 February 1999 at BEF 1.

90 Notwithstanding that the applicant was perfectly aware of the initiation of a formal investigation procedure concerning in particular the waiver of the debt in question

and of the need and importance for it to supply certain information because of the doubts already expressed by the Commission as regards the compatibility of that debt waiver with Community law, the applicant decided not to participate in the formal investigation procedure and did not even claim that the reasons given in the decision to initiate the formal investigation procedure were insufficient to allow it properly to exercise its rights (see, to that effect, *Fleuren Compost* v *Commission*, paragraph 83 above, paragraph 46).

91 It follows from all of the foregoing, first, that the applicant cannot rely for the first time before the Court on information which was unknown to the Commission at the time when it adopted the contested decision. That is all the more true as regards in particular factual arguments put forward by the applicant which are, in its view, essential to a correct analysis of this case in the light of State aid law.

92 Second, the recipient of aid cannot rely on a plea supported only by information which was unknown to the Commission when it adopted the contested decision, it being inadmissible since the legality of a decision pertaining to State aid must be assessed on the basis of the information which the Commission could have at the time when it adopted it.

93 It must however be stated that the pleas raised by the applicant in support of its action are based on information which was known to the Commission at the time of the adoption of the contested decision.

94 In its first plea, the applicant claims, first, that, when acquiring, pursuant to the agreement of 18 December 1996, the 14 214 Category B shares and Category I profit shares in the capital of Verlipack in consideration for the sum of BEF 113 712 000,

pressure was brought to bear on it by the Walloon authorities with a view to that acquisition. According to the applicant, the fact that it was subjected to such pressure is a factor which the Commission should have taken into account when determining whether, first, the condition relating to the existence of aid favouring certain undertakings was met and, second, if so, whether the condition relating to the fact that the applicant was the recipient undertaking was met; it did not do so in this instance.

95 In support of its argument relating to the pressure, the applicant relies on the note of 25 May 1998 sent by the Walloon Region to the Commission, in which it is stated that: '[s]ince the Walloon Region lost confidence in the Beaulieu Group, it imposed as a condition for approving the formation of the two holding groups the purchase of its shares in the Verlipack Ghlin and Verlipack Jumet operating sites'.

96 As regards the admissibility of the argument relating to pressure, it should be noted that, as is apparent from the documents in the file and the questions put by the Court on this point at the hearing, first, the Commission does not dispute that it was aware of the note of 25 May 1998 at the time of the adoption of the contested decision. Second, the parties to the dispute disagree only as regards the full significance of that note and how the verb 'impose' contained therein should be interpreted, but not on the fact constituted by the applicant's purchase of the shares held by the Walloon Region. The applicant's argument relating to the pressure therefore in reality alleges that the Commission erred in its assessment of the content of that note, and it must therefore be declared admissible.

97 Second, as regards the applicant's argument disputing the fact that the overvaluation of the price of the shares and profit shares in question fixed in the agreement of 18 December 1996 was justified by the Royal Decree of 1985, it must also be noted

that the Commission was informed to that effect at the time of the adoption of the contested decision, as is apparent, in particular, from paragraphs 62 to 64 of and footnote 21 to the decision to initiate the formal investigation procedure. Moreover, in its letter of 11 January 2001 to the Commission, registered as received on 15 January 2001, the Walloon authorities wrote:

'It must be borne in mind that the overall price of BEF 113 712 000 for the non-voting preferential shares and the profit shares held by the Walloon Region in Verlipack Ghlin and Verlipack Jumet represented at that time 80% of the value of those shares and profit shares on the basis of their issue price.

The Royal Decree of 7 May 1985 (Article 3) concerning the issuing of non-voting preferential shares by limited companies in national sectors requires that "the price may not be lower than 80% of the issue price" where non-voting preferential shares are resold to the issuing company or to third parties.

Taking account of the financial situation of the Verlipack Group, which was being completely restructured at that time, that price clearly did not correspond to the real value of the shares and profit shares, but was fixed in order to comply with the aforementioned Belgian legislation, which the Beaulieu Group agreed to.

...

The parties therefore fixed an interest-free repayment deferral of four years for the Beaulieu Group's debt in order to compensate somewhat the additional costs resulting from the application of the legislation (updated at the time of payment) in relation to the economic value of the asset.'

98 That same information is moreover repeated, in essence, at paragraph 2 of the Kingdom of Belgium's letter of 26 July 2001 to the Commission.

99 In any event, the argument relating to the Royal Decree of 1985 cannot be regarded as an element which could not be submitted for assessment by the Court, since it involves a question of the interpretation of that decree.

100 Third, as regards the inadmissibility of the applicant's argument that the contested decision is summary and incorrect regarding the analysis of the two conditions relating to the harm to competition and the effect on trade between Member States, it must be stated that the applicant does not rely on any information which was not available to the Commission at the time of the adoption of the contested decision, but merely criticises the analysis, in paragraphs 70 to 72 of the contested decision, based on the position of the Beaulieu Group in the textile market when it is concerned as a shareholder in the companies of the Verlipack Group and not as a textile producer.

101 It follows from the foregoing that the plea of inadmissibility raised by the Commission against the first plea must be rejected.

102 The second plea, by which the applicant claims that the Commission infringed the principle of proportionality by ordering the recovery of the aid even though the applicant did not derive any benefit from the allegedly forced purchase of the shares and profit shares in question, relies on the same information as that relied on in the first plea, which was known to the Commission at the time of the adoption of the contested decision. The plea of inadmissibility raised against that plea must therefore also be rejected.

103 The third plea, by which the applicant asserts that the Commission infringed the principle of equal treatment, calls in question the method for valuing the Category B shares and the Category I profit shares, the time at which they were valued and the determination of the recipient of the aid, relying on the fact that the addendum of 20 November 1998 amounted merely to a kind of compensation for the forced purchase of those shares and profit shares in 1996. In so doing, the applicant again relies on information which was available to the Commission at the time of the adoption of the contested decision. The complaint of inadmissibility raised against that plea cannot therefore be upheld.

104 As regards the documents that the applicant relied on in support of its application and which are referred to in paragraph 76 of this judgment, some of which, in its view, merely illustrate certain aspects incidental to this case, they must be disregarded, in accordance with the case-law referred to in paragraphs 82 to 84 above. Next, as is apparent from the documents in the file and the questions put by the Court in this respect during the oral procedure, none of the pleas or arguments put forward by the applicant is based on those documents which the Commission asserts were not in its possession at the time of the adoption of the contested decision, either in the file which led to the contested decision or in a related file.

105 Finally, as regards the applicant's argument based on Annex 18 to the application, namely that Sowagep promised, in December 1997, to make a fresh capital contribution of BEF 100 million to Verlipack, it is sufficient to note that the applicant itself claims that it is irrelevant in this case.

106 It follows from all of the foregoing, first, that the applicant cannot rely on the documents referred to in paragraph 76 of this judgment, which are therefore to be disregarded, and, second, that the plea of inadmissibility raised by the Commission must be rejected.

Substance

107 In support of its action, the applicant puts forward four pleas, alleging infringement: (i) of Article 87(1) EC and Articles 7 and 13 of Regulation No 659/1999, (ii) of the principle of proportionality and of Article 14 of Regulation No 659/1999, (iii) of the principle of equal treatment and (iv) of the obligation to state reasons.

First plea: infringement of Article 87(1) EC and Article 7 read in conjunction with Article 13 of Regulation No 659/1999

108 The applicant subdivides its first plea into three parts relating, first, to the existence of aid favouring certain undertakings, next, to the fact that, if an advantage had been conferred, the applicant cannot be regarded as the favoured undertaking for the purposes of Article 87(1) EC and, finally, to the harm to competition and the effect on intra-Community trade.

