COMMISSION DECISION

of 23 July 1981

on a proposal by the Netherlands Government to grant aid for investment in the foodstuffs packaging industry

(Only the Dutch text is authentic)

(81/718/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,

I

Whereas Article 6 of the Netherlands Law of 29 June 1978 (Wet Investeringsrekening — WIR)(1) on the promotion and guidance of investment introduced an 'additional premium for major schemes' for the benefit of projects where investment exceeds Fl 30 million. The amount of the premium depends on the number of jobs created and may account for up to 4 % of the investment in question.

When examining the Netherlands Law at the draft stage, in the course of the procedure under Article 93 (3) of the EEC Treaty, the Commission pointed out that since the 'additional premium for major schemes' involved no sectoral or regional objectives it therefore constituted a general aid system, and that since the arrangements applied to all investment, without distinction by reference to given undertakings, regions or sectors, they could not qualify for the derogations under Article 92 (3) (a) or (c). In the absence of such specification, the Commission could not assess the system's effects on trade between Member States and on competition and therefore assess its compatibility with the common market.

In respect of such general aid systems it is now the well-established policy of the Commission to accept them subject to one of two conditions, namely, that the Member State concerned notifies to the Commission either a plan for regional or sectoral application or alternatively, where this is felt not to be possible, significant individual cases of application.

In line with this approach, and in accordance with Article 93 (3) of the EEC Treaty, 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.

During discussions with the Netherlands 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 during administration of those provisions. The Netherlands Government could not infer that, by requesting regular prior notification, the Commission had taken a favourable view of the additional premium system.

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

II

By letter dated 16 August 1979 the Netherlands Government informed the Commission, as required by the procedure, of its intention to grant the 'additional premium for major schemes' to a firm operating in the packaging industry.

The assistance granted to the firm would help to double its production capacity for foodstuff packaging at Moerdijk and create 118 new jobs.

Total investment has been estimated at Fl 39·2 million and the scheme would qualify for a Fl 0·5 million grant from the WIR scheme (additional premium for major schemes). On account of its location at Moerdijk the scheme would not qualify for regional aid.

(1) Staatsblad 1978, No 368.

The Netherlands market would in no way be sufficient to absorb estimated output on completion of the scheme. Part at least of the surplus capacity would flow on to the markets of other Member States.

The recipient firm, which is already established at Moerdijk, regards this investment as a profitable undertaking enabling it to meet increased demand.

III

The Netherlands Government replied on 14 December 1980 to the Commission's notice under Article 93 of the EEC Treaty, claiming that the WIR scheme operates automatically and does not permit aid to be granted selectively in accordance with the desirability of the proposed investments. Its forecasts indicated that the additional capacity would be used to meet existing demand in non-member countries. The proposed investment would have a knock-on effect at regional level.

IV

Article 92 (1) of the EEC Treaty provides that, in principle, and aid fulfilling the criteria which it sets out is incompatible with the common market. The derogations from this principle set out in Article 92 (3) of the EEC Treaty specify objectives pursued in the Community interest and not in that of the individual recipient of the aid. These derogations must be strictly interpreted in the examination both of any regional or sectoral aid scheme and of any individual case of application of general aid systems. In particular, they may be applied only where the Commission establish that, in the absence of the aid, the free play of market forces would not of itself induce the recipient undertakings to act in such a manner as to contribute to the attainment of one of the objectives specified by those derogations.

To derogate in this way in favour of aids offering no compensatory benefit would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any justification in terms of the interest of the Community, while at the same time granting undue advantages to certain Member States.

When applying the principles set out above in its examination of individual cases of application of general aid systems, the Commission must be satisfied that there exists on the part of the recipient undertaking a specific compensatory justification in that the grant of aid is required to promote the attainment of one of the objectives set out in Article 92 (3) of the Treaty. Where this cannot be demonstrated, and especially where the proposed investment nevertheless takes place, it is clear that the aid does not contribute to the attainment of the objectives of the derogations but serves to increase the financial power of the undertaking in question.

In the case in question there does not appear to be such a compensatory justification on the part of the recipient of the aid.

The Netherlands Government has not been able to give, nor has the Commission found, any grounds to establish that the proposed aid meets the conditions justifying one of the derogations for which provision is made in Article 92 (3) of the EEC Treaty.

As regards the derogations of Article 92 (3) (a) and (c) of the EEC Treaty concerning aid to promote or to facilitate the development of certain areas, it cannot be considered that the standard of living in the Moerdijk region is 'abnormally low' or that it suffers from 'serious under-employment' within the meaning of subparagraph (a). As regards the derogation of subparagraph (c), the Netherlands Government has not included that area amongst those requiring special regional development aid. The Netherlands Government, in its comments submitted to the Commission, itself emphasized that the 'additional premium for major schemes' was not granted on account of regional considerations.

In respect of the derogations envisaged in Article 92 (3) (b) of the EEC Treaty, investment of this type is brought about in a general way by normal market forces. Moreover, there is nothing peculiar to the investment in question to qualify it as a project of common European interest or as one designed to remedy a serious disturbance in the economy of a Member State, the promotion of which merits a derogation under Article 92 (3) (b) of the EEC Treaty from the principle of the incompatibility of aids laid down by Article 92 (1). In stating its views on the WIR, the Commission recalled that the Netherlands are part of the Community's central regions. These regions are not suffering from the most serious economic and social problems in the Community but they are the regions where there is a real risk of an upward spiral of aids, and where any aid is likely, more than elsewhere, to affect trade between Member States. Furthermore, the information available on the socio-economic situation in that country does not point to

the conclusion that it is suffering from a serious disturbance in its economy within the meaning of the Treaty. In individual cases of application the 'additional premium for major projects' is not granted for the purpose of dealing with such a situation.

To take any other view would enable the Netherlands, in the present climate of slow growth and high unemployment throughout the Community, to divert to their advantage investment which might be made in other, less well-placed, Member States. Recent social and economic trends in the Community justify maintaining this approach as regards both the scheme itself and possible cases of application.

Finally, as regards the derogations provided for in Article 92 (3) (c), in favour of 'aid to facilitate the development of certain economic activities', scrutiny of the development of the foodstuffs packaging industry shows that the play of market forces should be capable itself, without State intervention, of ensuring that this activity develops normally. In this case, the main object is to increase the market share of one of the biggest Community manufacturers of foodstuffs packaging. Moreover, the increased output will probably lead to a 20 % expansion of exports to other Member States. The aid in question would therefore inevitably alter trading conditions to an extent contrary to the common interest.

In view of the foregoing, the abovementioned aid proposed by the Netherlands Government does not fulfil the conditions necessary for it to benefit from any of the derogations referred to in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of the Netherlands shall refrain from implementing its proposal, notified to the Commission by letter dated 16 August 1979 from its Minister for Foreign Affairs, to grant the 'additional premium for major schemes' in favour of investment made at Moerdijk by a Netherlands undertaking in the foodstuffs packaging industry.

Article 2

The Kingdom of the Netherlands shall inform the Commission within two months of the date of notification of this Decision of the measures which it has taken to comply with it.

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 23 July 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission