JUDGMENT OF THE COURT (Second Chamber)

22 June 2006 *

In Joined Cases C-182/03 and C-217/03,

ACTIONS for annulment under Article 230 EC, brought on 25 and 28 April 2003,

Kingdom of Belgium, represented initially by A. Snoecx, and subsequently by E. Dominkovits, acting as Agents, assisted by B. van de Walle de Ghelcke, J. Wouters and P. Kelley, avocats,

applicant in Case C-182/03

Forum 187 ASBL, established in Brussels (Belgium), represented by A. Sutton and J. Killick, Barristers,

applicant in Case C-217/03

* Languages of the case: French and English.

Commission of the European Communities, represented by G. Rozet, R. Lyal, and V. Di Bucci, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, J. Makarczyk, R. Schintgen, P. Kūris (Rapporteur) and J. Klučka, Judges,

Advocate General: P. Léger,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 September 2005,

after hearing the Opinion of the Advocate General at the sitting on 9 February 2006,

gives the following

Judgment

1 By its application, the Kingdom of Belgium seeks the annulment of Commission Decision 2003/757/EC of 17 February 2003 on the aid scheme implemented by

Belgium for coordination centres established in Belgium (OJ 2003 L 282, p. 25) ('the contested decision') in so far as it does not authorise it to grant, even temporarily, renewal of coordination centre status to the coordination centres which benefited from that scheme as at 31 December 2000.

2 Forum 187 ASBL ('Forum 187') requests that the contested decision be annulled.

Legal framework

Monitoring of existing aid systems under Community law

3 Article 88(1) and the first subparagraph of Article 88(2) EC provide:

'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.'

4 Article 17(2) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1) ('the Regulation') states:

'Where the Commission considers that an existing aid scheme is not, or is no longer, compatible with the common market, it shall inform the Member State concerned of its preliminary view and give the Member State concerned the opportunity to submit its comments within a period of one month. In duly justified cases, the Commission may extend this period.'

The Belgian tax regime for coordination centres

5 The Belgian tax regime for coordination centres, which derogates from ordinary law, is governed by Royal Decree No 187 of 30 December 1982 concerning the establishment of coordination centres (*Moniteur belge* of 13 January 1983), as supplemented and amended on several occasions.

6 To benefit from the regime, a centre must first receive individual authorisation by royal decree. In order to obtain that authorisation, the centre must form part of a multinational group with capital and reserves of at least BEF 1 000 million and an annual consolidated turnover of at least BEF 10 000 million. Only certain preparatory, auxiliary and centralisation activities are authorised, and undertakings in the financial sector are excluded from the regime. At the end of the first two years of their activity, centres must have in Belgium at least the equivalent of 10 full-time employees.

7 The authorisation granted to a centre is valid for 10 years and renewable for the same duration.

8 The tax regime for authorised coordination centres derogates from the ordinary tax regime in several respects.

9 First, a centre's taxable income is determined at a standard rate according to the cost-plus method. It represents a percentage of the total operating expenses and costs, from which staff costs, financial charges and corporation tax are excluded.

10 Secondly, the centres are exempt from property tax on the buildings they use to carry on their professional activity.

11 Thirdly, the 0.5% registration fee is not payable on contributions made to a centre or on increases in its registered capital.

12 Fourthly, dividends interest and royalties distributed by centres are, with certain exceptions, exempt from withholding tax, as is income received by the centres on their cash deposits.

13 Fifthly, the centres pay an annual tax fixed at BEF 400 000 per full-time member of staff, but this cannot exceed BEF 4 000 000 per centre.

Documents of the Council of the European Union concerning harmful tax competition

14 As part of an overall review of harmful tax competition, the Council, on 1 December 1997, adopted a code of conduct for business taxation (OJ 1998 C 2, p. 2). In that context, the Member States committed themselves to the gradual elimination of certain fiscal measures considered harmful, while the Commission expressed its intention to examine or re-examine, in the light of the State aid rules, the tax regimes in force in the Member States.

15 The Belgian rules relating to the tax regime for coordination centres were among the national fiscal measures affected by those various initiatives.

Facts prior to the contested decision

16 The tax regime for the coordination centres had been examined by the Commission when it was introduced. In particular, in decisions communicated in the form of letters on 16 May 1984 and 9 March 1987 ('the decisions of 1984 and 1987'), the Commission had found, in essence, that such a regime, based on a system for a flat-rate assessment of the income of the coordination centres, did not contain an aid element.

17 That appraisal was confirmed in the reply given on the Commission's behalf by Mr Brittan, the Commissioner for Competition, on 24 September 1990 to written question No 1735/90 by Mr Gijs de Vries, Member of the European Parliament (OJ 1991 C 63, p. 37).

18 After adopting, on 11 November 1998, a notice on the application of the State aid rules to measures relating to direct business taxation (OJ 1998 C 384, p. 3), the Commission undertook a comprehensive review of the tax legislation of the Member States from the point of view of the State aid rules.

19 In the course of that review, the Commission asked the Belgian authorities, in February 1999, for certain information relating, in particular, to the regime for the coordination centres. The latter replied in March 1999.

20 In July 2000, the Commission informed the Belgian authorities that the regime appeared to constitute State aid. For the purpose of initiating the cooperation procedure, in accordance with Article 17(2) of the Regulation, the Commission invited the Belgian authorities to submit their observations within one month.

21 At its meeting of 26 and 27 November 2000, the Ecofin Council noted that, in accordance with its resolution of 1 December 1997, all harmful measures relating to direct business taxation were to have been eliminated by 1 January 2003. It adopted a proposal from the Presidency of the European Union that, as regards undertakings benefiting from a harmful tax regime on 31 December 2000, the effect of that regime should expire at the latest on 31 December 2005, whether it was a regime granted for a fixed period or not. It also decided that it could, on a case-by-case basis and in order to take account of special circumstances, resolve, following a report from the 'Code of Conduct' Group, to extend the effects of certain harmful tax regimes beyond 31 December 2005.

22 On 11 July 2001, the Commission adopted four proposals for appropriate measures pursuant to Article 88(1) EC, concerning inter alia the regime for coordination

centres. It proposed to the Belgian authorities that a number of changes be made to that regime, while at the same time providing, on a transitional basis, that centres authorised before the date on which those measures were approved might continue to benefit from the previous regime until 31 December 2005.

23 Since the appropriate measures it had proposed were not approved by the Belgian authorities, the Commission, by decision notified by letter of 27 February 2002 (OJ 2002 C 147, p. 2), initiated the formal investigation procedure in accordance with Article 19(2) of the Regulation. In particular, it invited the Kingdom of Belgium to submit its observations and to provide any information relevant to an assessment of the measure in question. It also invited that Member State and interested third parties to submit observations and to supply any relevant information for determining whether the beneficiaries of the regime at issue had legitimate expectations that provisional measures would be laid down.

24 After the initial one-month time-limit had been extended, the Belgian authorities sent their observations to the Commission by letter of 12 April 2002.

25 By letter of 16 May 2002, the authorities notified a draft law designed to amend Royal Decree No 187. The draft was registered by the Commission as new aid under reference N351/2002.

26 In July 2002, following several meetings, the Commission sent the Kingdom of Belgium a request for additional information regarding both the existing regime and the draft which had been notified. The Belgian authorities responded to the request by letter of 30 August 2002. Interested third parties also took part in the formal procedure to investigate the measure in question.

27 On 21 January 2003, the Ecofin Council approved the extension of the effects of certain harmful tax regimes beyond 2005. As regards the Belgian tax regime for coordination centres, it provided that centres subject to the scheme on 31 December 2000 could continue to benefit from it until 31 December 2010.

The contested decision

28 On 17 February 2003, the Commission adopted the contested decision, which was notified on the same day to the Kingdom of Belgium. After finding that the wording of Article 2 of the operative part of the decision could seem inconsistent with the conclusions drawn in points 122 and 123 of the grounds of the decision, the Commission decided, on 23 April 2003, to amend Article 2 by means of a corrigendum. That amendment was notified to the Member State on 25 April 2003.

29 In the contested decision, the Commission first of all gave its reasons for classifying the regime for coordination centres as existing aid and explained the legal basis for the procedure it adopted. The decision stated that Article 1(b) of Regulation No 659/1999 could serve as a legal basis in the matter and that, failing that, Articles 87 EC and 88 EC constituted the real legal basis for the Commission's action.

30 The Commission also stated in the contested decision that, if it were to be regarded as a withdrawal or amendment of the decisions of 1984 and 1987, the contested decision satisfies the conditions for the exercise of the Commission's right to withdraw or amend any unlawful favourable measure.

31 In the remainder of the contested decision, the Commission set out its reasons for finding that the various measures which form the tax regime for coordination centres met the requirements of Article 87(1) EC, but did not qualify for any of the derogations laid down under Article 87(2) and (3).

32 With regard to the legitimate expectations invoked by the coordination centres, the contested decision states in its grounds:

'(117) The Commission recognises that there is a legitimate expectation on the part of beneficiaries of the scheme. It is therefore right that the Commission should allow the centres that hold an approval on 31 December 2000 to continue to enjoy the benefits of the scheme until the end of their period of approval, if this was ongoing at the time of the present Decision, up to 31 December 2010 at the latest. This view is based on the following grounds.

(118) ... [the] agreements [approved by the tax administration] related only to the facts and not to the scheme being implemented. They cannot, therefore, give any legal guarantee that the scheme, as it stood on the date approval was granted, would be maintained for the next 10 years. ...

(119) ... Although approval gives no guarantee as to the continued existence of the advantageous nature of the scheme, the Commission admits that centres were established, investment made and commitments entered into in the reasonable and legitimate expectation of a certain degree of continuity in the economic conditions, including the tax regime. The Commission has accordingly decided to allow a transitional period so that the cost-plus scheme for the present beneficiaries can be gradually phased out.

(120) Because the approvals do not represent a right to the continuation of the scheme or its advantageous character, even during the approval period, the Commission believes that they cannot, under any circumstances, confer a right to have the scheme renewed when the present approval expires. In view of the explicit restriction of the approval to 10 years it is impossible that a legitimate expectation should have been created as to automatic renewal, which would have amounted to approval that could theoretically last for ever.'

33 The conclusions set out in points 121 to 123 of the grounds of the contested decision state that:

'(121) The Commission concludes that the tax scheme covering coordination centres in Belgium is incompatible with the common market and that measures must be taken to remedy the incompatibility of its various components by abolishing or amending them. As of the date of notification of this Decision, new beneficiaries can no longer be covered by this scheme or sections thereof, nor can it be maintained by renewing existing approvals. The Commission notes that centres approved in 2001 have not benefited from the scheme since 31 December 2002.

(122) As regards the centres currently covered by the scheme, the Commission acknowledges that the 1984 Decision approving Royal Decree No 187 and the reply to a Parliamentary question given by the Member of the Commission responsible for competition gave rise to a legitimate expectation that the scheme did not violate the rules on State aid enshrined in the Treaty.

(123) In view of the substantial investments made on this basis, as well as the need to respect legitimate expectations and the legal certainty of the beneficiaries,

it is justifiable to allow a reasonable period for eliminating the scheme's impact on the existing approved centres. The Commission takes the view that this reasonable period comes to an end on 31 December 2010. The centres whose approval expires before this date can no longer make use of their approval after the deadline. After the date on which approval lapses and at any rate after 31 December 2010, it will be unlawful to grant or maintain the tax concessions in question.'

34 The first two articles of the operative part of the contested decision provide:

'*Article 1*

The tax scheme which currently operates in Belgium for the benefit of coordination centres approved under Royal Decree No 187 constitutes aid incompatible with the common market.

Article 2

Belgium is required to withdraw the aid referred to in Article 1 or to amend it in such a way as to make it compatible with the common market.

As of the date of notification of this Decision, the benefits of this scheme or sections thereof may no longer be granted to new beneficiaries or maintained by renewing existing agreements.

With regard to centres approved before 31 December 2000, the scheme may be maintained until the expiry date of the individual approval applying on the date of notification of this Decision and until 31 December 2010 at the latest. In accordance with the second paragraph, if approval is renewed prior to that date the benefits of the scheme dealt with in this Decision may no longer be granted, even temporarily.'

Facts subsequent to the contested decision

35 The amendments to Royal Decree No 187 which had been notified by the Belgian authorities to the Commission on 16 May 2000 were adopted by the Belgian Parliament on 24 December 2002 and published in the *Moniteur Belge* on 31 December 2002.