First part of the plea: the existence of aid favouring certain undertakings

— Arguments of the parties

109 The applicant submits, first, that the reasoning contained in the contested decision, namely that the applicant had a definite and repayable debt in an amount of BEF 113 712 000 which it repaid by transferring 9 704 shares that it held in Verlipack Holding II, the value of which was lower or even nil, is simplistic. Such reasoning is

based entirely on taking into consideration the debt of BEF 113 712 000 in abstract terms and fails to take account of the facts or the economic reality. The contested decision deals with that debt as if it were an obligation to repay funds actually made available to the applicant by the public authorities, which is not the case.

110 Thus, the applicant states that, by the agreement of 18 December 1996, it was forced to purchase shares from the Walloon Region and kept them only for a very short period, namely from 18 December 1996 to 11 April 1997, the date on which Heye took control of Verlipack Holding II. It was clear from the outset that the real addressee was Verlipack Holding I, over which Heye was supposed to have taken control. Those shares therefore had no asset value for the applicant. Furthermore, it is not only economic considerations which should have made the Commission realise that the applicant did not enter voluntarily into the agreement of 18 December 1996. The Commission was kept fully informed in writing during the formal investigation procedure of the fact that that agreement had been imposed on the applicant. Thus, it is apparent from the note of 25 May 1998 sent to the Commission by the Walloon Region that the latter had lost all confidence in the applicant and wished to become part of a group controlled by Heye. The Walloon Region therefore required the Beaulieu Group to repurchase from it its entire shareholding before the Beaulieu Group could bring a new partner into the shareholding of the Verlipack Group. At the same time, Heye did not wish to be associated with a group in which the public authorities held a share.

111 Second, the applicant submits that the forced repurchase of the shares in Verlipack Jumet and Verlipack Ghlin cannot be regarded as a benefit for the purpose of Article 87 EC.

112 In the first place, it is quite clear from an objective valuation of the shares in question that their real value was not BEF 113 712 000. Moreover, in its letter of 11 January 2001 to the Commission, registered as received on 15 January 2001, the

Walloon Region acknowledged that the price of the shares and profit shares based on the Royal Decree of 1985 was disproportionate and bore no relation to their economic value, whilst a professional carrying out a valuation would have found that the repurchased shares were worthless. That finding is confirmed by the Kingdom of Belgium's letter of 26 July 2001 to the Commission, according to which the financial situation of the three Verlipack companies was worrying and the sale price of the shares and profit shares, which was fixed on the basis of the Royal Decree of 1985, no longer corresponded to their real value. No normal economic operator would have wished to effect such a purchase under such conditions, so that that transaction could not be characterised as a voluntary acquisition having regard to the circumstances in question. Further, at the time of the repurchase, Heye had not given any undertaking as regards its possible acquisition of a shareholding in the Verlipack Group; that undertaking was given only in the agreement of 26 December 1996 between Imcopack Vlaanderen and Imcopack Wallonie on the one hand and Heye on the other.

113 The purchase of the shares also meant that the Walloon Region withdrew entirely from Verlipack Jumet and Verlipack Ghlin, which was a significant additional disadvantage.

114 The fact that the real value of the shares was already nil at that time, or even negative, is confirmed, first by Decision 2001/856, recital 104 of which mentions that '[i]n 1996 the Ghlin and Jumet plants experienced significant operating losses and a sharp drop in turnover compared with preceding years', recital 107 of which states that '[t]he Commission notes ... that Verlipack's financial position prior to Heye's arrival could not have indicated viability' and recital 115 of which concludes that '[the] operating results [of Verlipack] before the arrival of Heye very clearly [point] up the group[']s difficulties'. Second, the Commission was itself aware of the disastrous financial situation of Verlipack at the end of 1996. At recitals 11 and 12 of the contested decision, the Commission observed respectively that '[t]he two

companies located in Wallonia were making losses at that time', namely in 1995 and 1996, and that '[t]he Verlipack Group would not have been able to honour the end-of-1996 repayment deadlines for bank loans'. The reasoning followed by the Commission in concluding that the 9 704 shares in Verlipack Holding II had no value should also apply to the shares in question.

115 The view that the Verlipack Group was not viable was also shared by Advocate General Jacobs in his Opinion in *Belgium* v *Commission*, paragraph 44 above (ECR I-6934).

116 If the Commission were to maintain its position as regards the value of the shares in 1996, the applicant insists that it produces an assessment report so as to substantiate its position and that it states to what extent account was taken, in particular, of the position of the companies in the Verlipack Group and of the fact that the shares did not carry any voting rights and that, even after their conversion into shares carrying voting rights, they accounted for a minimal percentage of Verlipack's capital.

117 Furthermore, two other arguments support the view that the amount of BEF 113 712 000 cannot be regarded as reflecting the value of the benefit conferred; first, in civil law, that debt is extinguished. As a result of the implementation of the addendum of 20 November 1998, the debt lapsed under the law of obligations; second, the amount of BEF 113 712 000 was imposed on the applicant by the Walloon Region pursuant to the Royal Decree of 1985.

118 In this respect, the applicant observes that, in order to justify the economically abusive price in the agreement of 18 December 1996, the Walloon Region relied on a relevant legal obligation, so that the price imposed by statute or contractually was presented as non-negotiable and imposed.

119 The applicant points out, first, that the Royal Decree of 1985, in particular Article 3 thereof, does not lay down an obligation to repurchase, but relates to a right to repurchase, next, that it provides that the subscription agreement must provide for a right to repurchase and must govern the detailed conditions relating thereto, which, in this case, are contained in Article 11 of, and Annex 1 to, the agreement of 30 April 1985, and, finally, that it confers on the undertaking in which the State invests the right to repurchase the shares from the latter at a price which cannot be lower than 80% of their issue price. That provision does not preclude the State from being able to grant a purchase option independently of the subscription agreement fixing a price lower than 80% of the issue price and does not apply to situations in which the State itself wishes to withdraw from the capital or puts pressure on a private undertaking to take over its shareholding. Any other interpretation would mean that the State would be 'imprisoned' as a shareholder and could never resell its holding. Article 3 of the Royal Decree of 1985 does not therefore run counter to the agreement of 18 December 1996 and the addendum of 20 November 1998, which are clearly not based on the right to repurchase contained in the agreement of 30 April 1985.

120 Thus, the Commission's argument that, by concluding the addendum of 20 November 1998, the applicant infringed Article 3 of the Royal Decree of 1985 is incorrect, since the Walloon Region was under no legal obligation to fix the sale price of the shares at 80% of their nominal value.

121 The argument that the price of BEF 113 712 000 for the Category B shares and the Category I profit shares was imposed by the agreement of 30 April 1985 likewise cannot be accepted.

122 None of the provisions of the agreement of 30 April 1985, in particular Articles 10 and 11 thereof, is applicable to this case. Article 10 of that agreement lays down a condition which is impossible to satisfy in the context of the agreement of 18 December 1996, since the obligation to purchase laid down in that provision applied only 'to the extent that the profits carried forward and the available reserves of the companies allow'. Further, the applicant, which cannot be treated in the same

way as Mr De Clerck, has no knowledge of a document from which it is said to be apparent that it took on that specific obligation and that Article 10 is not a provision imposed by the Royal Decree of 1985. Article 11 of the agreement of 30 April 1985, whilst complying with the Royal Decree of 1985, is not relevant in this case. Both that article and the agreement providing for an option attached to Annex 1 to the agreement of 30 April 1985 merely grant the Verlipack companies a right of option to repurchase and do not impose an obligation to repurchase, it being borne in mind that that right is granted to those companies and not to the applicant.

