

## COMMISSION DECISION

of 24 April 2002

on the State aid implemented by Belgium for the Beaulieu Group (Ter Lembeek International)

(notified under document number C(2002) 1341)

(Only the French and Dutch versions are authentic)

(Text with EEA relevance)

(2002/825/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above <sup>(1)</sup> and having regard to their comments,

Whereas:

## I. PROCEDURE

(1) By Decision of 4 October 2000, notified to Belgium on 16 October 2000 (SG(D)2000/107549), the Commission terminated the Article 88(2) procedure in respect of some of the aid granted by Belgium to the Verlipack Group <sup>(2)</sup>. By that same Decision, it revoked its Decision of 16 September 1998 (ref. SG(D)98/8769) <sup>(3)</sup> not to raise any objections to part of the aid. This was prompted by the fact that the Decision of 16 September 1998 was based on incorrect information provided in the course of the procedure which was of decisive importance in the decision.

(2) During its examination of the aid, the Commission was informed of other measures that might contain elements of state aid for the Verlipack Group and/or the Beaulieu Group. Since the case concerned new support from the Walloon Region, the Commission called on the Belgian State on 5 July 2000 to provide it with information that would enable it to assess the measures in the light of the rules applicable.

(3) After several reminders, the Commission decided to issue, by letter of 19 January 2001, a formal injunction to Belgium to supply the information that would enable it to assess the compatibility of the measures in favour of Verlipack and/or the Beaulieu Group with Article 87 of the Treaty. Only a few days before this injunction was notified, Belgium submitted its reply to the letter of 5 July 2000 by letter registered as received on 15 January 2001.

(4) On 6 June 2001 the Commission decided to initiate the Article 88(2) procedure with regard to the aid. Belgium was informed by letter of 8 June 2001. After having requested additional time to reply, Belgium responded by letter received by the Commission on 26 July 2001.

(5) The publication of this letter in the *Official Journal of the European Communities* <sup>(4)</sup> prompted a reaction from 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 and from the United Kingdom Permanent Representation by letter of 7 December 2001. Belgium replied to the letter of 3 December 2001 by letter received by the Commission on 16 January 2002.

## II. BACKGROUND

## II.1. Developments within the Verlipack Group

(6) Until it was declared bankrupt on 18 January 1999, the Verlipack Group had been Belgium's largest producer of hollow container glass (white or brown glass bottles or jars for the agri-foodstuffs industry), with a market share of 20 % in Belgium and 2 % in the Community. It employed 735 people at its plants at Ghlin, Jumet and Mol in 1996.

<sup>(1)</sup> OJ C 313, 8.11.2001, p. 2.

<sup>(2)</sup> OJ L 320, 5.12.2001, p. 28.

<sup>(3)</sup> OJ C 29, 4.2.1999, p. 13.

<sup>(4)</sup> See footnote 1.

- (7) In 1985 the Belgian public authorities acquired a 49 % holding in the Verlipack Group, with the remaining shares being held by a private operator, the Beaulieu Group. This holding, which had been acquired by Société Nationale pour la Restructuration des Secteurs nationaux (SNRSN), was approved by the Commission (aid N123/85). In accordance with the Special Law of 15 January 1989, the Walloon Region acquired the non-voting shares for the Ghlin and Jumet plants, while the shares for the Mol plant were transferred to the Flemish Region.
- (8) In 1992 the Verlipack Group received two investment grants totalling BEF 502 122 500 under a regional aid scheme (Law of 30 December 1970) approved by the Commission<sup>(5)</sup>. 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 8 December 1992 not to raise any objection<sup>(6)</sup>. The Walloon authorities subsequently revealed that, for various internal reasons, this loan had not been released. They also indicated that a decree had been adopted on 15 July 1993 repealing their initial decision to grant this aid to Verlipack.
- (9) In the course of the procedure resulting in the adoption of the decision of 4 October 2000, Belgium revealed that the Verlipack Group was experiencing problems, mainly due to the quality of its management and, above all, its production (inadequate equipment and technology); while investment was needed to improve equipment, the Beaulieu Group could not fully assume the burden and management of its BEF 5 500 million investment programme. This would explain, among other things, why the Walloon Region did not pay the aid that had been authorised.
- (10) Following a number of capital increases by the private shareholders (SA Imcopack Wallonie, owner of the Ghlin and Jumet sites, and NV Imcopack Vlaanderen, owner of the Mol site, both belonging to the Beaulieu Group), the public holding was gradually reduced. By 1996 the Walloon Region had shareholdings of 6,2 % in SA Verlipack Jumet and 11,1 % in SA Verlipack Ghlin, the operating companies situated on Walloon territory. At the end of this gradual disengagement, the public authorities held no more than 20,7 % of the capital of the Verlipack Group.
- (11) The two companies located in Wallonia were making losses at that time (SA Verlipack Ghlin suffered an operational loss of 8 % in 1995 and 16 % in 1996; SA Verlipack Jumet recorded a loss of 55 % in 1995 and 60 % in 1996).
- (12) The Verlipack Group would not have been able to honour the end-of-1996 repayment deadlines for bank loans of more than BEF 362,8 million and would have been subjected to the banks' recovery procedures.
- (13) On 1 September 1996 the Verlipack Group and the German Heye-Glas Group signed a technical cooperation agreement.
- (14) This scope of this agreement was extended on 11 April 1997 to cover managerial and financial assistance, with the German group becoming directly involved in the management and running of the Verlipack Group. At the end of this operation, the shares held by the Walloon Region in SA Verlipack Ghlin and SA Verlipack Jumet were bought by the Beaulieu Group<sup>(7)</sup>. The latter and the Heye-Glas Group set up an umbrella holding, Verlipack Holding I, controlled by the latter subject to a majority vote.
- (15) Verlipack Holding I has equity capital of BEF 1 030 million, of which BEF 515 million was contributed by the Heye-Glas Group, with the rest comprising all of the equipment of the three operating sites contributed by the Beaulieu Group and valued at BEF 515 million. Out of this umbrella holding a second holding company, Verlipack Holding II, was formed with a capital of BEF 1 230 million to oversee the three production sites. The management bodies for the whole of the new industrial group are concentrated at the level of Verlipack Holding II, in which Heye holds a majority, and there is single management of the group's various departments (commercial, technical, accounting, financial and administrative).