36 On 23 April 2003, the Commission authorised the new regime in so far as it laid down in particular the principle of prior authorisation for coordination centres for a period of 10 years and that the tax base was to be determined by including all operating costs together with an appropriate profit margin. However, as the new regime also provided for such centres to be exempt from withholding tax and capital duty, as well as for 'special advantages and advantages without any *quid pro quo*' to be exempt from tax, the Commission initiated a formal investigation procedure in relation to those three measures.

37 By its Decision 2005/378/EC of 8 September 2004 concerning the aid scheme which Belgium is proposing to implement for coordination centres (OJ 2005 L 125, p. 10), the Commission held that, having regard to the undertakings given by the Belgian Government as to the abolition of the exemptions in question and their replacement by measures for exemption or reduction applying to all undertakings established in that country as well as to bring all the 'special advantages and advantages without any *quid pro quo*' extended to the coordination centres within the charge to tax, the measures comprised in the new tax regime for coordination centres did not constitute aid falling within Article 87(1) EC.

38 At the hearing of 14 September 2005, the representative of the Kingdom of Belgium confirmed the information given to the Commission by letter of 28 February 2005, to the effect that that new regime had been abandoned.

39 In addition, by letter of 20 March 2003, the Belgian Minister for Finance informed the Commission pursuant to Article 88(3) EC that he intended to grant, until 31 December 2005, the benefit of certain tax measures to undertakings which were subject to the regime for coordination centres on 31 December 2000 with an authorisation which expired between 17 February 2003 and 31 December 2005.

40 The Kingdom of Belgium also asked the Council, by letter of the same day, for those measures to be declared to be compatible with the common market in accordance with the third subparagraph of Article 88(2) EC.

41 In a letter of 25 April 2003, the President of the Commission stated that the contested decision was enforceable and that the letter of 20 March 2003 referred to above could not be considered as the notification of new aid for the purposes of Article 88(3) EC.

42 By letter of 26 May 2003, the Kingdom of Belgium again informed the Commission that it was its intention to implement the measures referred to in its letter of 20 March 2003.

43 At its meeting of 3 June 2003, the Ecofin Council gave its approval in principle to that request and asked the Committee of Permanent Representatives to take any measures necessary to enable the Council to adopt the planned decision as soon as possible, and in any event before the end of June 2003.

44 By Council Decision 2003/531/EC of 16 July 2003 on the granting of aid by the Belgian Government to certain coordination centres established in Belgium (OJ 2003 L 184, p. 17), adopted pursuant to Article 88(2) EC, 'the aid which Belgium plans to grant in the period up to 31 December 2005 to undertakings authorised as at 31 December 2000 to act as coordination centres under Royal Decree No 187 ..., and whose authorisations expire between 17 February 2003 and 31 December 2005' was declared to be compatible with the common market. That decision formed the subject-matter of Case C-399/03.

45 By letter of 17 July 2003 sent in reply to the notification of 26 May 2003 referred to above, the Commission confirmed the position set out in its letter of 25 April 2003.

46 By order of 26 June 2003 in Joined Cases C-182/03 R and C-217/03 R *Belgium and Forum 187* v *Commission* [2003] ECR I-6887, the President of the Court ordered that the operation of the contested decision be suspended in so far as it prohibits the Kingdom of Belgium from renewing coordination centre authorisations effective as at the date of notification of the decision.

Forms of order sought and procedure before the Court

47 In Case C-182/03, the Kingdom of Belgium claims that the Court should:

— annul the second and third paragraphs of Article 2 of the contested decision in so far as it provides that 'as of the date of notification of [the] decision, the benefits of this scheme or sections thereof may no longer be ... maintained by

renewing existing agreements' and that 'in accordance with the second paragraph, if approval is renewed prior to [31 December 2010] the benefits of the scheme dealt with in this Decision may no longer be granted, even temporarily';

— order the Commission to pay the costs, including those relating to the interlocutory proceedings.

48 In Case C-217/03, Forum 187 claims that the Court should:

— annul the contested decision and, in the alternative, annul it in so far as it failed to lay down appropriate transitional measures;

— order the Commission to pay the costs in Case C-217/03 and in the case which gave rise to the order of the Court of First Instance in Case T-276/02 *Forum 187* v *Commission* [2003] ECR II-2075.

49 The Commission contends that the Court should, in each case:

— dismiss the actions;

— order the applicants to pay the costs, including those relating to the interlocutory proceedings.

50 By a separate document registered on 16 June 2003, the Commission raised an objection of inadmissibility against Forum 187's application.

51 By decision of 30 March 2004, the Court decided to join the objection of inadmissibility to the substance of the case and to continue the procedure.

52 By order of the President of the Second Chamber of 28 April 2005, Cases C-182/03 and C-271/03 were joined for the purposes of the oral procedure and the judgment.

Admissibility

53 The Commission contends that Forum 187 has no *locus standi* to challenge the contested decision — which is not addressed to it — on the ground that it is not directly and individually concerned by the decision.

54 Forum 187 contests that objection of inadmissibility and argues, first, that there is direct and individual concern on the part of 30 centres which had their authorisation renewed in 2001 and 2002 which will cease to be entitled to benefit from the tax regime at issue on 31 December 2010, and also eight centres with an application for renewal pending on the date on which the contested decision was adopted. Secondly, it regards itself as being affected by the contested decision in its capacity as the representative body for the coordination centres, which is recognised by the Belgian authorities, and with which it has a semi-official status which allowed it to play an important part in the administrative procedure before the Commission, and as the contested decision affects its *raison d'être.*

55 Under Article 230 EC, a natural or legal person may institute proceedings against a decision addressed to another person only if the decision is of direct and individual concern to it.

56 An association such as Forum 187 which is responsible for protecting the collective interests of coordination centres established in Belgium is, as a rule, entitled to bring an action for annulment against a final decision of the Commission in matters of State aid only if the undertakings which it represents or some of those undertakings themselves have *locus standi* (Case C-6/92 *Federmineraria and Others* v *Commission* [1993] ECR I-6357, paragraphs 15 and 16) or if it can prove an interest of its own (Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraphs 29 and 30).

57 As regards the first condition laid down under the fourth paragraph of Article 230 EC, it is not in dispute that the Commission decision prohibiting the Belgian Government from renewing the authorisations of coordination centres which expired after 17 February 2003 and restricting in any event the temporal effects of current authorisations to 31 December 2010 is mandatory in its application and that the coordination centres in question are therefore directly concerned by the contested decision.