123 Lastly, four months after the agreement of 18 December 1996, the Walloon Region negotiated a similar obligation to purchase with Heye in which it agreed to waive the inflated price based on a general obligation, since, as is apparent from Article 1 of the option agreement, reference was made to the net value of the asset and therefore to the real value of the shares in question as a criterion for determining the price, and not to the issue price.

124 The addendum of 20 November 1998, which the Commission found — wrongly — to be a totally autonomous agreement, which is illogical in the light of its wording (its title, recitals and provisions showed that it was not an autonomous agreement; on the contrary, it forms part of the agreement of 18 December 1996) and loses sight of the fact that that transaction relates to payment for shares acquired by the applicant in 1996, therefore merely adjusts the price of the transaction by aligning the payment terms with those which had already been granted to Heye, since the applicant had been granted the option to pay the Walloon Region for the shares acquired compulsorily by transferring a number of shares of equivalent real economic value.

125 In the second place, as regards the concrete assessment of the 'benefit' aspect, the applicant observes, first, that the shares which it took over conferred on it no additional control, since they did not carry any voting rights during the time that the Walloon Region held them (and could not therefore in any event be used by that region to intervene in the decision-making process in the Verlipack companies),

next, that it did not receive any dividend or other financial benefit as a result of holding the shares in question and, lastly, that it could not have converted the shares concerned into cash, since, as part of Heye's entry into the shareholding, it had to contribute the shares in question along with its controlling holding in Verlipack Holding I.

126 The Commission should therefore have considered the factual context fully rather than analysing the facts in isolation and should have taken as a basis the economic reality without limiting its analysis to the formal legal aspects, as the Court of Justice held in relation to determining the value of shares in Joined Cases C-329/93, C-62/95 and C-63/95 *Germany and Others* v *Commission* [1996] ECR I-5151, paragraph 36. According to the applicant, the Commission's approach is restrictive since it is confined to the nominal value of the shares which the applicant was forced to acquire, to the exclusion of any other factor.

127 The applicant illustrates the incorrect nature of the Commission's analysis by stating that, if, instead of selling its shares to the Beaulieu Group and providing for reimbursement at a later stage either by a cash payment or by a transfer of shares in lieu of payment, the Walloon Region had at the outset given it the shares for no consideration or remuneration, account would have been taken, in assessing whether there had been a benefit and the extent thereof, only of the value of the shares received free of charge. That is why the applicant submits that account should be taken of the specific circumstances of this case, namely the forced repurchase and the artificial process by which the price was set, and that, since the situation in this case and the one described above are very similar, they should be analysed in the same way in the light of State aid. In both cases, the applicant holds a number of shares and the fact that that disposal for no consideration occurs directly or by means of a cancellation of the payment obligation should be immaterial. The Commission should therefore have extended its analysis to the real value of the assets which were transferred to the applicant instead of basing its analysis on a debt in abstract terms. Only that analysis would make it possible to assess whether there is a benefit in real economic terms.

128 The Commission contends that this part of the plea should be rejected.

— Findings of the Court

129 It is first necessary to consider the applicant's argument that it was forced by the Walloon Region to acquire, by the agreement of 18 December 1996, 14 214 Category B shares and Category I profit shares for the sum of BEF 113 712 000, an argument that is based on the note of 25 May 1998 in which the Belgian authorities indicated to the Commission that '[s]ince the Walloon Region lost confidence in the Beaulieu Group, it imposed as a condition for approving the formation of the two holding groups the repurchase of its shares in the Verlipack Ghlin and Verlipack Jumet operating sites'.

130 As a preliminary point, it should be noted that the repurchase of shares which was the subject of the agreement of 18 December 1996 is not classified by the Commission as State aid in the contested decision.

131 That being so, it must be observed that, under Article 3 of the addendum of 18 November 1987, '[f]rom 1 October 1987, the undersigned Imcour NV and Mr R. De Clerck undertake irrevocably to take over and carry out all the rights and obligations, as set out in the agreement of 30 April 1985 and its annex, which Adsum NV and Mr De Backer held on that date'.

132 Amongst those obligations was that referred to in the first paragraph of Article 10 of the agreement of 30 April 1985, which provided that Adsum was to undertake that, from the fifth tax year following the signature of that agreement, the three Verlipack

companies would repurchase each year 10% of the Category B shares (to be repurchased at their nominal value) and Category I profit shares (to be repurchased at the unit price of BEF 10 000) held by SNRSN, to the extent that the profits carried forward and the available reserves of those companies allowed. The third paragraph of Article 10 of that agreement provided that, in the absence of such agreements, Adsum would in any event carry out the obligations provided for in that article.

133 In addition, the addendum of 18 November 1987 stated that a change had occurred in the control of the management of the Verlipack companies and that the Ministers for Economic Affairs and Finance had approved this on 17 November 1987, in accordance with the second paragraph of Article 14 of the agreement of 30 April 1985.

134 Lastly, Article 16 of the agreement of 30 April 1985 provided that the statutes would be amended in order to take account of the clauses in that agreement.

135 It follows from those elements that the applicant was fully aware of the facts when it agreed to assume not only the rights but also the obligations set out in the agreement of 30 April 1985 which Adsum and Mr De Backer had in relation to Verlipack and the Belgian State and which, in accordance with Article 16 of that agreement, were to form part of the statutes of the Verlipack companies. In particular, Imcour Holding, which the applicant succeeded, undertook irrevocably under Article 3 of the addendum of 18 November 1987 to comply with the obligations and conditions for repurchasing the Category B shares and Category I profit shares held by SNRSN in the capital of Verlipack.

136 Moreover, the applicant cannot deny the application of such an obligation to repurchase by relying on the condition relating to the existence of profits carried forward and the availability of the reserves of the Verlipack companies referred to in

the first paragraph of Article 10 of the agreement of 30 April 1985, given that, under the third paragraph of Article 10 of that agreement, the applicant was in any event itself supposed to repurchase the Category B shares and Category I profit shares held by SNRSN if the Verlipack companies failed to do so.

137 It should also be noted that, as a result of the early repurchase of the Category B shares and Category I profit shares which were the subject of the agreement of 18 December 1996, the applicant enjoyed several benefits.

138 First, the applicant acquired immediately ownership of all the Category B shares and Category I profit shares still held by the Walloon authorities, which it was in any event supposed to repurchase in annual instalments pursuant to the addendum of 18 November 1987, which thus enabled it to carry out the restructuring of Verlipack by involving Heye in that process and to simplify the structure of the group by transferring all the shares to Verlipack Holding I.

139 In this respect, it should be recalled that, as is apparent from the documents in the file (see, in particular, recitals 11 and 12 of the contested decision, paragraph 23 of the application and paragraphs 6 and 7 of the Kingdom of Belgium's letter of 26 July 2001 to the Commission), the situation of the companies in the Verlipack Group had become so worrying in 1996 that the entry of a specialist in the glassmaking field appeared to be vital in order to enable the group to recover economically. Moreover, that specialist, in this case Heye, did not wish to acquire a shareholding in a group in which the public authorities held a stake, which, in Heye's view, 'could have posed a risk of a change in the majority shareholding in the event of an alliance between the Walloon Region and the Beaulieu Group'.

140 That finding, which appears in the note of 25 May 1998, is moreover not disputed by the applicant which states, at paragraph 22 of its application, that '[t]he Beaulieu

Group has the distinct impression that the public shareholder is no longer willing to support actively the three Verlipack [sites] and that, without radical measures, they are heading straight towards bankruptcy. Beaulieu is therefore undertaking to launch a rescue operation and, to this end, is looking for strategic partners with recognised experience in the glass market. It is in this context that the negotiations with ... Heye ..., one of the leading German glass manufacturers, are being conducted'.