<sup>(5)</sup> OJ L 312, 9.11.1982, p. 18.

<sup>(6)</sup> OJ C 83, 24.3.1993, p. 3.

<sup>(7)</sup> By agreement of 18 December 1996, SA Ter Lembeek International bought the following holdings from Sowagep (the management company for the holdings of the Walloon Region in commercial firms): Verlipack Ghlin SA: 5 087 non-voting preferential shares and 3 937 Category I profit shares; Verlipack Jumet SA: 2 923 non-voting preferential shares and 2 267 Category I profit shares. The agreement stipulated that the price of BEF 113 712 000 was payable 'on 31 December 2001, net-net, without interest'.

- (16) However, the results announced by the Heye-Glas Group and Verlipack worsened significantly in 1997. On 30 November of that year, the provisional and unaudited consolidated position revealed a net loss for the year of BEF 828 592 044. On 2 April 1998 the Walloon authorities estimated the loss as at 31 December 1997 to be some BEF 825 million, whereas the Heye-Glas/Verlipack business plan had forecast a loss of only BEF 368 million, i.e. BEF 457 million less than the estimate.
- (17) 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. According to media reports, the company justified these measures 'in part at least, by the difficult situation on the container glass market' and by 'mounting losses and unfavourable forecasts given the overcapacity in glass production on the market in central Europe'.
- (18) On 11 January 1999 the Turnhout Commercial Court declared Verlipack Mol bankrupt and on 18 January 1999 the Mons Commercial Court declared bankrupt the six companies in the glassmaking Verlipack Group (the Ghlin and Jumet plants, Verlipack Belgium, Verlipack Engineering, Verlimo and Imcourlease).
- (19) 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. Sowagep announced to the Court that it did not intend to pursue recovery of its claim (and thus granted a credit to its debtor). As a consequence, the Court found on 31 May 1999 that the conditions for bankruptcy on the part of Verlipack Holding II were not met even though, now that its object no longer existed, the company was destined merely to be put into liquidation.
- (22) The Group is controlled by the holding company Ter Lembeek International, known until 1994 as Beaulieu Wielsbeke<sup>(8)</sup>.
- (23) Beaulieu Wielsbeke NV, which took over the activities of Ter Lembeek International before the latter changed its name, recorded a turnover of BEF 5 182 220 000 in 1998 and BEF 4 821 857 000 in 1999, with losses of BEF 39 035 000 and BEF 309 520 000 respectively.
- (24) In 1999 Beaulieu Wielsbeke employed 553 persons, and 98 % of its sales were exported.

### III. INJUNCTION ADDRESSED TO BELGIUM

#### II.2. Beaulieu Group

- (20) The Beaulieu Group is the name of a Belgian holding company active in the carpeting and synthetic fibres sector.
- (21) It is the world's second-largest carpet manufacturer and by far the largest carpet manufacturer in Europe. It also produces nylon fibres for its own use and, as a result, is one of the carpet manufacturers which have become involved upstream in the production of nylon fibres.
- (25) In the context of the procedure resulting in the decision of 4 October 2000, Belgium described the situation at Verlipack in the months preceding and following the Commission's decision of 16 September 1998.
- (26) The Commission notes that, in view of the deterioration in Verlipack's position at the end of May 1998, fresh efforts had to be made by the partners (banks, Beaulieu Group and Heye) under a relaunch agreement concluded on 5 June 1998. In this context, and in addition to converting its BEF 150 million loan into capital, Sowagep undertook to find a new private investor willing to make a cash injection of BEF 100 million. However, according to the information supplied by Belgium, it became clear fairly quickly that this new relaunch plan was not producing the anticipated results in that Sowagep was no longer able to find a new private investor.
- (27) It was decided on 26 June 1998 to increase Verlipack's capital further with a contribution from Heye<sup>(9)</sup> of BEF 200 million for 19 408 new shares and a BEF 100 million injection by the Luxembourg company Worldwide Investors, the investor found by Beaulieu, in exchange for 9 704 new shares.

