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COMMISSION DECISION

of 17 June 1975

on the aids granted by the Belgian Government pursuant to the Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries

(Only the French and Dutch texts are authentic)

(75/397/EEC)

(OJ L 177, 8.7.1975, p. 13)

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on the aids granted by the Belgian Government pursuant to the Law of 17 July 1959 introducing and coordinating measures to encourage economic expansion and the creation of new industries

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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 given written notice to those concerned to submit their comments as provided in Article 93;

I. Whereas the Belgian Law of 17 July 1959 introduces measures to encourage economic expansion and the creation of new industries and, for this purpose, provides for a number of aids to be granted to activities which help 'to create, extend, convert or modernize large and small Belgian undertakings' in the general economic interest; whereas the Royal Order of 17 August 1959 ([1]) implementing that Law treats the following, 'inter alia', as being in the general interest: 'the creation of jobs in connection with employment policies; the establishment of new industries and the manufacture of new products; the development of existing enterprises which adjust to the changed situation on the market; the improvement of the situation of depressed industries; the more rational utilization of the country's economic resources; the improvement of working conditions, of the conditions in which enterprises operate (by increasing productivity or profitability) and of the quality of production; the establishment or development of research facilities in enterprises';

Whereas, under that Law, the Belgian Government may grant a number of types of aid in favour of investments which undertakings carry out for the various purposes, the main benefits being:

— interest rebates on loans contracted in order to pay for such investments, the usual rate being 2 %, increased to 4 % where the relevant operations fall within the objectives of the Government's five-year plan and even higher 'where this is warranted by economic circumstances'; whereas, although the Law and its implementing provisions do not go into detail on this point, the loans on which interest rebates are given are generally to cover 50 % of the value of the investments made, while the period for which the rebate may be given is from three to five years;

— State guarantees covering loans contracted by undertakings with banks, where interest rebates are given as above;

— exemption for five years from the tax on income from immovable property (précompte immobilier);

Whereas between 1965 and 1969 the loans contracted by undertakings giving entitlement to an interest rebate under the Law of 17 July 1959 ran to an annual value of between Bfrs 5 000 and 10 000 million each year, approximately one third of all investments made by manufacturing industry in Belgium being thus aided, and, although it is not possible to give exact statistics, it is thought that the aid scheme has been applied with similar intensity in the more recent period;

Whereas an aid system of this kind is likely to affect trade between Member States and to distort competition within the meaning of Article 92 (1).

II. Whereas the objects of this aid scheme are such that it clearly cannot qualify for exemption under Article 92 (2) and (3) (b);

([1]) Moniteur belge, 29 August 1959.

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Whereas, since the criteria laid down in the Law of 17 July 1959 and the Royal Order of 17 August 1959 for deciding what operations should qualify for the aid are of an extremely general nature, the relevant Belgian authorities can at their discretion, without being subject to advance control by the Commission, grant aids to any industrial enterprise, wherever it may be and in whatever industry it may be operating, as the need arises;

Whereas the scope of the aid scheme is therefore such as to exclude application of the derogating measures in Article 92 (3) (a) or (c) in favour of aids to promote the development of 'certain economic activities or of certain economic areas', since the aids in question here are available throughout the Belgian economy and throughout Belgian territory;

Whereas in view of the extensive scope of the aids the Commission is unable to assess their effects on trade and competition in the Community, since to do so it would at least need precise knowledge in advance of the areas or activities in which the recipient undertakings are operating;

Whereas, furthermore, when a Member State plans to grant aid to assist a specific industry or region, it must comply with the rules and procedures of Article 93 (2) and (3) EEC; and that under a general aid scheme such as the Law of 17 July 1959, the Belgian Government can at any time take such measures without being subject to these rules and procedures;

Whereas, therefore, in view of the terms on which they are granted, these aids cannot be regarded as compatible with the Common Market.

III. Whereas, however, the Belgian Government may find it necessary to be able to apply a scheme of aids enabling it to intervene wherever necessary in the country's industrial life without being restricted from the outset by predetermined geographical or industry restrictions;

Whereas account can be taken of this need while nevertheless respecting Community requirements on aids if, before the aids in the present scheme are granted, the Commission is able to verify whether, in view of the points at which they are to be applied and of their purpose, the aids satisfy the tests for the derogations in the Treaty from the provisions declaring certain aids incompatible;

Whereas, in view of the object of the aid scheme, which is to promote the creation, extension, conversion and modernization of industrial enterprises, one of the main requirements is that the Commission must be informed of the industry or geographical area in which the aids are to be applied;

Whereas the Commission should therefore be informed in advance as provided in Article 93 (3) of the EEC Treaty:

— of programmes which, under the Law of 17 July 1959, the Belgian Government may from time to time establish in favour of certain industries or geographical areas;

or, in their absence,

— of any individual aids granted to any individual undertaking, where such aids are likely to have significant effects on competition and trade within the Community;

IV. Whereas identical considerations underlay Commission Decision No 72/173/EEC [1] of 26 April 1972, which imposed the same requirements as regards the aids to specific industries provided for in Article 5 of the Belgian Law of 30 December 1970 on economic expansion, whose nature and objects are similar to those of the Law of 17 July 1959;

Whereas, although at the time the Commission was perfectly aware that the control procedure imposed by that decision as regards aids to

[1] OJ No L 105, 4. 5. 1972, p. 13.

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specific industries given under Article 5 of the Law of 30 December 1970 would be of little avail if a similar procedure was not imposed as regards the aids provided by the Law of 17 July 1959, the Commission requested the Belgian authorities to comply with it nevertheless; whereas an informal agreement was reached on this point;

Whereas, nevertheless since the adoption of the Decision of 26 April 1972, above the Belgian Government has not informed the Commission of a single case of aids to specific industries granted under Article 5 of the Law of 30 December 1970, or of similar aids foreseen under the Law of 17 July 1959, with one exception of a case where the Commission, acting on press reports, had requested it to comply with the abovementioned informal agreement [1],

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium shall take the necessary measures to ensure that aids granted under the Law of 17 July 1959 are henceforth granted only on the following conditions:

— where such aids are granted in connection with programmes affecting all undertakings in a given industry or in a given geographical area, the programmes shall be notified to the Commission giving it time to state its views in advance; the notification shall contain all the information which the Commission normally requires in order to assess a scheme of aid for a specific industry or region (nature of the industry or of the region, objectives, particulars and intensity of the aids);

— where such aids are given to an individual undertaking or to a restricted number of undertakings, all individual significant cases as defined in Article 2 shall be notified to the Commission giving it time to state its views in advance; such notification shall provide the same information as required under subparagraph (a).

Article 2

For purposes of Article 1, second paragraph, the following shall constitute significant cases:

— cases where the value of the investment is ►**M1** three million European units of account ◄. or more, regardless of the value of the aid;

— cases where the value of the aid, expressed as net subsidy equivalent, is 15 % or more of the value of the investment, regardless of the value of the investment.

Article 3

This Decision is addressed to the Kingdom of Belgium.

[1] See also Commission Decision No 73/293/EEC of 11 September 1973 on aids which the Belgian Government intended to give to refineries at Antwerp and Kallo: OJ No L 270, 27 September 1973, p. 22.