141 Furthermore, according to the Kingdom of Belgium's letter of 26 July 2001 to the Commission 'Beaulieu and Heye together with the Walloon Region entered into negotiations in order to organise the transfer of the Verlipack Group to Heye and to develop a new financial structure put in place in April 1997' and that 'following an agreement between Beaulieu and Heye it was decided that the shares and profit shares held by the Walloon Region in Verlipack Ghlin and Verlipack Jumet would be repurchased by Beaulieu prior to any new involvement by the Walloon Region'.

142 Moreover, the Walloon Region participated actively in the restructuring of the Verlipack Group with the intention of stemming the losses threatening it. As is apparent from recitals 18 to 22 of Decision 2001/856, in 1997 it granted two loans each totalling BEF 250 million to Heye, which financed the latter's capital contribution to Verlipack for the purpose of that restructuring (see also, in this regard, *Belgium* v *Commission*, paragraph 44 above, paragraphs 22 to 24).

143 Second, it is against the background of the negotiations and the deal between Beaulieu and Heye referred to above that it is necessary also to point out the benefits obtained by the applicant as regards the price of the Category B shares and the Category I profit shares which it acquired and the manner in which they were to be paid for.

144 Thus, first of all, whilst according to the agreement of 30 April 1985, to which the applicant had acceded by the addendum of 18 November 1987, the applicant had to pay the agreed price as and when the instalments became due, it was possible for the applicant to defer payment for the price of the shares and profit shares in question until 31 December 2001, interest-free, notwithstanding that it had acquired immediately all those shares and profit shares and could therefore have facilitated Verlipack's restructuring.

145 Next, contrary to the applicant's claim that the price was non-negotiable, and although it was supposed to pay the sum of BEF 142 140 000 corresponding to 100% of the nominal value of the shares and profit shares in question, the applicant enjoyed a reduction of BEF 28 428 000, the price paid corresponding to 80% of the issue price in accordance with Article 3 of the Royal Decree of 1985, despite obtaining a right to immediate ownership of the shares and a right not to pay the sum of BEF 113 712 000 until 31 December 2001, and interest-free at that.

146 Lastly, this analysis is also apparent from the Kingdom of Belgium's letter of 26 July 2001 to the Commission, according to which 'the Beaulieu Group agreed to repurchase those shares and profit shares in exchange for favourable payment terms, that is to say an interest-free payment deferral period of four years in order to facilitate the planned restructuring under Heye's management in cooperation with the Walloon Region'.

147 Thus, the last paragraph taken from the note of 25 May 1998 which the applicant relied on in support of its argument that the agreement of 18 December 1996 provided absolutely no room for negotiation in terms of repurchasing the shares and profit shares in question must be read in the light of the whole context of that repurchase set out above, in particular of the fact that there were negotiations between Heye and the applicant which resulted in an agreement and the applicant's acceptance of the repurchase in question on the abovementioned terms, and cannot therefore be construed as showing that the Walloon Region put pressure on the applicant.

148 Moreover, the subsequent paragraphs of that note of 25 May 1998 bear out that analysis in that they expressly refer to the need, in order to remedy Verlipack's situation, to transfer the control of the group to Heye so as to ensure that the new investor had a majority in that holding, which was attributable more to the applicant's expressed desire to involve Heye in the economic restructuring of the Verlipack Group.

149 It therefore follows that, in the light of the obligation assumed by the applicant in the addendum of 18 November 1987 to repurchase the Category B shares and Category I profit shares, of the agreement between the Beaulieu Group and Heye prior to that repurchase and of the benefits deriving from it, the applicant's argument that it was forced by the Walloon authorities to act in that way must be rejected.

150 Second, it is necessary to consider the applicant's argument that the price of the shares and profit shares in question, the value of which was nil, or even negative, was overvalued at the time of the agreement of 18 December 1996 and that the addendum of 20 November 1998 was designed to adjust the price fixed in the earlier agreement in order to bring it into line with that paid four months later by Verlipack Holding I or, according to the applicant, by Heye in the agreement of 9 April 1997 in the context of a similar repurchase obligation for shares the price of which was fixed according to their real value as opposed to their nominal value.

151 First, as regards the overvaluation of the price fixed in the agreement of 18 December 1996, it should be borne in mind that the applicant (i) agreed, by acceding to the agreement of 30 April 1985 by the addendum of 18 November 1987, to repurchase the Category B shares and Category I profit shares in Verlipack held by SNRSN in accordance with the repurchase timetable and the price determined in that agreement and (ii) was aware that, under the Royal Decree of 1985, already specifically referred to in the last paragraph of Article 4(f) of the agreement of 30 April 1985, the price of the non-voting preferential shares could not be lower than 80% of their issue price.

152 In addition, it is apparent from the wording of the letter of 11 January 2001, registered as received on 15 January 2001, and which is reproduced at paragraph 97 of this judgment, that the Walloon authorities informed the Commission in writing that the price of BEF 113 712 000 represented, pursuant to the Royal Decree of 1985, 80% of the value of those shares and profit shares in question on the basis of their issue price.

153 It is also apparent from the Kingdom of Belgium's letter of 26 July 2001 to the Commission that, in response to the Commission's assertion that '[t]he requirement to set a price equivalent to 80% of the issue price is a statutory one imposed without distinction on anyone wishing to purchase such preferential shares', the Belgian authorities stated that they had already taken account of the fact that the Royal Decree of 1985 did not lay down the conditions under which payment was to be made and that the specific conditions agreed were justified by the additional cost resulting for the Beaulieu Group from the application of the Belgian legislation.

154 Thus, although, as follows from recitals 77 to 79 of the contested decision, the Belgian authorities confirmed the fact that the shares and profit shares in question had been purchased at a price which did not correspond, in their view, to the economic reality, they nevertheless justified that price in the light of the Royal Decree of 1985 which is applicable to all acquisitions of the type at issue in this case and stated, in the letters of 11 January and 26 July 2001 referred to in paragraphs 152 and 153 of this judgment, that it had compensated that additional cost by granting favourable repayment terms, namely deferment of payment by the applicant, interest-free, until four years after the transfer of ownership, and that the Beaulieu Group had agreed to that price.

155 Moreover, it is apparent from paragraphs 10 and 13 of the decision to initiate the formal investigation procedure that the value of the assets exceeded the amount of the debts; the assets, comprising the three operating plants (Ghlin, Jumet and Mol), were valued at BEF 515 million and the debts at more than BEF 362.8 million.

156 Lastly, there is nothing in the file to suggest that the applicant challenged in any national legal proceedings either the obligation accepted by it to pay the amount of the price of the shares and profit shares in question referred to in the agreement of 18 December 1996 or the applicability of the Royal Decree of 1985.

157 Second, as regards the purpose of the addendum of 20 November 1998, the Court notes that it provides that the debt can be cleared either by payment of the sum of BEF 113 712 000 or by transfer of the 9 704 shares in the capital of Verlipack Holding II.

158 Thus, by determining that the debt could be cleared not only by transfer of the sum of BEF 113 712 000, but also by transfer of 9 704 shares of nil value, the addendum of 20 November 1998 could not have been designed to adjust the price in the agreement of 18 December 1996 to bring it into line with that fixed in the agreement of 9 April 1997, since, in its own words, it merely added the possibility of clearing the debt by transfer of shares of nil value.

159 In addition, if there had been an intention to adjust the price, it is reasonable to assume (i) that a reduction in the amount payable by transfer would also have been provided for and (ii) that such an addendum would not have been adopted on 20 November 1998, that is to say approximately 20 months after the agreement of 9 April 1997 between the Walloon Region and Verlipack Holding I (held by Heye) had been signed, and at a time when, as is apparent from recital 75 of the contested decision, Verlipack Holding II was no longer able to meet its liabilities. Indeed, by judgment of 31 May 1999, the Mons Commercial Court stipulated that Verlipack Holding II's suspension of payments was effective from June 1998.