58 As regards the second condition laid down under Article 230 EC, the Court has repeatedly held that the fact that a disputed provision is, by its nature and scope, a provision of general application inasmuch as it applies to the traders concerned in general, does not of itself prevent it being of individual concern to some (see, to that effect, Case C-309/89 *Codorniu* [1994] ECR I-1853, paragraph 19).

59 Natural or legal persons may claim that a contested provision is of individual concern to them only if it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons (see Case 25/62 *Plaumann* v *Commission* [1963] ECR 95).

60 In that regard, the Court has held that, where a contested measure affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons might be individually concerned by that measure inasmuch as they form part of a limited class of traders (see Case 11/82 *Piraiki-Patraiki and Others* v *Commission* [1985] ECR 207, paragraph 31, and Case C-152/88 *Sofrimport* v *Commission* [1990] ECR I-2477, paragraph 11).

61 In the first place, not only is the effect of the contested decision that 31 December 2010 becomes the last date on which the authorisations of the coordination centres which had their authorisation renewed in 2001 and 2002 are to end, rather than that date being set in 2011 or 2012, but also that those centres were fully identifiable at the time when the contested decision was adopted. The 30 coordination centres which are concerned by the effects of the decision therefore had *locus standi* as individuals to bring proceedings against it.

62 In the second place, the contested decision did not lay down any transitional measures for the benefit of the coordination centres with an authorisation which had expired at the same time as the contested decision was notified and those with a pending application for authorisation on the date on which the decision was notified.

63 Thus, eight centres which had a pending application for renewal of their authorisation are concerned. These form part of a closed class, the members of which are particularly affected by the contested decision, as they could no longer obtain a renewal of their authorisation. Those centres accordingly had *locus standi* as individuals to bring proceedings against the contested decision.

64 It follows from the above, without it being necessary to consider whether Forum 187 can prove an interest of its own in bringing an action, that that association has *locus*

standi in that it represents, first, 30 coordination centres the entitlement of which to benefit from the disputed regime was limited to 31 December 2010 and, secondly, eight centres with pending applications for renewal on the date on which the contested decision was notified.

The merits of the actions

65 As the Kingdom of Belgium and Forum 187 each seek the annulment of the contested decision in so far as it does not lay down any transitional provisions, it is appropriate first of all to examine the claims of Forum 187 for the annulment of the decision in so far as it classifies the disputed aid as incompatible with the common market.

The claims of Forum 187 for the annulment of the contested decision in so far as it classifies the disputed measures as State aid incompatible with the common market

The plea alleging the lack of any legal basis

66 By this plea, Forum 187 maintains that the contested decision has no legal basis and infringes the principle of legal certainty. Given the positions adopted by the Commission 15 years previously, the decision cannot be based on Article 87 EC or Article 88 EC, nor can it be based on Article 1(b)(v) of the Regulation, since it makes no reference to any development in the common market

67 The Commission cannot, moreover, invoke the right to correct its mistakes. The association infers from that that, in the present case, the principle of legal certainty, which requires that previous decisions be adhered to, was infringed.

68 The Court notes at the outset that, by the contested decision, the Commission did not withdraw the decisions of 1984 and 1987. What it did was to undertake a fresh investigation of the tax regime for coordination centres, by applying to that regime the procedure for monitoring existing aid and concluded from that that the regime should henceforth constitute State aid incompatible with the common market.

69 In order to determine whether the Commission was entitled to carry out such a new investigation, it should be noted not only that the principle of legal certainty requires that Community legislation must be certain and its application foreseeable by those subject to it (Case 325/85 *Ireland* v *Commission* [1987] ECR 5041, paragraph 18, and Case C-63/93 *Duff and Others* [1996] ECR I-569, paragraph 20), but also that its application must be combined with that of the principle of legality (Joined Cases 42/59 and 49/59 *SNUPAT* v *High Authority* [1961] ECR 53, 87).

70 In that regard, it is common ground, as the Advocate General points out in points 212 and 213 of his Opinion, that the Regulation, which codifies the rules relating to the exercise by the Commission of the powers conferred on it by Article 88 EC, does not define the concept of 'evolution of the common market' referred to in Article 1 (b)(v), which states that a measure which did not constitute aid when it was put into effect is nonetheless to be treated as existing aid in so far as it 'subsequently became an aid due to the evolution of the common market'.

71 That concept, which may be understood as a change in the economic and legal framework of the sector concerned by the measure in question, does not apply in a situation where, as in the present case, the Commission alters its appraisal on the basis only of a more rigorous application of the Treaty rules on State aid.

72 It must however be noted that the Regulation constitutes a measure of secondary legislation adopted for the purposes of the application of Article 87 EC and Article 88 EC, which cannot restrict the scope of those articles, particularly as the Commission derives its powers directly from them.

73 Article 88(1) EC entrusts the Commission with the task of keeping under constant review all systems of aid existing in the Member States and of proposing to them any appropriate measures required by the progressive development or by the functioning of the common market.

74 Should effect not be given to those proposals, Article 88(2) entitles the Commission to require the Member State concerned to alter or to abolish the aid within a period of time to be determined.

75 It follows that, in deciding to review the tax regime for coordination centres in force in Belgium, which had been declared harmful to the common market by the Code of Conduct Group, the Commission carried out the duties entrusted to it under Article 88 EC. The legal basis of the contested decision is therefore Article 87 EC and Article 88 EC.

76 As the principle of legality was thus complied with, the contested decision constitutes a measure which is certain and the application of which was foreseeable by those subject to it. Accordingly, the decision does not infringe the principle of legal certainty.

77 Furthermore, the only procedure which the Commission could apply in the present case is that laid down by the Regulation for the monitoring of existing aid. It is beyond doubt that the tax regime in question constitutes an existing measure, as the Commission was notified of it in 1984 and the regime had not been materially altered.

78 Forum 187 therefore has no grounds for arguing that, in taking Articles 17 and 18 of the Regulation as a basis for initiating the formal investigation procedure, as it indicated in its letter of 17 July 2000 to the Belgian authorities, and thereafter referring only to Article 87 EC and Article 88 EC, the Commission committed an error of law. The first plea should accordingly be rejected.

The plea alleging infringement of Article 87(1) EC

79 By this plea, Forum 187 contends that the tax regime for coordination centres does not constitute State aid for the purposes of Article 87(1) EC. To that end, it argues not only that the method of assessment of the tax regime used by the Commission was unduly general, but also that the various measures comprised in the regime in question did not meet the conditions laid down by that article. In particular, it states that those measures confer no benefit on the centres, do not involve a transfer of State resources, are not selective in nature and that the Commission has failed to establish that they have an impact on competition and intra-Community trade. In any event, the regime is justified by the nature and general scheme of the Belgian tax system.

— The method of assessment of the tax regime

80 Forum 187 complains that the Commission failed to have proper regard to the competence of the Member States in tax matters and that its appraisal of the regime in question was unduly general.

81 It should be pointed out, first, that rules relating to tax are not excluded from the scope of Article 87 EC.

82 Secondly, in the case of an aid programme, the Commission may confine its examination to the characteristics of the programme in question in order to determine whether it gives an appreciable advantage to the recipients in relation to their competitors (Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 48). It is not required to examine each particular case in which the regime applies (Case C-278/00 *Greece* v *Commission* [2004] ECR I-3997, paragraph 24, and the case-law cited there).

83 The first part of the plea must accordingly be rejected.

— The conditions laid down under Article 87(1) EC

84 The first point to be noted is that it is settled case-law that classification as aid requires that all the conditions set out in Article 87(1) EC be met (Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 74).

85 It is accordingly necessary to consider each of those conditions.

(i) Whether certain undertakings are favoured

86 The concept of aid may cover not only positive benefits, such as subsidies, loans or the taking of shares in undertakings, but also action which, in various forms, mitigates the charges which are normally included in the budget of an undertaking and which, without therefore being subsidies in the strict meaning of the word, are

similar in character and have the same effect (Case C-126/01 *Gemo* [2003] ECR I-13769, paragraph 28, and the case-law cited there).

87 Furthermore, the Court has held that a measure by which the public authorities grant to certain undertakings a tax exemption which, although not involving a transfer of State resources, places the persons to whom it applies in a more favourable financial situation than other taxpayers constitutes State aid (Case C-387/92 *Banco Exterior de España* [1994] ECR I-877, paragraph 14).

88 The Commission held in the contested decision that the method of determining taxable income, the exemption from property tax, withholding tax and capital duty and the system of notional withholding tax constitute advantages for the coordination centres.

89 Forum 187 challenges that appraisal.

90 In the first place, the Commission took the view in points 89 to 95 of the contested decision that the flat-rate assessment of income under the cost-plus method constitutes an economic advantage for the purposes of Article 87 EC.

91 Under the regime in question, taxable profits are set at a flat-rate amount which represents a percentage of the full amount of operating costs and expenses, from which staff costs and financial charges are excluded.

92 Moreover, the profit margin of a coordination centre is, as a rule, to be set by reference to the activity which it actually carries on. If the centre itself charges for some of its services at a rate that corresponds to its costs plus a percentage for profits, that percentage can be adopted, provided it is not exceptional. Where no objective criteria exist for establishing the percentage of profits to be taken into account, the latter is normally set at 8%.

93 However, the taxable profits of the centre may not be less than the total of the expenditure or charges that are not deductible as business costs and the 'special advantages and advantages without any *quid pro quo*' extended to the centre by the members of the group. That profit is taxed at the normal rate of corporation tax.

94 That method of assessment of taxable income is based on the so-called cost-plus method recommended by the Organisation for Economic Cooperation and Development (OECD) for the taxation of services provided by a subsidiary or a fixed establishment on behalf of companies belonging to the same international group and established in other States.

95 In order to decide whether a method of assessment of taxable income such as that laid down under the regime for coordination centres confers an advantage on them, it is necessary, as the Commission suggests at point 95 of the contested decision, to compare that regime with the ordinary tax system, based on the difference between profits and outgoings of an undertaking carrying on its activities in conditions of free competition.

96 In that regard, the staff costs and the financial costs incurred in cash-flow management and financing are factors which make a major contribution to enabling the coordination centres to earn revenue, inasmuch as those centres provide services, particularly of a financial nature. Accordingly, the effect of the exclusion of those costs from the expenditure which serves to determine the taxable income of

the centres is that the transfer prices do not resemble those which would be charged in conditions of free competition.

97 It follows that such an exclusion confers an economic advantage on the centres.

98 Contrary to what Forum 187 contends, that analysis cannot be called into question either by the fact that the inclusion of the financial charges could, in some cases, lead to a tax base that was unduly high or by the scale of the tax burden that might be imposed on the group, nor can it be called into question by the fact that a centre may be taxed when it has not made any profits. Each of those factors is a necessary incident of the cost-plus system.

99 Furthermore, the annual charge introduced from 1 January 1993 of EUR 10 000 per full-time staff member, capped at EUR 100 000, does not offset the positive effects of the method of calculation adopted, as the cap corresponds to the minimum number of employees which the centres are required to employ by the end of their first two years of their activity.

100 The same point applies to the rate of 8% applied by default to operating expenses in order to determine the tax base, inasmuch as that rate is applied to a base which has already been reduced and the marginal rate differs widely in practice between one centre and another, as it depends on the activity which is carried on.

101 Lastly, as the Advocate General stated at point 265 of his Opinion, the Commission is right to argue that the alternative tax base, intended to avoid possible abuses by laying down a minimum basis of assessment, does not extinguish the advantage

conferred by the combined application of the abovementioned exclusions and the rate of 8%. That base includes only amounts which are also liable to tax in Belgium in the case of companies that are not subject to the disputed regime.

102 In the light of the above points, the Commission was correct to hold that the rules governing the determination of taxable income constitute an advantage for the coordination centres and the groups to which they belong.

103 In the second place, the Commission held in points 76 and 77 of the contested decision that the exemption from property tax from which the coordination centres benefit confers an economic advantage on them.

104 The tax regime in question exempts the centres from property tax on the buildings which they use in order to carry on their activities, although that tax is, generally speaking, a charge which is included in the budget of every company which owns immovable property in Belgium, that is to say built and unbuilt immovable property, including materials and equipment which are immovable owing to their intrinsic nature or the use to which they are put.

105 It follows that the exemption from that tax constitutes an economic advantage. The fact that only 5% of the coordination centres benefit from it in practice, as all the others hold their buildings under lease, does not affect that assessment, since the choice between owning a building and leasing it is a matter entirely at the discretion of the centres.

106 In the third place, the Commission held in points 78 and 79 of the contested decision that the exemption from capital duty which the coordination centres enjoy also constitutes an economic advantage.