<sup>(8)</sup> This holding company owns the following subsidiaries Beaulieu Wielsbeke NV, Goed Ter Lembeek NV, Cefima NV, Verlico NV, Der Grüne Teppich GmbH, Beja Textil Lda, Beaulieu Service Centre Moskau, Datex NV, Beaulieu Kunststoffen NV, Chemical Finance Company, De Steenhout NV and Verlipack Holding NV.

<sup>(9)</sup> In 'full knowledge of the statutes and financial situation of Verlipack Holding II'.

- (28) In the autumn of 1998 the undertaking given by Worldwide Investors was terminated by the transfer of its shares to the Beaulieu Group, which in turn transferred them to the Walloon Region. This transfer was in lieu of payment<sup>(10)</sup> of the amount owed by Beaulieu to the Walloon Region for the Verlipack shares valued at BEF 113 712 000, held by the latter and acquired by the Group in December 1996, repayment of which, without interest, was not to begin until 31 December 2001.
- (29) The Commission notes that the transfer in lieu of payment of a debt, which was not to start being repaid until 31 December 2001, took place several weeks before Verlipack filed for bankruptcy.
- (30) In its letter of 28 September 1999<sup>(11)</sup>, Belgium had indicated 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 Beaulieu, which has been repaid by having its debt to the Walloon Region cleared'.
- (31) In its letter of 10 April 1998<sup>(12)</sup>, Belgium announced its intention to grant BEF 100 million to Verlipack in the form of either a capital contribution or a long-term loan<sup>(13)</sup>. It also specified that it would not 'implement the project without prior notification to the Commission and without authorisation'.
- (32) In its letter to Belgium of 14 December 1998 in the procedure resulting in the decision of 4 October 2000, the Commission reserved 'its position concerning any further intervention by the Walloon authorities in Verlipack's favour'. This was repeated in its letter of 13 January 1999 in the same case. Moreover, Belgium stated on 4 February 1999, also in the same case, that it had 'never considered financing the composition period in view, in particular, of the terms of the recent Commission decision [of 16 September 1998]'.
- (33) Nevertheless, it was only indirectly that the Commission learned of further intervention by Walloon Region linked to the repayment of its amount owed to it by the Beaulieu Group for the transfer of its shares in the Ghlin and Jumet plants in 1996.
- (34) The Commission informed Belgium by letter of 5 July 2000 that it had entered the new measure in the register of non-notified aid under number NN 73/2000 with a view to determining its compatibility with the common market.
- (35) In this letter, the Commission observed that the BEF 100 million contribution from either Sowagep or the Walloon Region had come from state resources but that, since this was a new public measure, it did not at the time have all the information it required to assess the measure's compatibility with Article 87 of the Treaty.
- (36) In the same letter, the Commission expressed doubts concerning possible aid granted to the Beaulieu Group by the Walloon Region on the ground that the Group had secured payment terms when buying the shares in the Ghlin and Jumet plants which would not have been acceptable to a private financial institution. Moreover, it wondered whether the transfer in lieu of payment which had taken place in December 1998, a few weeks before Verlipack had filed for bankruptcy, did not constitute aid to the Beaulieu Group within the meaning of Article 87(1) of the Treaty.
- (37) In its letter of 5 July 2000, the Commission requested 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
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- (10) Supplementary agreement of 20 November 1998 to the transfer agreement of 18 December 1996 between the Walloon Region and the Beaulieu Group on the acquisition of 14 214 shares.
- (11) Response to the initiation of the formal investigation procedure resulted in the decision of 4 October 2000 (page 24).
- (12) In the context of the procedure resulting in the decision of 16 September 1998, subsequently revoked.
- (13) 'Given the firm's difficulties and the desire on the part of its private shareholders and bankers to provide Verlipack with new finance, the Walloon Region had agreed in principle to participate on certain conditions in a BEF 100 million capital increase. [...] The Walloon Region would point out that it will not implement the project without prior notification to the Commission and without authorisation. At present, the project is tending towards the granting of a BEF 100 million long-term loan on the same terms as applied to Verlipack by the banks. The Walloon Region will ensure that it contacts the Commission again once the conditions in finalising such a project have been met. [...] Finally, Verlipack's management has announced that the initial results for 1998 point to the start of an improvement.'

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.

- (38) In the same letter, the Commission wondered who was the real beneficiary of the increase in Verlipack's capital subscribed in June 1998 by Worldwide Investors.
- (39) By letter of 4 September 2000, Belgium asked for more time to reply to these questions; the Commission acceded to the request by letter of 6 September 2000.
- (40) By letter of 29 September 2000, the Commission issued a second reminder.
- (41) Belgium failed to submit the information requested by the deadline set.
- (42) Since Belgium had therefore not provided it with all the information it required to examine the measures in question, and in accordance with Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(14)</sup>, the Commission issued an injunction requiring Belgium to supply the documents, information and data necessary for it to examine the compatibility with the common market of the relevant measures in favour of Verlipack and/or the Beaulieu Group. This decision, which reproduced the wording of the letter of 5 July 2000 regarding the information which was being requested, was notified to Belgium by letter of 19 January 2001 (ref. SGD(2001)285235).