160 It follows that the applicant's argument that in 1996 the real value of the shares was nil, or even negative, and that the addendum of 20 November 1998 was designed to bring the price fixed in the agreement of 18 December 1996 into line with that fixed in the agreement of 9 April 1997 cannot be accepted.

161 It follows from all of the foregoing that the first part of the first plea must be rejected.

Second part of the plea: if an advantage had been conferred, the applicant cannot be regarded as the favoured undertaking within the meaning of Article 87(1) EC

— Arguments of the parties

162 In support of this part of the plea, the applicant relies on Decision 2001/856, in particular recitals 109 and 110 thereof, in which the Commission states that a recipient of aid, which may have to be repaid, is not necessarily the firm which received the funds directly from the public authorities but rather the firm that actually benefited from the aid. According to recital 110 of Decision 2001/856, that is upheld in the case-law of the Court of Justice, which distinguishes between, on the one hand, firms that acted merely as a conduit for the funds and, on the other, firms that derived an advantage from the aid such that they qualify as recipients. The applicant again asserts that it held only for a very short period the shares which it was forced to acquire and that it did not intend to keep them. As is apparent from the note of the Walloon Region of 25 May 1998 to the Commission, the forced repurchase of those shares should be understood in the light of the fact that Heye was to assume control of the Verlipack Group, which is why the shares in question were placed in Verlipack Holding I and ended up indirectly in Heye's possession.

163 The applicant therefore submits that it cannot be considered to have been favoured within the meaning of Article 87(1) EC.

164 It follows that in so far as it finds that the applicant was the recipient of State aid, the contested decision is contrary both to Article 87(1) EC and to Article 7 read in conjunction with Article 13 of Regulation No 659/1999.

165 The Commission contends that this part of the plea should be rejected.

— Findings of the Court

166 First, in so far as the applicant's argument is based on the alleged pressure put on it by the agreement of 18 December 1996 in connection with the repurchase of the 14 214 Category B shares and Category I profit shares, it must be rejected for the reasons referred to in paragraphs 129 to 149 of this judgment.

167 Second, even if the applicant's argument should not be understood in the light of that forced repurchase, it cannot be accepted.

168 As noted at paragraphs 131 to 149 of this judgment, the applicant agreed, in accordance with an undertaking given by Adsum in the agreement of 30 April 1985 to which the applicant acceded by the addendum of 18 November 1987 and which

was reproduced in the agreement of 18 December 1996, to repurchase the Category B shares and Category I profit shares which the Walloon Region held in the capital of SA Verlipack Jumet and SA Verlipack Ghlin in consideration for payment of the sum of BEF 113 712 000.

169 Thus, the Walloon Region, which therefore had a definite fixed claim of BEF 113 712 000 against the applicant, consequently waived that debt on 20 November 1998 in exchange for shares in the capital of a company the value of which was nil at that time, which the applicant does not dispute. However, the applicant has not demonstrated that, following that debt waiver in November 1998, it had transferred that sum into the capital of Verlipack Holding II or into that of another company which is therefore the recipient of it. That sum therefore remained part of the applicant's assets.

170 The Commission was therefore right to find that the applicant had received a transfer of public resources in its favour.

171 It follows that the second part of the plea must therefore be rejected.

The third part of the plea: harm to competition and the effect on intra-Community trade

— Arguments of the parties

172 The applicant observes that, at recitals 70 to 72 of the contested decision, the Commission is very succinct in its analysis of the two conditions relating to harm to

competition and the effect on intra-Community trade since it merely states that those conditions are satisfied given that the Beaulieu Group is a major player in the textile market and exports much of what it produces.

173 That amounts to saying that, for operators such as the Beaulieu Group, the Commission is dispensed from the obligation to show that those two conditions have been satisfied. According to the applicant, first, it is affected as a shareholder in the Verlipack companies and not as a textile producer and the fact that it was forced to acquire shares in a group producing container glass and place them in a holding company controlled by another operator in that market has little bearing on the textile business of the Beaulieu Group. In those circumstances, the applicant claims that, since the aid is on a market other than the one on which the distortion of competition occurs, the contested decision is erroneous when, as regards the two conditions referred to in Article 87(1) EC, it refers only to the position of the Beaulieu Group on the textile market. Second, the fact that it withdrew funds from its assets in order to place them in Verlipack slowed down rather than supported its activity in the textile sector, particularly as the loss stemming from that investment was considerable.

174 By ordering repayment of the sum referred to in the contested decision, the Commission does not eliminate a distortion of competition (quite the opposite) and penalises the Beaulieu Group even though the public authority itself acknowledged that the price paid by the applicant as consideration for the shares was disproportionate and that the Walloon Region adjusted the consideration by means of the addendum of 20 November 1998. In addition, the applicant held the shares in Verlipack Holding I only for a temporary period and did not derive any financial or economic benefit whatsoever from them. The applicant submits that, even if it were to have received those shares free of charge, that gift could not have any impact on competition on the textile market.

175 The Commission contends that that plea must be rejected.

— Findings of the Court

176 As a preliminary point, it should be observed that in this part of the plea the applicant calls in question, first, the Commission's analysis as regards the finding in the present case concerning the conditions laid down in Article 87(1) EC relating to distortion of competition and the effect on trade between Member States and, second, the alleged summary reasoning in the contested decision regarding those two conditions, reasoning which is also the subject of the fourth plea and which will therefore be considered in that plea.

177 First, as regards the condition relating to distortion of competition, it must be borne in mind that, according to settled case-law, aid which is intended to relieve an undertaking of the expenses which it would normally have had to bear in its day-to-day management or its usual activities in principle distorts competition (see Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675, paragraphs 48 and 77, and the case-law cited, and Case T-214/95 *Vlaamse Gewest* v *Commission* [1998] ECR II-717, paragraph 43).

178 It must also be borne in mind that, where a public authority favours an undertaking operating in a sector characterised by intense competition by granting it a benefit, there is a distortion of competition or a risk of such distortion (*Vlaamse Gewest* v *Commission*, paragraph 177 above, paragraph 46).

179 In this case, as was found in the examination of the first and second parts of this plea, the Walloon Region waived its claim of BEF 113 712 000 against the applicant, which pursues its activity in a sector which is entirely open to competition, namely the textile sector.

180 The Commission was therefore right to find, at recital 71 of the contested decision, that the aid at issue distorted or threatened to distort competition.

181 As regards the condition relating to the effect on trade between Member States, it is settled case-law that, when State aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, that trade must be regarded as affected by that aid (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11, and Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 47; *Vlaamse Gewest* v *Commission*, paragraph 177 above, paragraph 50; Case T-152/99 *HAMSA* v *Commission* [2002] ECR II-3049, paragraph 220, and *Fleuren Compost* v *Commission*, paragraph 83 above, paragraph 57).

182 In the present case, the Commission drew up a table at recital 70 of the contested decision, which was not disputed by the applicant, from which it is apparent that, in the field of carpets and other textile floor coverings, there is a considerable amount of trade between Belgium and the rest of the world, Belgium having recorded export figures of EUR 2 009 560 000.84 and import figures of EUR 211 659 000.19 in 1998.

183 In addition, it is apparent from recital 71 of the contested decision, and in particular from footnote 17, that the applicant is the leading European carpet manufacturer and exports 98% of its production. Further, the Commission stated that, during

1997, 1998 and 1999, the applicant's sales totalled BEF 4 379 764 000, BEF 5 182 220 000 and BEF 4 821 857 000 respectively.