107 As the rule in Belgium is that capital contributions are taxable transactions, every company having a share capital should therefore be liable to that tax. The exemption which the coordination centres enjoy, which applies both to contributions on start-up and on increases in registered capital, cannot therefore be regarded as anything other than an advantage.

108 The fact that Article 7(1) of Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ, English Special Edition 1969 (II), p. 412), as amended by Council Directive 85/303/EEC of 10 June 1985 (OJ 1985 L 156, p. 23), provided for transactions that were in place on 1 July 1984 to be maintained has no bearing on that assessment, since the capital duty exemption at issue applies only to certain types of company and is thus not one of a general nature.

109 In the fourth place, at points 80 to 87 of the contested decision, the Commission classified the exemption of the coordination centres from withholding tax as an economic advantage.

110 Under the regime in question, there is no liability to withholding tax, that is to say deductions at source on dividends, interest — except for interest paid to beneficiaries who are liable to tax in Belgium — royalties paid by the coordination centres and income received on cash deposits.

111 The Commission's findings show that withholding tax is the definitive Belgian tax on income distributed to non-resident companies which are unable to have the income offset or refunded in the State in which they are established.

112 It follows that, by exempting the coordination centres from payment of that tax, the regime at issue confers on them an advantage, the existence of which cannot, on any basis, be challenged on the ground that other exemptions from that tax have been granted to different types of undertakings.

113 In the fifth place, the Commission held in point 88 of the contested decision that the grant of a notional withholding tax constitutes an advantage.

114 Not only are the recipients of payments made by the coordination centres exempt from withholding tax, but they also enjoy a flat-rate deduction on the total amount of tax they are required to pay.

115 It is clear from the oral argument presented at the hearing that the rate of the notional withholding tax was reduced to zero in 1991.

116 However, interest paid on long-term loans entered into before 24 July 1991 continues to be exempted. Such a situation accordingly confers an advantage on the coordination centres concerned.

117 By contrast, the fact that the rate of that tax, which has been reduced to zero, may be amended by royal decree constitutes, at best, no more than a contingent and future advantage. Such a contingency does not provide a basis for classifying that measure as State aid.

118 It follows from the above that the regime in question confers an advantage on the coordination centres.

(ii) Selectivity

119 It must be observed that, according to settled case-law, Article 87(1) EC requires that it be determined whether, under a particular statutory scheme, a State measure is such as to favour 'certain undertakings or the production of certain goods' in comparison with others which, in the light of the objective pursued by the system in question, are in a comparable legal and factual situation. If so, the measure concerned fulfils the condition of selectivity which is a defining characteristic of the concept of State aid as set out by that provision (see Case C-172/03 *Heiser* [2005] ECR I-1627, paragraph 40, and the case-law cited there).

120 Thus, it is clear from the above analysis that the exemptions from property and withholding tax, from capital duty and the granting of a notional withholding tax constitute derogations from the ordinary Belgian tax regime. The point, relied on by Forum 187, that a number of other derogations exist, does not undermine the finding that the regime for coordination centres is, in fact, derogatory in nature and that it restricts those exemptions to the coordination centres alone.

121 The selective character of those exemptions is accordingly established.

122 As regards the method of determining taxable income, while Forum 187 argues that the regime in question applies to those companies for which it was specifically designed, so that the risk of double taxation may be avoided, it is a matter of agreement that the regime applies only to international groups having subsidiaries which are established in at least four different countries, which have capital and reserves of at least BEF 1 000 million, and have an annual consolidated turnover of at least BEF 10 000 million.

123 It follows that the regime in question is also selective in that regard.

124 That finding is not called into question by Forum 187's argument that the regime in question does not constitute a derogation from the ordinary tax regime which applies to undertakings, but a different type of regime, dictated by fiscal logic and the need to provide a solution to the problem of double taxation of services provided within an international group of companies.

125 First, Forum 187 provides no explanation as to why the various measures laid down under the regime in question are justified by the tax system in force in Belgium. Secondly, Forum 187 has not shown in what way the aim of providing a resolution for the problem of double taxation of intra-group services justifies restricting the benefit of the regime in question to centres established by groups of a particular size, nor in what way such an aim made each of the various advantages comprised in that regime necessary.

126 Forum 187 has thus not established that the regime in question is justified by the nature or the general scheme of the Belgian tax system of which it forms part and it must therefore be held that the selective nature of the scheme has been established.

(iii) The requirement that the aid be granted through State resources and be imputable to the State

127 For advantages to be capable of being categorised as aid within the meaning of Article 87(1) EC, they must, first, be granted directly or indirectly through State resources and, second, be imputable to the State (*GEMO*, paragraph 24)

128 While there can be no dispute that the second condition is satisfied, as the tax regime in question was drawn up by the Belgian Government, it is otherwise with the first condition, as Forum 187 argues that the Belgian State has received EUR 500 million a year of tax revenues and social security contributions from the coordination centres.

129 It is sufficient to find that the shortfall of tax and social security revenue on that State's part resulting from the exemptions considered above means that the advantages which they gave rise to are granted through State resources.

(iv) The requirement that the aid scheme affect trade between Member States and distort or threaten to distort competition

130 Points 99 to 103 of the contested decision show that the Commission took the view that the regime in question affects trade between Member States and distorts or threatens to distort competition.

131 It is clear from the case-law of the Court that competition is distorted where a measure mitigates the burden imposed on a beneficiary undertaking and thereby strengthens its position as regards competing undertakings (see, to that effect, Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraph 11, and Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24).

132 In the present case, the advantages conferred on the coordination centres had the effect of distorting competition between them and service providers in the financial, trust, information technology and recruitment sectors by encouraging group companies to make use of the services provided by those centres.

133 Moreover, as the Advocate General stated at point 320 of his Opinion, the wide-ranging nature of the activities carried on by the multinational groups which have established a coordination centre means that the tax scheme in question has inevitably had an impact on competition.

134 Lastly, the scheme necessarily affects trade between Member States, since the coordination centres are set up by multinational companies which are established in at least four States.

135 It follows from all of the above that the tax scheme for coordination centres meets the conditions laid down by Article 87(1) EC. The plea based on infringement of that article must therefore be rejected.

— The plea alleging a failure to state adequate reasons

136 Forum 187's primary submission is that the Commission failed to explain the reasons which led it to reverse its previous decisions.