#### IV. REPLY FROM BELGIUM AND INITIATION OF THE PROCEDURE

- (43) By letter registered as received on 15 January 2001, Belgium replied to the Commission's letter of 5 July 2000 in the following terms:
- (44) Despite the Verlipack Group'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. A new relaunch plan was thus adopted by the private and public partners which entered into an agreement (Heads of Agreement) on 5 June 1998. This plan can be summarised as follows:

Partner	Undertaking
Heye	Injection into Verlipack of BEF 200 million
Beaulieu Group	Waiver of a debt of BEF 600 million owed to it by the Verlipack (unless the latter's fortunes improved after 1 January 2002)
Walloon Region	— Search for an investor to put up BEF 100 million in order to increase Verlipack's capital — Conversion into capital of the BEF 150 million subordinated loan granted to Verlipack by the Walloon Region in 1997
Private banks (Kredietbank, Crédit Lyonnais)	Release of the remaining BEF 73 million of an overdraft facility granted in 1997, plus rescheduling of debts and conditional reduction in interest rates

- (45) As regards the Walloon Region's involvement, the following should be stressed:
- (46) The conversion into capital of the BEF 150 million subordinated loan was covered by the negative final decision of 4 October 2000.
- (47) As for the capital increase of BEF 100 million, the Walloon Region was supposed to find a private investor. However, according to the Walloon authorities, 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 (the Walloon Region) was to find'. According to Belgium, the Beaulieu Group, which had waived a debt of BEF 600 million, had every interest in ensuring that the relaunch plan would produce the anticipated results.
- (48) As it happened, it was Worldwide Investors SA, a Luxembourg investment company, which on 26 June 1998 put up the BEF 100 million to increase Verlipack's capital. According to Belgium, this was done on the Beaulieu Group's behalf.

<sup>(14)</sup> OJL 83, 27.3.1999, p. 1.

- (49) However, again according to the Belgian authorities, since the new relaunch plan did not succeed in curbing Verlipack's mounting losses, the Walloon Region was unable to find a new private investor.
- (50) Consequently, the Walloon region and the Beaulieu Group jointly decided to amend the terms of the agreement under which the Beaulieu Group had purchased the shares held by the Walloon Region in Verlipack Ghlin and Verlipack Jumet in 1996. Under the terms of the supplementary agreement of 20 November 1998 amending the agreement of 1996 between Beaulieu and the Walloon Region, the payment of BEF 113 712 000 for the shares acquired by Beaulieu in 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'.
- (51) On 21 December 1999 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. Belgium has also confirmed that, on an unspecified date between 21 and 31 December 1998, the Beaulieu Group transferred 9 704 shares in Verlipack Holding II to the Walloon Region 'in exchange for the waiver of the Beaulieu's debt to the Region (Annex 5)' <sup>(15)</sup>.
- (52) In their letter registered as received on 15 January 2001, the Belgian authorities themselves indicated that their reply was incomplete since the Beaulieu Group had not cooperated. Since then, they have not submitted any other communication to the Commission, not even to confirm that their letter covered the questions contained in the information injunction.
- (53) In the light of the information available, the Commission concluded on 6 June 2001 that this 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 of the EC Treaty. It also took the view that doubts existed as to the compatibility with Article 87 of the Treaty and Article 61 of the EEA Agreement of the aid received by the Verlipack and/or Beaulieu Group and, consequently, initiated the Article 88(2) procedure in that regard. This decision was communicated to Belgium by letter of 8 June 2001.

## V. COMMENTS FROM BELGIUM

- (54) By letter received by the Commission on 27 July 2001, Belgium repeated the comments which it had made in the context of the injunction and which can be summarised as follows.
- (55) Despite the Verlipack Group'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. A new relaunch plan was thus adopted by the private and public partners, which entered into an agreement (Heads of Agreement) on 5 June 1998. Under this plan, the Walloon Region undertook (i) to convert the BEF 150 million subordinated loan into capital and (ii) to find a private investor willing to contribute BEF 100 million to Verlipack's capital.
- (56) The conversion into capital of the BEF 150 million subordinated loan was covered by the negative final decision of 4 October 2000. It is therefore not covered by the new procedure.
- (57) As regards the search for a private investor, the Walloon authorities indicate that this undertaking 'could not be met by Sowagep in the short term'. They go on to state that 'Beaulieu thus proposed to Sowagep that it would put up the funds itself, 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. This intervention by Beaulieu is the result of verbal negotiations and has not been formalised by an agreement'.
- (58) As it happened, it was Worldwide Investors SA which on 26 June 1998 put up the BEF 100 million to increase Verlipack's capital. According to Belgium, this was done on the Beaulieu Group's behalf.
- (59) However, again according to the Belgian authorities, since the new relaunch plan did not succeed in curbing Verlipack's mounting losses, the Walloon Region was unable to find a new private investor. Consequently, the Walloon region and the Beaulieu Group jointly decided, by means of a supplementary agreement of 20 November 1998, to amend the terms of the agreement which enabled the Beaulieu Group in 1996 to acquire the shares held by the Walloon Region in Verlipack Ghlin and Verlipack Jumet. Under the terms of the supplementary agreement, the payment of BEF 113 712 000 for the shares acquired by Beaulieu in 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'.