184 Finally, the Court cannot accept the applicant's argument that, as the aid at issue is on a market other than the one on which the distortion of competition occurred, the conditions set out in Article 87(1) EC are not satisfied in the present case. According to the contested decision, the procedure relating to the State aid in question concerned the Beaulieu Group which, according to recital 22 of the contested decision, is controlled by the applicant. The aid granted in the sum of BEF 113 712 000 which, as was found at paragraph 169 of this judgment, was not transferred into the capital of Verlipack Holding II or that of another company in the glassmaking sector, remained part of the Beaulieu Group's assets. That aid therefore necessarily had an effect on the sector of activity in which the Beaulieu Group operates, namely the textile sector. The aid received by the applicant therefore resulted in a competitive advantage on the textile market.

185 It follows that the third part of the plea cannot be accepted and that the first plea must be rejected in its entirety.

The second plea: breach of the principle of proportionality and of Article 14 of Regulation No 659/1999

Arguments of the parties

186 The applicant recalls that, according to case-law, measures adopted by Community institutions should not exceed the limits of what is appropriate and necessary to attain the objective pursued (Case 15/83 *Denkavit Nederland* [1984] ECR 2171; Case

T-9/98 *Mitteldeutsche Erdöl-Raffinerie* v *Commission* [2001] ECR II-3367) and that that principle is laid down in Article 14 of Regulation No 659/1999 which provides that the Commission is not to require recovery of aid if this would be contrary to a general principle of Community law.

187 The applicant submits that it has demonstrated that it did not derive any financial or other benefit for the purpose of Article 87 EC from the forced repurchase of the shares and profit shares in question in the Verlipack companies, and that it is therefore contrary to the principle of proportionality to require it to reimburse non-existent aid.

188 In addition, even if State aid were granted in its favour, it is not possible to quantify in the usual manner the alleged benefit. In most cases, it is assumed that the amount of operating aid received by an undertaking equates in essence to the impediment to competition in its sector of activity. In the present case, first, there is no direct transfer of liquid assets from the public to the private sector and, second, the advantage is not in its traditional sector of activity. It is therefore incorrect to determine the scale of the distortion of competition on the textile market on the basis only of the nominal value of the shares acquired by the applicant in a group producing container glass. In the applicant's submission, it is apparent from the facts of the case as a whole that the nominal value of the shares cannot equate to the size of the alleged distortion of competition on the textile market, not only because that value is unreasonably high and in no way corresponds to their real value, but also because, even assuming that it did derive a benefit from the forced repurchase of the shares, it could not have had the effect of distorting competition on the textile market since the acquisition free of charge of shares on the glass market does not automatically give rise to an operating advantage on that textile market.

189 It follows from those factors that the Commission's assertion that recovery of the nominal value of the shares acquired by the applicant is necessary to eliminate the

distortion of competition is contrary to the economic reality, so that, by ordering that recovery, the Commission infringes the principle of proportionality and Article 14 of Regulation No 659/1999.

190 The Commission contends that the Court should reject the plea.

Findings of the Court

191 As regards the applicant's argument that the Commission infringed Article 14(1) of Regulation No 659/1999 and the principle of proportionality by ordering the recovery of the aid even though the applicant did not derive any financial benefit from the forced repurchase of the Category B shares and the Category I profit shares pursuant to the agreement of 18 December 1996, it is sufficient to observe that, to the extent that that infringement is based on the argument that pressure was put on the applicant in connection with that repurchase, it must be rejected for the reasons referred to in paragraphs 129 to 149 of this judgment.

192 Even if the applicant's argument were not based on such pressure, but on the mere fact that it repurchased the shares, it must also be rejected.

193 In this case, as is apparent from the contested decision, in particular recitals 91 and 92, the State aid consisted in the fact that on 20 November 1998 the Walloon Region waived a definite debt of BEF 113 712 000 owed to it by the Beaulieu Group in exchange for the surrender of 9 704 shares in the capital of Verlipack Holding II,

which, at the time of their transfer in December 1998, were of no value, the assets of that company having been valued at BEF 1 on 11 February 1999.

194 It is therefore on an incorrect premiss that the applicant claims, in particular, that the scale of the distortion of competition was incorrectly determined on the basis of the nominal value of the shares acquired in 1996, since it was not that transaction which was categorised as State aid, but rather the Walloon Region's waiver on 20 November 1998 of a definite fixed claim totalling BEF 113 712 000 which it had against the applicant and which the applicant has never disputed before the national courts.

195 By waiving such a claim, to the benefit of a private undertaking, the Kingdom of Belgium granted aid in the sum of BEF 113 712 000 from the public sector to the private sector.

196 It was therefore necessary to assess the scale of the distortion in the light of the fact that the Walloon Region had a definite fixed claim of BEF 113 712 000 against the applicant which it decided not to recover.

197 It is therefore in respect of the waiver of the debt in that amount that the Commission ordered, at recital 111 of the contested decision, that the aid be recovered '[i]n order to restore the economic conditions with which the company would have had to contend if it had not been granted incompatible aid'.

198 As regards the applicant's argument that the aid granted did not have the effect of distorting competition on the textile market since the acquisition free of charge of

shares on the glass market did not automatically give rise to an operating advantage on that textile market, it is sufficient to observe that, as already held at paragraph 184 of this judgment, the aid received by the applicant remained part of the assets of the Beaulieu Group and therefore resulted in a financial advantage on the textile market so that, since it is likely to strengthen the position of the recipient undertaking in comparison with other undertakings and to enable it to increase its exports, it must be liable to distort competition in the common market and affect trade between Member States.

199 The applicant cannot therefore complain that the Commission infringed the principle of proportionality and Article 14 of Regulation No 659/1999 on the ground that it ordered the recovery of the value of the aid consisting in the waiver of a debt of BEF 113 712 000.

200 In those circumstances, the second plea must be rejected.

The third plea: infringement of the principle of equal treatment

201 The applicant, which subdivides this plea into three parts, alleges that the Commission infringed the principle of equal treatment as formulated by the Court of Justice in Joined Cases 117/76 and 16/77 *Ruckdeschel and Others* [1977] ECR 1753, first, by applying two different valuation methods to determine the value of the shares and profit shares held in the Verlipack companies, next, by carrying out that valuation at two different times and, lastly, by using the argument relating to the final recipient of the State aid inconsistently.

First part of the plea: the contested decision infringes the principle of equal treatment by applying two different methods to determine the value of the shares and profit shares

— Arguments of the parties

202 The applicant complains that the Commission applied two different methods to determine the value of the shares and profit shares held in the Verlipack companies, one based on their issue price (nominal value, that is to say BEF 113 712 000, the price at which the applicant was required to repurchase them), the other on the real value of the shares at the time when they were transferred to the Walloon Region, which, according to recital 80 of the contested decision, was in fact nil.

203 In those two transactions, the Walloon Region and the applicant were in practically identical positions: they had both transferred a portfolio of shares in the Verlipack companies at a time when those companies were experiencing financial difficulties, whether that be in December 1996, when the shares and profit shares in question were transferred by the Walloon Region to the applicant, or in November 1998, when the shares were transferred by the applicant to the Walloon Region. Indeed, in December 1996 Verlipack Jumet and Verlipack Ghlin revealed extremely heavy losses.

204 Accordingly, the applicant queries whether the Commission had grounds for applying two different methods to assess — admittedly at different times — the value of a portfolio of shares in essentially identical companies in very similar financial positions.

205 The applicant observes that the only justification given by the Commission is the Royal Decree of 1985. In the light of the case-law cited in paragraph 126 of this judgment, the applicant submits that that approach is too formal, rigid and restrictive and fails to have regard to the factual and economic context of this case. First, the Walloon Region repeated many times that the price paid by the applicant in 1996 was excessive and, second, in 1997, the Walloon Region took account of the real value of the shares in the case of Heye.