137 It should be pointed out in that regard that, while the obligation to state reasons for a Community measure must be appropriate to the act at issue and must disclose in a clear and unequivocal fashion laid down under Article 253 EC the reasoning followed by the institution which adopted the measure in question 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 (Case 1/69 *Italy* v

Commission [1969] ECR 277, paragraph 9, and Case C-310/99 *Italy* v *Commission* [2002] ECR I-2289, paragraph 48), the Commission is not required to state the reasons why it made a different assessment of the regime in question in its previous decisions. The concept of State aid must be applied to an objective situation, which falls to be appraised on the date on which the Commission takes its decision.

138 The plea alleging a failure to state adequate reasons must accordingly be rejected, as must Forum 187's claims for the annulment of the contested decision in so far as it classifies the disputed measures as State aid incompatible with the common market.

The claims of the Kingdom of Belgium and Forum 187 for partial annulment of the contested decision

139 The Kingdom of Belgium, which seeks the annulment of the contested decision in so far as it does not permit it to grant, even temporarily, renewal of the authorisations of centres benefiting from the regime in question as at 31 December 2000 which expire before 31 December 2010, relies on four pleas alleging infringement of Article 88 EC and the principle of the protection of legitimate expectations, the principle of equal treatment and a failure to state adequate reasons.

140 Forum 187, which seeks the annulment of the decision in so far as it does not lay down appropriate transitional measures for the centres with an authorisation which expires between 17 February 2003 and 31 December 2004, relies on two pleas alleging infringement of the principle of the protection of legitimate expectations and a failure to state adequate reasons.

Infringement of the principle of the protection of legitimate expectations

— Arguments of the parties

141 The Kingdom of Belgium contends that, while the Commission based its decision on the Code of Conduct and the documents of the Ecofin Council when it allowed the coordination centres to have the benefit of current authorisations until 31 December 2010, it failed to have regard to all of the Council's positions including, in particular, the memorandum of 26 and 27 November 2000 which stated that the tax regime in question should continue to apply to all centres until 31 December 2005.

142 It also argues that the adoption of that position led the Belgian Minister for Finance to make an official announcement to the Chamber of Representatives on 20 December 2000 that authorisations could be renewed until 31 December 2005, which was the date adopted by the Commission in its proposals for appropriate measures of 11 July 2001.

143 The Kingdom of Belgium also states that since coordination centres could expect to have their authorisations renewed automatically when the applicable conditions were satisfied, the centres with an authorisation which expired at the same time as the contested decision were legitimately entitled to expect that they would be granted a renewal. It observes that until the notification of the contested decision, neither it nor the centres could be aware that that date would be adopted by the Commission as being the date from which authorisations could no longer be renewed.

144 Forum 187 argues that in the light of the Commission's previous decisions the coordination centres were legitimately entitled to expect that they would continue to benefit from an authorisation which had been granted to them.

145 It also contends that the coordination centres with an authorisation which expired during 2003 and 2004 needed a transitional period of two years in which to reorganise themselves or, if appropriate, to leave Belgium. It disputes the grounds relied on by the Commission to refuse to grant transitional measures.

146 The Commission contests all of those arguments and states that it acknowledged that the centres had a legitimate expectation arising from its previous decisions that the regime in question would be maintained and that it was for that reason that it provided for a transitional period, expiring on 31 December 2010 at the latest, to apply to those centres with an authorisation which was in force on the date on which the contested decision was notified.

— Findings of the Court

147 The Court has repeatedly held that the right to rely on the principle of the protection of legitimate expectations extends to any person in a situation where a Community authority has caused him to entertain expectations which are justified. However, a person may not plead infringement of the principle unless he has been given precise assurances by the administration (Case C-506/03 *Germany* v *Commission,* not published in the ECR, paragraph 58). Similarly, if a prudent and alert economic operator could have foreseen the adoption of a Community measure likely to affect his interests, he cannot plead that principle if the measure is adopted (Case 265/85 *Van den Bergh en Jurgens and Van Dijk Food Products Lopik* v *Commission* [1987] ECR 1155, paragraph 44).

148 Furthermore, even if the Community had first created a situation capable of giving rise to legitimate expectations, an overriding public interest may preclude transitional measures from being adopted in respect of situations which arose before the new rules came into force but which are still subject to change (Case C-183/95 *Affish* [1997] ECR I-4315, paragraph 57).

149 However, the Court has also held that, in the absence of an overriding public interest, the Commission infringed a superior rule of law by failing to couple the repeal of a set of rules with transitional measures for the protection of the expectations which a trader might legitimately have derived from the Community rules (see, to that effect, Case 74/74 *CNTA* v *Commission* [1975] ECR 533, paragraph 44).

150 It is necessary in the first place to consider whether the conclusions of the Council of 26 and 27 November 2000 and the proposals for appropriate measures made by the Commission were capable of creating an expectation that the regime in question would be continued until at least 31 December 2005.

151 It is clear from the documents before the Court that the conclusions of the Council express an aspiration of a political nature and cannot, by reason of their contents, produce legal effects on which parties could rely before the Court. Furthermore, those conclusions could in no event bind the Commission in the exercise of its own powers, which are conferred on it by the Treaty in State aid matters. It follows that there is no merit in the Belgian Government's argument that those conclusions could have been the basis of assurances that transitional measures would be implemented.

152 The same applies to the coordination centres, which are deemed to be aware of the Commission's powers and cannot therefore rely on the Council's conclusions of 26 and 27 November 2000 as against the Commission.

153 Nor, on any basis, could the proposals for appropriate measures notified to the Kingdom of Belgium by the Commission constitute grounds for an expectation, since they represent an integral part of the formal investigation procedure and a State may, as in the present case, reject them.

154 Accordingly, neither the Kingdom of Belgium nor Forum 187 may rely on a legitimate expectation that the regime in question would continue in force until at least 31 December 2005.

155 In the second place, it is common ground that, by its decisions given in 1984 and 1987 and by the reply given on 24 September 1990, the Commission created an expectation that the scheme in question did not contain any aid element.

156 It is also common ground that:

— although the scheme in question provides that an authorisation is to subsist for a period of 10 years, the renewal of such an authorisation, while not automatic, is subject to the same procedure and may be obtained without difficulty when the relevant objective conditions continue to be satisfied;

— in addition, the number of renewals is not stipulated by the national legislation;

— in the absence of any discretionary review by the national authorities, coordination centres seeking a renewal of their authorisation might reasonably expect that there would be no obstacle to that renewal.

