II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 27 July 1979**

**on proposed Netherlands Government assistance to increase the production capacity of a cigarette manufacturer**

**(Only the Dutch text is authentic)**

(79/743/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 given notice in accordance with the above Article to interested parties to submit their comments and having regard to these comments,

Whereas :

I

Article 6 of the Dutch Act of 29 June 1978 on the promotion and guidance of investment (1) introduced an additional premium for major schemes with paid for investment exceeding Fl 30 000 000. The amount depends on the number of jobs created and may account for up to 4 % of the investment in question.

When examining the scheme at the bill stage, pursuant to the procedure under Article 93 (3) of the EEC Treaty, the Commission pointed out that the additional premium for major schemes constituted a general aid system and contained no industry or regional objectives. Since the scheme covered investment by any firm in any area or industry it could not qualify for exemption to the incompatibility of State aids under Article 92 (3) (a) or (c). Without these objectives the Commission could not assess the scheme's effects on intra-Community trade and competition and check whether its application would be counter to its principles and rules on aids.

In line with the general approach previously taken on similar existing or proposed schemes in the Community, the Commission requested prior notification in good time of individual cases of application of the additional premium for major schemes, account being taken of the amount of investment concerned, as required by Article 93 (3) of the EEC Treaty.

During talks with the Dutch authorities the Commission stated that it would assess each case on its own merits in the light of the rules contained in Article 92 *et seq.* or rules developed later during administration. The Netherlands Government could not infer, by requesting regular prior notification, that the Commission had taken a favourable view of the additional premium.

(1) 'Staatsblad' No 368, 1978.

The Netherlands Government complied with the Commission's request by including the prior notification procedure in Articles 6 (7) and 7 (3) of Chapter V of the Dutch Act of 29 June 1978.

II

By letter dated 4 October 1978, the Netherlands Government informed the Commission, as required by the procedure, of its intention to grant the additional premium for major schemes to the Dutch subsidiary of a major multinational tobacco manufacturer.

The assistance was to be granted to the subsidiary for the purpose of concentrating and developing cigarette production in one of its two factories in the Netherlands which produced 11 100 million cigarettes in 1978. One factory, at Eindhoven, had been closed down and the annual production capacity of the other, located at Bergen-op-Zoom, was to be increased to 16 000 million cigarettes, a 40 % increase in production capacity of the firm and approximately a 13 % increase in Dutch production overall. Plant extensions and modernization would require an investment of Fl 165 million (some 60·7 million EUA).

When the investments were completed, the firm would account for almost 50 % of Dutch cigarette production, with the number of workers a little less than that in the previous two factories.

The firm expects to export over 80 % of its production to other Member States.

Dutch cigarette exports to other Member States in 1977 totalled 94 million EUA; imports were 63·7 million EUA, a 30·4 million EUA trade surplus in cigarettes for the Netherlands.

For some years now growth in Community cigarette consumption and production has been very slack. Common Customs Tariff duties (subheading 24.02 A) on cigarettes are levied at 90 % *ad valorem* and encourage the firm to supply the Community market from Community production centres.

The additional premium for major schemes to be granted in this case amounts to Fl 6·2 million (2·3 million EUA), 3·8 % of the investment, almost the maximum rate for the additional premium.

On account of the firm's location in a regional development area the investment would also qualify for a Fl 10 million grant (3·7 million EUA) under the Dutch regional aid system (Investeringspremieregeling (IPR)), the rate of grant paid to improve socio-economic balance in the Bergen-op-Zoom area.

III

The Netherlands Government's proposed aid is likely, therefore, to affect trade and distort competition between Member States by favouring the undertaking within the meaning of Article 92 (1) of the EEC Treaty.

The terms of the Treaty provide for the incompatibility with the common market aids fulfilling the criteria it contains. The exemptions to incompatibility included in Article 92 (3) must be strictly interpreted, notably, aid may only be granted when the Commission can establish that it will contribute to the attainment of the objectives specified in the exemption, which under normal market conditions the recipient firms would not attain by their own actions.

Any granting of exemptions to aids without such compensatory justification would be tantamount to agreeing to a distortion of intra-Community trade and competition without grounds of Community interest while putting certain Member States at an undue advantage.

In the case in question there does not appear to be such a counterpart on the part of the undertaking's benefiting.

Effectively the Netherlands Government has not been able to give nor has the Commission found any grounds establishing that the proposed aid meets the conditions laid down to enforce derogations pursuant to Article 92 (3) of the EEC Treaty.

As regards the derogation of Article 92 (3) (a) and (c) on aid to favour the development of certain areas, it should be remembered that the standard of living in the Bergen-op-Zoom area is not abnormally low and that it does not suffer from serious under-employment within the meaning of the derogation (paragraph (a)). As regards the derogation of paragraph (c), the Netherlands Government has already taken account of the contribution made by the investment concerned to

improving the socio-economic balance of the area by granting assistance under the Dutch regional aid system (Investeringspremieregeling (IPR)). The Netherlands Government, in the framework of presenting its observations to the Commission, emphasized that the additional premium for major schemes was not given on account of regional considerations.

Moreover, in respect of the derogation envisaged in Article 92 (3) (b), the investment concerned does not constitute an important project of common European interest, considering also that when examining the additional premium, the Commission considered that given the relatively favourable socio-economic situation in the Netherlands when compared to the rest of the Community, that it could not be regarded as assistance 'to remedy a serious disturbance in the economy of a Member State'. To take another viewpoint would permit the Netherlands, in the context of an economic downturn and large-scale unemployment throughout the whole Community, to effect to their advantage investments likely to be made in other Member States in a less-favourable situation. Recent economic and social developments in the Community provide grounds for maintaining this approach both as regards the system itself and any possible cases of application.

Finally, as regards the derogation of Article 92 (3) (c), in favour of aid as 'aid to facilitate the development of certain economic activities', examination of the cigarette manufacturing industry in the Community and in the Netherlands shows that since market conditions seem apt to ensure a normal development, that therefore the proposed aid cannot be considered as 'facilitating the development'. Moreover, it should be noted that, basically, the proposed increased production would mainly be exported to other Member States in a situation where the growth consumption has slackened, so that it is therefore unlikely that trading conditions would remain unaffected by a measure contrary to the common interest, such as this aid.

In view of the above, the Dutch aid proposal does not meet the conditions necessary to benefit from one of the derogations of Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

The Kingdom of the Netherlands shall refrain from implementing its proposal, communicated to the Commission by letter dated 4 October 1978 from its Minister of Foreign Affairs, to grant the additional premium for major schemes to investment made at Bergen-op-Zoom by the Dutch subsidiary of a multinational tobacco manufacturer.

*Article 2*

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 27 July 1979.

*For the Commission*

Raymond VOUEL

*Member of the Commission*