<sup>(15)</sup> It should be noted that the Annex 5 in question does not relate to the transfer of shares held by the Beaulieu Group to the Walloon Region but rather to an exchange of shares between Worldwide Investors and the Beaulieu group.

- (60) According to the Walloon authorities, this supplementary agreement 'is a clear indication of the temporary nature of Beaulieu's intervention in favour of the Verlipack Group and of the existence of a nominee transaction on the Walloon Region's behalf' (page 7 of the letter of 26 July 2001).
- (61) Finally, on 21 December 1999 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.
- (62) Belgium has also confirmed that, on an unspecified date between 21 and 31 December 1998, the Beaulieu Group transferred 9 704 shares in Verlipack Holding II to the Walloon Region 'in exchange for the waiver of the Beaulieu's debt to the Region'.
- (63) With regard to the value of these 9 704 shares, they were worthless in real terms given that the assets of the company had, according to the Mons Commercial Court, been 'reduced to one franc, it is unable to obtain a bank loan to meet its liabilities and [...], consequently, the conditions for bankruptcy are met' <sup>(16)</sup>.

#### VI. COMMENTS FROM INTERESTED PARTIES

- (64) The Collectif de Défense des Travailleurs Licenciés de Verlipack à Jumet et à Ghlin presented comments on the facts established by the Commission, referring to the social consequences of the crisis within the Verlipack Group. It also supplied copies of the minutes of meetings of the Verlipack board and a copy of a letter signed by a union representative at Verlipack (Ghlin plant).
- (65) The United Kingdom Permanent Representation presented the following comments on behalf of the association of the leading United Kingdom carpet manufacturers, the Carpet Foundation (formerly the British Carpet Manufacturers Association):
- (a) The United Kingdom was Europe's largest market for fitted carpets (97 % of homes use this type of floor covering). For obvious reasons, the United Kingdom market was a target for outside competition, and imports had increased to such an extent that imported fitted carpets now accounted for 64 % of the total volume fitted in the United Kingdom (47 % in value terms).
- (b) This dramatic growth had threatened the continued existence of the United Kingdom fitted-carpet industry. In 1970, when imports were almost insignificant, the industry employed 45 000 people. Now, with imports accounting for 64 % of the market, only 8 000 people were directly employed in the industry.
- (c) The Carpet Foundation considered the main beneficiaries of this major market penetration to be manufacturers in Belgium, who now accounted for 55 % of the fitted carpets imported into the United Kingdom. In the last twenty years, imports from Belgium had increased tenfold (from 8 million m<sup>2</sup> in 1980 to 85 millions m<sup>2</sup> in 2000).
- (d) The average price of fitted carpets imported into the United Kingdom was GBP 3,83/m<sup>2</sup> while that of exported fitted carpets was GBP 6,43/m<sup>2</sup>. The most recent figures supplied by the United Kingdom Department of Trade and Industry (DTI) for 1997 revealed a deficit vis-à-vis the rest of the Community of GBP 273 million.
- (e) The Commission had been informed that Beaulieu had, in recent years, been implicated in dubious financial transactions. In the present case, in which Beaulieu had cleared a debt of BEF 113,7 million by transferring 9 704 shares in Verlipack Holding II to the Walloon Region, the Carpet Foundation took the view that the Walloon Region had effectively waived a debt equivalent to GBP 1,5 million in state aid. It thus considered that this debt waiver constituted operating aid to Beaulieu/Verlipack, which was incompatible with the common market.

<sup>(16)</sup> As it happened, bankruptcy was not declared even though, since its purpose had lapsed, the company was destined merely to be put into liquidation. The Walloon Region indicated that it did not intend to pursue recovery of the amounts owed to it (and, in so doing, granted a credit to its debtor). When questioned on this point at the time the procedure was initiated, the Walloon Region confirmed that, as a result of the adoption of the negative decision of 4 October 2000, it had instructed Verlipack Holding II to repay the state aid. Following this, the Mons Commercial Court, by judgment of 19 February 2001, declared Verlipack Holding II bankrupt after the latter had, on the same date, filed for a suspension of payments.

(66) In its reply to the comments from third parties, Belgium asked that the Commission disregard those from the Collectif des Travailleurs Licenciés since this was an insufficiently representative body.

(67) Belgium failed to submit by the deadline set comments on the points raised by the United Kingdom.