206 The Commission contends that that part of the plea should be rejected.

— Findings of the Court

207 It must be borne in mind that, in accordance with settled case-law, discrimination consists in particular in treating like cases differently, thereby subjecting some operators to disadvantages as opposed to others, without that difference in treatment being justified by the existence of substantial objective differences (Joined Cases 17/61 and 20/61 *Klöckner-Werke and Hoesch* v *High Authority* [1962] ECR 325, 345; Case 250/83 *Finsider* v *Commission* [1985] ECR 131, paragraph 8, and Case C-351/98 *Spain* v *Commission* [2002] ECR I-8031, paragraph 57; Case T-106/96 *Wirtschaftsvereinigung Stahl* v *Commission* [1999] ECR II-2155, paragraph 103).

208 In that respect, it should be observed that the applicant agreed, as provided in the agreement of 30 April 1985 to which it acceded by reason of the addendum of 18 November 1987, to assume the rights and obligations flowing from that agreement, which set out precisely, in Article 10, the conditions governing the

repurchase of the Category B shares and Category I profit shares, in particular the price. In addition, that agreement referred expressly to the Royal Decree of 1985 which sets, inter alia, the price conditions for repurchasing those shares.

209 As is apparent from recitals 77 and 78 of the contested decision, the price set by the agreement of 18 December 1996, in accordance with the Royal Decree of 1985, was equivalent to 80% of the value of the non-voting preferential shares set in the agreement of 30 April 1985. By that transaction, the applicant had a definite fixed debt of BEF 113 712 000 to the Walloon Region.

210 By contrast, since the value of the shares which the Walloon Region accepted by the addendum of 20 November 1998 as payment for the debt of BEF 113 712 000 (as is apparent from recitals 73 to 76 and 80 of the contested decision) was not based on the Royal Decree of 1985, it was necessary to determine that value in the light of the facts at the time of that addendum. At the time of the addendum of 20 November 1998, Verlipack Holding II, the shares of which were transferred to the Walloon Region, was unable to meet its liabilities and had been unable to do so since June 1998 according to the judgment of the Mons Commercial Court of 31 May 1999, and its assets were valued at BEF 1. Those shares, the nominal value of which was BEF 100 million, therefore no longer had any value at the time of the addendum of 20 November 1998, which is moreover not disputed by the applicant. The Commission was therefore entitled to assess that addendum by taking into account the real value of the shares in question.

211 It follows that, since the situations were not identical, the Commission did not infringe the principle of equal treatment.

212 That finding cannot be invalidated by the applicant's argument by which it compares its situation with that of Heye in the context of the option agreement of 9 April 1997

concluded between Verlipack Holding I and the Walloon Region which determined that 'the price of each share [would correspond] to the value calculated by dividing the net assets ... of SA Verlipack Holding II ... by the number of shares issued by that company'.

213 It is not apparent from that agreement that the shares held by the Walloon Region in the capital of Verlipack Holding II were non-voting preferential shares within the meaning of the Royal Decree of 1985.

214 In any event, even if the shares which were the subject of that option agreement were comparable to those which were the subject of that transfer in the agreement of 18 December 1996, it must be stated, as the Commission rightly claimed, that it is the Walloon Region, and not the Commission, which discriminated against the applicant.

215 The first part of the third plea must therefore be rejected.

Second part of the plea: the contested decision infringes the principle of equal treatment by valuing the shares and profit shares at different times

— Arguments of the parties

216 In the applicant's submission, it is apparent from the contested decision that the shares transferred in lieu of payment in December 1998 were worth BEF 0 on the

ground that the value of Verlipack Holding II's assets had been reduced to BEF 1 on 11 February 1999. In order to determine the value of the shares given in payment to the Walloon Region, the Commission therefore placed itself at the time of the adoption of the contested decision and took account of the subsequent development of the relevant Verlipack Group undertaking until it became bankrupt. By contrast, as regards the value of the shares purchased in 1996, the Commission had regard only to their nominal value at the time of their acquisition. At recital 107 of the contested decision, the Commission therefore takes no account of the economic and financial development of the companies concerned or of Decision 2001/856, from which it is apparent that, before Heye's entry, Verlipack's financial situation appeared to be wholly unviable. The Commission also fails to have regard to the addendum of 20 November 1998, by reason of which the Walloon Region's claim was already extinguished, as a matter of civil law, following the transfer of the Verlipack Holding II shares in lieu of payment. The distinction thus made by the Commission between those two situations, stemming from the fact that it took account of the economic and financial development of the Verlipack Group in the first situation and not in the second, is not objectively justified and amounts to a breach of the principle of equal treatment.

217 The Commission contends that the Court should reject that part of the plea.

— Findings of the Court

218 In this second part of the plea, the applicant essentially repeats the arguments which it has already put forward in the first part of the plea in relation to the value of the shares and profit shares in question, and reference is therefore made to paragraphs 207 to 211 of this judgment.

219 In any event, in order to determine the amount of the aid granted to the applicant by the addendum of 20 November 1998 the Commission was right to take into

consideration the facts at the time when the Walloon Region accepted, as payment for a definite fixed claim of BEF 113 712 000, the surrender of 9 704 shares in Verlipack Holding II which on that date, namely 20 November 1998, were worthless.

220 The second part of the third plea must therefore be rejected.

Third part of the plea: the contested decision infringes the principle of equal treatment by applying the argument relating to the final recipient of the State aid inconsistently

— Arguments of the parties

221 The applicant observes that, as is apparent from recitals 109 and 110 of Decision 2001/856, Heye was not considered to be the final recipient of the aid. By the same token, the applicant claims that it cannot be considered to be the final recipient of the aid since it transferred almost immediately (24 January 1997) the portfolio of shares acquired on 18 December 1996 to Verlipack Holding I which was controlled by Heye as of 11 April 1997. The applicant did not therefore actually benefit from the alleged State aid and its position is therefore the same as that of Heye in Decision 2001/856. By treating differently those two companies without giving any objective justification, the Commission infringed the principle of equal treatment.

222 The Commission contends that that part of the plea should be rejected.

— Findings of the Court

223 In the third part of the plea, the applicant again disputes that it was the recipient of the aid and claims, relying on recitals 109 and 110 of Decision 2001/856, that, just like Heye, it was unable to use the shares and profit shares made available to it on 18 December 1996 for any purpose other than to transfer them immediately, through Verlipack Holding I, to the Verlipack plants and thus did not benefit from the alleged aid.

224 First, it must be borne in mind that, as is apparent from the contested decision, only the waiver of the debt provided for in the addendum of 20 November 1998 was found to be State aid by the Commission and that, consequently, the question whether the transaction which is the subject of the agreement of 18 December 1996 is to be classified as State aid is irrelevant.

225 Second, at recital 108 of Decision 2001/856, the Commission found that '[t]he allocation clauses in the two agreements [namely a debenture loan and a loan] specifically stipulate[d] that Heye agreed (i) to recapitalise the Ghlin and Jumet plants and (ii) to finance investments in the three Verlipack plants, including the Mol plant (Flanders)'. It follows that Heye had to use the funds received to recapitalise Verlipack.

226 By contrast, there is no such clause in the addendum of 20 November 1998 and the applicant did not moreover submit that such a clause requiring transfer of the funds made available to it had been provided for, and therefore its situation cannot be comparable to that of Heye. In addition, the applicant did not claim that, following the waiver of the claim held by the Walloon Region, it recapitalised Verlipack with an amount corresponding to the debt thus waived.

227 It follows from the foregoing that the third part of the plea cannot be upheld and that the third plea must be rejected in its entirety.

Fourth plea: infringement of the obligation to state reasons

Arguments of the parties

228 The applicant submits that the contested decision fails to provide an adequate statement of reasons, at least on four points.

229 First, the applicant claims that the contested decision fails to provide an adequate statement of reasons as regards why the Commission relies exclusively on the nominal value of the portfolio of shares that the applicant repurchased without taking account of the complex factual background to this case.