157 The fact, relied on by the Commission, that the Belgian authorities reduced the advantages conferred by the regime in question, in particular by introducing an annual tax based on staff employed, does not call into question the finding regarding the continuation of the regime in respect of the coordination centres. Nothing was said at the hearing to suggest that the amendments made to the scheme introduced by Royal Decree No 187 were so substantive as to fundamentally alter its nature.

158 It follows that, by its decisions of 1984 and 1987 and by its reply of 24 September 1980, the Commission gave the coordination centres with an authorisation in place on 31 December 2000 grounds to expect that the Treaty rules did not preclude the renewal of their authorisation.

159 In the third place, it is necessary to consider whether the expectation reached on that basis is a legitimate one.

160 The Commission essentially argues that the coordination centres could not plead a legitimate expectation in the continued existence of the scheme in question, because there was information available to them that the scheme would not be maintained.

161 Even if it were the case that the information relied on by the Commission in that regard was capable of undermining the expectation of the coordination centres that the regime for the centres was compatible with the Treaty rules, the centres were on any basis entitled to expect that a Commission decision reversing its previous approach would give them the time necessary to address that change in approach.

162 It should be pointed out in that regard that the period which elapsed between the publication of the decision to initiate the formal investigation procedure of 20 June 2002 and the contested decision of 17 February 2003 was not sufficient to enable all the centres to address the possibility that there might be a decision terminating the regime in question. As previously stated, the regime is a tax regime under which authorisations for a period of 10 years are granted, which calls for measures of an accounting nature and financial and economic decisions which cannot be taken in such a brief time by a prudent economic operator.

163 It follows that the coordination centres with an application for renewal of their authorisation pending on the date on which the contested decision was notified or with an authorisation which expired at the same time as or shortly after that decision was notified were entitled to have a legitimate expectation that a reasonable transitional period would be granted in order for them to adjust to the consequences of that decision. In that regard, the expression 'shortly after' should be understood as referring to a date so close to that on which the contested decision was notified that the coordination centres concerned did not have the time required to adjust to the change in the regime in question.

164 In the fourth place, it is necessary to be certain that there was no overriding public interest which might take precedence over the interest of the coordination centres in question to be granted such a transitional period.

165 First, it must be stated that the Commission has not shown how the interests of the Community preclude a transitional period of that kind. Secondly, there is a lack of consistency in the Commission's approach inasmuch as it allowed authorisations that were in place on the date on which the decision was notified to continue in force until 31 December 2010 at the latest, while, conversely, it refused to allow any transitional period to those coordination centres with an application for renewal pending on the date on which the contested decision was notified or with an authorisation which expired at the same time as or shortly after the decision was notified.

166 Lastly, not only did the Commission acknowledge in the decision that the coordination centres had made substantial investments and had entered into long-term commitments, but it must also be pointed out that no replacement or amended regime was in place on the date of the contested decision.

167 It follows from all of the above that the plea alleging infringement of the principle of the protection of legitimate expectations is well founded.

Infringement of the principle of equal treatment

168 The Kingdom of Belgium maintains that the contested decision discriminates without justification between those coordination centres with an authorisation which expired shortly before its adoption and which thus benefit from the regime in question until 31 December 2010 and those with an authorisation which expired after the date on which the contested decision was notified and which are denied the benefit of any transitional measures.

169 The Commission contests that argument and contends that as all coordination centres are granted a 10-year authorisation and are entitled to the benefit of the whole of the period of authorisation, they are in the same position.

170 According to the case-law of the Court, the general principle of equal treatment requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (Joined Cases 66/79, 127/79 and 128/79 *Salumi and Others* [1980] ECR

1237, paragraph 14, and Case C-14/01 *Niemann* [2003] ECR I-2279, paragraph 49, and the case-law cited there).

171 Having regard to the finding set out in paragraph 167 of this judgment, the coordination centres, each of which was entitled to a legitimate expectation that a reasonable transitional period would be granted, were treated differently in the contested decision.

172 Thus, depending on the date on which the last renewal of an authorisation took place in 2001 and 2002, or whether the authorisation terminated at the same time as or shortly after the notification of the contested decision, the time when the benefit of the regime in question is to expire will differ, as, in the former case, it will occur on 31 December 2010, whereas, in the latter, there is to be no transitional period.

173 It follows that, by failing to adopt transitional measures for those coordination centres with an authorisation which expired at the same time as or shortly after the notification of the contested decision, the Commission infringed the general principle of equal treatment.

174 In the light of all of the above, the contested decision must be annulled in so far as it does not lay down transitional measures for those coordination centres with an application for renewal of their authorisation pending on the date on which the contested decision was notified or with an authorisation which expired at the same time as or shortly after the notification of the decision.

175 As the action is to be upheld, it is not necessary to consider the other pleas in law set out in the applications.

Costs

176 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Under the first subparagraph of Article 69(3) of those rules, where each party succeeds on some and fails on other heads the Court may order that the costs be shared.

177 Since the Kingdom of Belgium has applied for the Commission to be ordered to pay the costs and the Commission has been unsuccessful, it must be ordered to pay the costs in Cases C-182/03 and C-182/03 R.

178 Since Forum 187 has applied for the Commission to be ordered to pay the costs and the Commission has in part been unsuccessful, it should be ordered to pay half of Forum 187's costs in Case C-217/03 and all of Forum 187's costs in Case C-217/03 R.

179 On the other hand, as the Court of First Instance ordered Forum 187 to pay the costs in the case which gave rise to its order in *Forum 187* v *Commission*, Forum 187's application for the Commission to be ordered to pay the costs of that action must be rejected.

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

1. **Annuls Commission Decision 2003/757/EC of 17 February 2003 on the aid scheme implemented by Belgium for coordination centres established in Belgium in so far as it does not lay down transitional measures for those coordination centres with an application for renewal of their authorisation pending on the date on which the contested decision was notified or with an authorisation which expired at the same time as or shortly after the notification of the decision;**

2. **Rejects the application of Forum 187 ASBL as to the remainder;**

3. **Orders the Commission of the European Communities to pay the costs in Case C-182/03 and half of the costs of Forum 187 ASBL in Case C-217/03;**

4. **Orders the Commission of the European Communities to pay the costs in Cases C-182/03 R and C-217/03 R.**

[Signatures]