## VII. ASSESSMENT OF THE AID

## VII.1. Existence of State aid within the meaning of Article 87(1) of the Treaty

- (68) Article 87(1) of the Treaty stipulates that 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 is, in so far as it affects trade between Member States, incompatible with the common market.
- (69) The concept of aid is wider than that of a grant and extends to measures which, in various forms, reduce the charges usually borne by a firm's budget and have identical effects to grants. It follows that, while not involving any direct transfer of state resources, a measure by which the public authorities renounce a claim places the beneficiaries in a more favourable position than other taxpayers and thus constitutes state aid within the meaning of Article 87(1) of the Treaty.
- (70) The following tables provide statistics for carpets and other textile floor coverings and reveal the existence of trade between Belgium and the other Member States:

(EUR 1 000)

1998	Imports into Belgium	Exports from Belgium
World	211 659,19	2 009 560,84
France	44 502,03	204 232,6
Netherlands	47 711,61	201 575,12
Germany	32 177,89	482 395,03
Italy	3 363,12	25 131,73
United Kingdom	21 083,57	438 580,14
Ireland	317,46	19 756,55
Denmark	1 147,49	17 893,69
Greece	573,09	31 398,44
Portugal	3 844,57	14 468,5
Spain	2 875,73	23 844,69
Sweden	1 396,42	26 411,19
Finland	220,4	9 460,45
Austria	385,45	22 268,92

(Source: Eurostat)

(EUR 1 000)

2000	Imports into Belgium	Exports from Belgium
World	234 803,67	2 185 284,43
France	39 851,55	186 007,02
Netherlands	72 424,95	192 991,38
Germany	31 533,12	459 466,56
Italy	2 695,96	27 042,16
United Kingdom	23 711,69	557 366,43
Ireland	191,31	25 054,58
Denmark	569,55	15 657,08
Greece	730,35	28 670,43
Portugal	1 212,05	18 410,99
Spain	1 297,43	24 813,28
Luxembourg	286,95	2 417,64
Sweden	606,83	21 062,8
Finland	415,04	10 837,97
Austria	527,53	21 444,46

(Source: Eurostat)

- (71) Moreover, in view of the aid recipient's market position<sup>(17)</sup>, any aid granted to this group is liable to affect such trade and distort competition<sup>(18)</sup>. The sales of Beaulieu Wielsbeke NV (a subsidiary of Ter Lembeek International active on the carpeting market) in 1997, 1998 and 1999 amounted to BEF 4 379 764 000, BEF 5 182 220 000 and BEF 4 821 857 000 respectively.

<sup>(17)</sup> The Beaulieu in 2000 group is the leading European carpet manufacturer and exports 98 % of its production.

<sup>(18)</sup> For example, in 2000 Associated Weavers, a manufacturer established in Belgium, sold 48,7 million m<sup>2</sup> of carpeting for a total turnover of EUR 212,89 million, which makes it one of the largest European manufacturers in the sector. According to the data published on its website (<http://www.awe.be/>) (14 march 2002), it exports its products throughout the world, but predominantly to Europe.



(72) These data, along with those supplied by the United Kingdom Permanent Representation, demonstrate the existence of a significant level of trade within the Community.

## VII.2. Contribution of BEF 100 million to Verlipack Holding II

(73) Leaving aside the complexity of the legal and financial arrangements behind the intervention in June 1998 of Worldwide Investors, which injected BEF 100 million into Verlipack Holding II, one indisputable fact stands out: 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.

(74) With regard to the value of these 9 704 shares, the following should be borne in mind:

(75) On 11 February 1999 Verlipack Holding II filed for a suspension of payments before the Mons Commercial Court, which granted a suspension with effect from June 1998. The ruling states, *inter alia*, that:

'Whereas the company Verlipack Holding II, with assets reduced to ONE FRANC, is unable to obtain a bank loan to meet its liabilities and, consequently, the conditions for its bankruptcy are met.'

(76) In the event, bankruptcy was not declared. This was because the Walloon Region indicated that it did not intend to pursue recovery of the amounts owed to it (and, in so doing, granted a credit to its debtor) and proposed that it would meet the cost of voluntary liquidation. As a consequence, the Court found on 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.

(77) 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'<sup>(19)</sup>. 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.

(78) 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.

(79) Regardless of the fact that the purchase price was set on the basis of national rules applicable without distinction, as Belgium acknowledged in its letter of 26 July 2001, to anyone wishing to purchase such preferential shares, it has to be concluded that the price thus set had to be paid by the Beaulieu Group. This was confirmed by the Belgian authorities when they stated in their letter of 15 January 2001<sup>(20)</sup> 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'.

(80) Since, according to the above ruling by the Mons Commercial Court of 31 May 1999, the assets of Verlipack Holding II, which had filed for a suspension of payments on 11 February 1999, had been reduced to a value of one franc, with the Court stipulating that 'the suspension of payments was effective from June 1998'<sup>(21)</sup>, the shares received in payment were of no value. In accepting them 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.

<sup>(19)</sup> Royal Decree concerning the issuing of non-voting preferential shares by limited companies in national sectors (Moniteur Belge of 11 May 1985). The shares in question were non-voting shares which could be subscribed to in companies undergoing restructuring by: (1) Société nationale d'investissement; (2) Société nationale pour la Restructuration des Secteurs nationaux; (3) Fonds voor de herstructurering van de nationalen sectoren in het Vlaamse Gewest; (4) Fonds pour la restructuration des secteurs nationaux en Région wallonne; (5) limited liability companies ('sociétés anonymes') in which Société nationale d'investissement holds at least 50 % of the capital, provided that they are authorised to do so by decree of the Minister for Economic Affairs.

<sup>(20)</sup> This letter was in reply to the Commission's letter of 5 July 2000 (p. 5).

<sup>(21)</sup> See the first recital of the ruling by the Mons Commercial Court of 31 May 1999.

