II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 11 September 1973

on aid which the Belgian Government intends to grant for extending an oil refinery at Antwerp (province of Antwerp) and for setting up a new refinery at Kallo (province of East Flanders)

(Only the French and Dutch texts are authentic)

(73/293/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof ;

Having, pursuant to Article 93, given notice to the parties concerned to submit their comments and having considered those comments ;

I. Whereas, by letter of 23 August 1972 from its Permanent Representative, the Belgian Government, pursuant to Article 93 (3) EEC, informed the Commission of its intention to grant certain aid for investments made by two oil companies, the one for extending an oil refinery at Antwerp and the other for setting up a new oil refinery at Kallo ;

Whereas the refining capacity in Belgium will be considerably increased as a result of those investments ;

Whereas the information supplied by the Belgian Government indicates that the aid in question will be granted pursuant to the Law of 17 July 1959 instituting and coordinating measures to encourage economic expansion and the setting up of new industries ;

Whereas the aid will consist :

— in the case of the Antwerp refinery, of interest rate subsidies of 2 % for three years on a loan of Bfrs 4·570 million and of 3 % for three years on a loan of Bfrs 1·430 million and also exemption for three years from the tax on land and buildings ;

— in the case of the Kallo refinery, of an interest rate subsidy of 2 % for three years on a loan of Bfrs 4·300 million and also exemption for three years from the tax on land and buildings ;

Whereas the aids are such as to affect trade between Member States and to threaten to distort competition within the meaning of Article 92 (1).

II. Whereas the economic and social situation of the regions and areas in which the new investments receiving aid are located are not such as would warrant applying the exceptions made under Article 92 (3) (a) and (c) for aid to promote the development of certain areas to the aids which the Belgian Government intends to grant,

Whereas growth in the province, and in particular in the district of Antwerp, is very rapid ; whereas, in view of the investments which have been made and which are likely to be made in this area, the current shortage of labour may be expected to become more acute ; whereas the gross domestic product per inhabitant in this area is among the highest in the Community ;

Whereas expansion in the province of East Flanders and the district of St Niklaas where Kallo is located is likewise particularly rapid ; whereas this province, which, through its proximity, benefits from Antwerp's own expansion, is particularly attractive for new investments ; whereas its situation, from the point of view of employment or standard of living of the population, does not give rise to any concern ;

Whereas, moreover the districts of Antwerp and of St Niklaas are not within the regions or areas in respect of which the Commission, in its Decision 72/173/EEC of 26 April 1972 on aid granted under the Belgian Law of 30 December 1970 on economic expansion, authorized the Belgian Government to grant regional aid.

III. Whereas, firstly, the refining industry and its undertakings face no particular difficulty in Belgium whether from the point of view of their structures or of their own ability to expand ; whereas, on the contrary, production capacities in Belgium already far exceed the needs of the domestic market and the forecasts which are at present possible of trends in these two variables during the years ahead indicate that there will be a continued surplus which will even increase considerably ;

Whereas the Commission, in exercising the powers vested in it by Article 92 (3) EEC, should not therefore except from Article 92 (1) EEC which provides for the incompatibility of aids defined in that paragraph, measures which would contribute to further the development of this industry, by granting those measures the benefit of the exemption provided under Article 92 (3) (c) EEC for 'aid to facilitate the development of certain economic activities', there being no justification for such measures ;

Whereas, furthermore, it is characteristic of the petroleum industry that when refining capacity is available there is advantage in making the maximum use of it since the proportional element in refining costs is relatively small ; whereas, however, if there are any surpluses, however small, on the market for petroleum products those surpluses have a considerable depressing influence on prices and are therefore likely to upset the financial equilibrium of the refining industry of the Community.

Whereas the aids planned by the Belgian Government are therefore such as to 'adversely affect trading conditions to an extent contrary to the common interest' and cannot for that very reason be exempted under Article 92 (3) (c) EEC, since this provision allows aids to be considered compatible with the Common Market only of they facilitate the development of certain economic activities without producing any adverse effect ;

Whereas, moreover, the aids clearly do not qualify for exemption under Article 92 (2) or Article 92 (3) (b) EEC ;

IV. Whereas, when submitting its comments, the Belgian Government declared itself prepared to limit the aids originally proposed only to investments directed towards the elemination, by the two refineries concerned, of the pollution they cause ;

Whereas, however, it is the responsibility of Member States to take the necessary measures to ensure that the undertakings themselves, under the principle of 'the polluter pays' meet the costs of protecting the environment from the harmful effects of their activities ; whereas aids can be exempted from this rule only if it can be proved that full application of the rule might give rise to particular difficulties especially of a regional or industrial nature, and that those difficulties can only be overcome by enabling the industries concerned to make the necessary alterations to their existing production plants.

Whereas, in this case under consideration, an examination of the situation of the undertakings which would benefit from the aids proposed by the Belgian Government, of the regions and areas where the new investments are to be made and of the sector of industrial activity to which the undertakings belong, does not indicate that any such difficulties exit,

HAS ADOPTED THIS DECISION :

Article 1

The Kingdom of Belgium shall not grant the aids which, as notified to the Commission by letter of 23 August 1972 from its Permanent Representative, it intended to grant towards the extension of an oil refinery at Antwerp and towards the setting up of a new refinery at Kallo.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 11 September 1973.

For the Commission

The President

François-Xavier ORTOLI