230 Second, the contested decision does not explain why it relies, on the one hand, on the date of its adoption as regards the value of the shares given in payment (valued at BEF 1) and on the date of forced repurchase of the shares by the applicant on 18 December 1996, that is to say their nominal value, on the other. The contested decision fails to provide an adequate statement of reasons for this difference.

231 Third, the contested decision fails to justify the difference in treatment between the applicant and Heye throughout the whole of the Verlipack case. In the same way that Heye was not considered to be the final recipient of the aid in Decision 2001/856, the applicant should likewise not have been considered the final recipient in the contested decision and should not have been considered to be the undertaking actually benefiting from the portfolio of shares which admittedly it acquired, but because it was forced to. The applicant could have derived a financial benefit (assuming that there was such a benefit) only to the extent that it held those shares, namely between 18 December 1996 and 11 April 1997.

232 Lastly, the applicant, in relation to the content of paragraphs 172 to 174 of this judgment, claims that the Commission fails to explain why the aid — assuming that it was granted to the applicant — distorted competition and affected trade between Member States on the textile market.

233 The Commission contends that that plea should be rejected.

Findings of the Court

234 According to settled case-law, the obligation to provide a statement of reasons laid down in Article 253 EC is an essential procedural requirement, as distinct from the

question whether the reasons given are correct, which goes to the substantive legality of the contested measure. Accordingly, the statement of reasons required by Article 253 EC must be appropriate to the measure at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure at issue in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 19; *Commission* v *Sytraval and Brink's France*, paragraph 83 above, paragraphs 63 and 67, and Case C-114/00 *Spain* v *Commission* [2002] ECR I-7657, paragraph 62; *Fleuren Compost* v *Commission*, paragraph 83 above, paragraph 119).

235 Furthermore, that requirement must be appraised by reference to the circumstances of each case, in particular the content of the measure, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 253 EC must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see *Spain* v *Commission*, paragraph 234 above, paragraph 63, and Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraph 58, and the case-law cited).

236 When applied to decisions finding that measures constitute State aid, this principle requires that the reasons for which the Commission considers that the aid measure in question falls within the scope of Article 87(1) EC should be indicated (Case T-16/96 *Cityflyer Express* v *Commission* [1998] ECR II-757, paragraph 66).

237 In the light of that case-law, it is not apparent that the Commission failed, in the present case, to provide an adequate statement of reasons for the contested decision in relation to the four complaints raised by the applicant.

238 As regards, first, the fact that the Commission relies on the nominal value of the Category B shares and Category I profit shares that the applicant repurchased in 1996, it is sufficient to note that, as is apparent from paragraphs 150 to 156 of this judgment concerning the value of the shares and profit shares in question, the Commission set out, at recitals 77 and 78 of the contested decision, its reasons for relying on such a value. Those two recitals read as follows:

'Belgium claims that the price of BEF 113 712 000 determined in December 1996 for the non-voting shares and the profit shares transferred by Sowagep to the Beaulieu Group did not correspond to their value. According to Belgium, it was a "price imposed by the Royal Decree of 7 May 1985". Under Article 3 of this Royal Decree, the purchase price of non-voting preferential shares "may not be lower than 80% of the issue price". According to Belgium, the price of BEF 113 712 000 for the non-voting and profit shares purchased by the Beaulieu Group in December 1996 was equivalent to 80% of their issue price.

The requirement to set a price equivalent to 80% of the issue price is a statutory one imposed without distinction on anyone wishing to purchase such preferential shares.'

239 To the extent that the applicant's argument relates to the fact that the Commission failed to provide an adequate statement of reasons for the contested decision on the ground that it does not state why it relied exclusively on the nominal value of the portfolio of shares that the applicant repurchased in 1996 without taking account of the more complex factual background of this case, namely the pressure allegedly exerted on the applicant, it must be rejected for the reasons referred to in paragraphs 129 to 149 of this judgment.

240 It follows that the applicant cannot complain that the Commission failed to provide a statement of reasons for the contested decision on that point.

241 As regards, second, the fact that the contested decision does not explain the reasons for relying on the date of its adoption so far as concerns the value of the shares given in payment to the Walloon Region in 1998 and on the date of the forced repurchase of the shares and profit shares in question by the applicant on 18 December 1996, it must be stated that, as is apparent from the analysis carried out in paragraphs 207 to 211 and 218 to 220 of this judgment, the Commission provided an adequate statement of reasons at recitals 77 to 79 of the contested decision for its finding that, in December 1996, the Walloon Region's claim against the applicant amounted to BEF 113 712 000. The same applies in respect of the value of the shares in Verlipack Holding II, the Commission stating, at recitals 73 to 76 and 80 of the contested decision, why, in November 1998, those shares were worthless.

242 Furthermore, if, by that argument, the applicant calls in question the merits of the statement of reasons of the contested decision by invoking the pressure allegedly put on it, that argument must be rejected for the reasons mentioned in paragraphs 129 to 149 of this judgment.

243 As regards, third, the alleged failure to provide a statement of reasons in the contested decision concerning the difference in treatment between the applicant and Heye owing to the fact that the applicant, unlike Heye, was considered to be the final recipient of the aid, it must be observed that the Commission stated, in particular at recitals 73, 80 and 91, why the applicant had to be considered to be the undertaking which received the aid in question.

244 Furthermore, the situation was different in relation to the State aid which was the subject of Decision 2001/856. As is apparent from paragraphs 225 and 226 of this judgment, the Commission found, at recital 108 of that decision, that the aid was to be used to recapitalise the Ghlin and Jumet production plants and that Heye was not therefore the final recipient of the aid.

245 The applicant cannot therefore complain that the Commission failed to provide a statement of reasons for the alleged difference in treatment between the applicant and Heye.

246 As regards, lastly, the complaint that the Commission failed to explain why, assuming that aid was granted to the applicant, that aid distorted competition and affected trade between Member States, it must be stated that, as is apparent from paragraphs 176 to 184 of this judgment, the Commission set out sufficiently clearly, in particular at recitals 70 to 72 of the contested decision, the facts and legal considerations of essential importance in the scheme of the decision, allowing the applicants and the Court to ascertain the reasons for the Commission's view that the transaction at issue led to a distortion of competition and affected trade within the Union (Joined Cases T-228/99 and T-233/99 *Westdeutsche Landesbank Girozentrale and Land Nordrhein-Westfalen* v *Commission* [2003] ECR II-435, paragraphs 292 to 294).

247 The fourth plea must therefore be rejected.

The applicant's request for production of documents

248 The applicant requests that, if the Commission were to maintain its position as regards the value of the shares in 1996, it produces an assessment report so as to substantiate its position.

249 As is clear from the foregoing considerations, the Court has been able to rule on the application on the basis of the forms of order sought, the pleas in law and the arguments put forward during the proceedings and in the light of the documents lodged by the parties (see, to that effect, Case T-152/00 *E* v *Commission* [2001] ECR-SC I-A-179 and II-813, paragraph 86, and Case T-281/01 *Huygens* v *Commission* [2004] ECR-SC I-A-203 and II-903, paragraph 145).

250 The applicant's request that the Commission should be ordered to provide documents other than those already produced at the Court's request must therefore be rejected (see, to that effect, *E* v *Commission*, paragraph 249 above, paragraph 87, and *Huygens* v *Commission*, paragraph 249 above, paragraph 146).

Costs

251 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. As the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fifth Chamber, Extended Composition)

hereby:

1. Dismisses the action;

2. Orders the applicant to pay the costs.

Vilaras Martins Ribeiro Dehousse

Šváby Jürimäe

Delivered in open court in Luxembourg on 23 November 2006.

E. Coulon M. Vilaras

Registrar President