- (81) Consequently, the Commission considers that this operation constitutes a 'debt waiver', as Belgium confirmed in its letter of 15 January 2001<sup>(22)</sup>. Belgium argues, however, that the Beaulieu Group did not draw any economic benefit from that operation since, by waiving the debt, Belgium was compensating the Beaulieu Group for the 'capital contribution made in June 1998'. The difference between the BEF 113 712 000 (amount of the debt) and the BEF 100 million (nominal amount of the capital contribution) was said to be justified 'by the early repayment of the debt<sup>(23)</sup> [...] and remuneration of the nominee transaction'.
- (82) With regard to the latter aspect, reference should be made to the terms of the Heads of Agreement of 5 June 1998. Point 2 states: 'Capital increase (cash) of BEF 100 promoted by Sowagep in Verlipack Holding II (to be used for corresponding capital increases in the Verlipack group companies). A new shareholder must be accepted by all shareholders of Verlipack Holding II.' In its letter of 15 January 2001, Belgium indicated that it was in this context that 'Sowagep undertook to find a new private investor willing to make a BEF 100 million cash injection'. (Page 2). In its letter of 26 July 2001, Belgium stated that the measures provided for in the Heads of Agreement included a 'capital increase of BEF 100 million by a private investor introduced by Sowagep (since renamed Sogepa)' (page 6).
- (83) Accordingly, the Walloon authorities undertook under the Heads of Agreement to introduce an investor and not to contribute BEF 100 million to the capital of Verlipack Holding II.
- (84) Despite the formal injunction, and even after the initiation of the procedure, Belgium failed to provide proof of the existence of an agreement between the Beaulieu Group and the Walloon Region under which Beaulieu would take over the Walloon Region's undertaking (under the Heads of Agreement of 5 June 1998) to find an investor who would put up BEF 100 million.
- (85) In the event, Belgium has not even provided proof of the existence of a nominee agreement between the Beaulieu Group and Worldwide Investors.
- (86) Belgium also confirmed in its response to the initiation of the procedure that there had not been any formal agreement but rather 'verbal negotiations which were not formalised by an agreement'<sup>(24)</sup>.
- (87) If it were accepted, in the light of the comments presented by Belgium, that the Beaulieu Group decided to take over the Walloon Region's undertaking under the Heads of Agreement of 5 June 1998, it would have to be concluded that the Beaulieu Group undertook to introduce an investor and not to contribute BEF 100 million to Verlipack II's capital. A private investor, World Investors, was found that was willing to run the risk of investing in a firm like Verlipack Holding II.
- (88) The response to the initiation of procedure suggests, although there is nothing substantial to bear this out, that the supposed verbal agreement between the Beaulieu Group and the Walloon Region according to which the former would take over the latter's undertaking (under the Heads of Agreement of 5 June 1998) to find an investor that would put up BEF 100 million went well beyond the Walloon Region's undertaking under the Heads of Agreement (to find an investor that would put up BEF 100 million).
- (89) The suggestion is that the Beaulieu Group did not merely take over the Walloon Region's undertaking under the Heads of Agreement (to find an investor that would put up BEF 100 million) but, going beyond that undertaking, intended to ensure in any event that BEF 100 million would be contributed to Verlipack Holding II's capital without its having to put up that amount itself, something which Sowagep supposedly guaranteed to it.
- (90) On the basis of the information supplied by Belgium, the Commission considers that the Member State has not demonstrated: (i) that an agreement under which the Beaulieu Group is said to have taken over the undertaking to find an investor that would put up BEF 100 million actually existed; (ii) that there was also a second, separate and more extensive, agreement under which the Walloon Region allegedly guaranteed to the Beaulieu Group repayment of the BEF 100 million that a private investor should have contributed.

<sup>(22)</sup> See footnote 21 (p. 5).

<sup>(23)</sup> The agreement of December 1996 stipulated that the price of BEF 113 712 000 was payable 'on 31 December 2001, net-net, without interest'.

<sup>(24)</sup> Moreover, in the context of the injunction issued to Belgium, the Walloon authorities' legal counsel approached the legal counsel of the Beaulieu Group in order to obtain information for a reply to the injunction. Belgium did not pass on any reply from the Beaulieu Group or its legal counsel. In addition, neither the Beaulieu Group nor its legal counsel has come forward in the context of this procedure.

- (91) The only incontrovertible aspect is still 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 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 company's assets were valued on 11 February 1999 at one franc.
- (92) In the light of these various circumstances, the Commission concludes that this debt waiver involves a transfer of public resources on the part of the Belgian State that constitutes state aid within the meaning of Article 87 of the Treaty.

### VII.3. Debt waiver in favour of Verlipack Holding II

- (93) On 8 January 1999 Verlipack sought a court-approved arrangement with creditors concerning the plants at Jumet and Ghlin and announced the closure of the plant at Mol. On 11 January 1999 the Commercial Court of Turnhout declared Verlipack Mol bankrupt, while on 18 January 1999 the Commercial Court of Mons declared the six companies of the glassmaking group Verlipack bankrupt (the plants at Ghlin and Jumet, Verlipack Belgium, Verlipack Engineering, Verlimo and Imcourlease).
- (94) 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. Before the Court, Sowagep, 'acting on behalf of the Walloon Region, a minority shareholder in the company' <sup>(25)</sup>, indicated that it did not intend to pursue recovery of the amount owing to it (and, accordingly, granted a credit to its debtor) and that it was meeting the cost of a voluntary liquidation. As a consequence, the Court found on 31 May 1999 that the conditions for bankruptcy on the part of Verlipack Holding II were not met, stressing however that, now that its purpose had lapsed, it was destined merely to be put into liquidation.

- (95) Questioned on this point when the procedure was initiated, the Walloon Region confirmed that, following the adoption of the negative decision of 4 October 2000, it had given notice to Verlipack Holding II to repay the aid. Subsequently, on 19 February 2001, the Mons Commercial Court declared Verlipack Holding II bankrupt.
- (96) The Commission notes that the purpose of Verlipack Holding II was to hold and manage the shares of a series of companies which had been declared bankrupt and that, as a result, its object no longer existed. Accordingly, the only step it could take was to go into liquidation. Given that its assets had been rendered worthless, none of its creditors could reasonably hope to recover even part of what was owing to them. In these circumstances, and in view of the closure of all production installations and the fact that the holding was itself in liquidation, the Commission finds that the debt waiver granted to Verlipack Holding II did not involve a transfer of public resources conferring an economic advantage on Verlipack Holding II or other creditors which is liable to distort competition or affect trade.

### VII.4. Compatibility of the aid

- (97) The Commission notes that Belgium has not invoked any of the derogations provided for by the Treaty, its position being that this case does not involve the granting of State aid.
- (98) It thus considers that none of the derogations provided for in Article 87(2) of the Treaty apply to the measure under review since it does not constitute aid having a social character granted to individual consumers, aid to make good the damage caused by natural disasters or aid to compensate for the economic disadvantages caused by the division of Germany.
- (99) The derogations provided for in Article 87(3)(a), (b) and (d) do not apply either since the aid is not designed to compensate for the economic disadvantages of certain areas, to promote the execution of an important project of common European interest or to promote cultural and heritage conservation.

<sup>(25)</sup> Second recital to the ruling by the Mons Commercial Court of 31 May 1999.

(100) It remains to be examined, therefore, whether or not the aid in question qualifies for the derogation provided for in Article 87(3)(c) as aid to facilitate the development of certain economic activities where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(101) The production units of some of the companies belonging to the Beaulieu group are indeed located in an assisted region under Article 87(3)(c). Such regions qualify for regional aid schemes authorised by the Commission and with a maximum ceiling of 25 % net. However, Belgium, in its response to the initiation of the procedure, has not supplied any information enabling the aid in question to be classified as investment aid, the eligibility of the investment to be verified or the intensity of such aid to be calculated.

(102) Consequently, the Commission takes the view that, as far as the aid in question is concerned, the conditions for applying the derogation provided for in Article 87(3)(c) in connection with the development of certain economic areas are not met.

(103) The information at the Commission's disposal concerning the intervention of the Walloon authorities leads it to believe that the measures in question should be regarded as operating aid to the Beaulieu Group, which is incompatible with the common market.

(104) This is because they are designed to relieve 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.

(105) As the Commission stated in points 4.15 to 4.17 of its guidelines on national regional aid<sup>(26)</sup>, regional aid aimed at reducing a firm's current expenses (operating aid) is normally incompatible with the common market.

(106) Exceptionally, however, such aid may be granted in regions eligible under the derogation in Article 87(3)(a) provided that it is justified in terms of its contribution to regional development and its nature and that its level is proportional to the handicaps it seeks to alleviate. However, the Commission notes that the Beaulieu Group's production plants are not situated in one of the regions referred to in Article 87(3)(a) of the Treaty.

(107) In view of the above, the Commission finds that the aid is not compatible with the common market.

## VIII. CONCLUSIONS

(108) The State aid implemented by Belgium 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.

(109) The Commission finds that Belgium has illegally implemented the aid in question in violation of Article 88(3).

(110) Article 14 of Council Regulation (EC) No 659/1999 stipulates that any unlawful aid which the Commission has deemed to be incompatible with the common market must be the subject of a decision requiring that it be recovered from the beneficiary.

(111) In 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 must take all the necessary steps to withdraw the benefits deriving from the aid and to recover it from the beneficiary.

(112) The aid must be recovered in accordance with the procedures laid down in national law and must include interest from the date on which the aid was at the beneficiary's disposal until the date of its effective recovery, calculated on the basis of the reference rate used to calculate the net grant equivalent of regional aid in Belgium<sup>(27)</sup>,

HAS ADOPTED THIS DECISION:

### Article 1

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.

### Article 2

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.

<sup>(26)</sup> OJ C 74, 10.3.1998, p. 9.

<sup>(27)</sup> Letter from the Commission to the Member States (SG (91) D/4577 of 4 March 1991). See also the judgment of the Court of Justice of 21 March 1990 in Case C-142/87 Belgium v Commission ECR [1990] I-959.

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.

*Article 3*

Belgium shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with it.

*Article 4*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 24 April 2002.

*For the Commission*

Mario MONTI

*Member of the Commission*

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