II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 September 1981

on a proposal by the Netherlands Government to grant aid for the creation of new production capacity by an undertaking in the chemical industry (magnesium oxide)

(Only the Dutch text is authentic)

(81/797/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 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 the Commission either of a plan for regional or sectoral application or alternatively, where this is felt not to be possible, of 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

[1] Staatsblad 1978, No 368.

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 of procedure in Articles 6 (7) and 7 (3) of Chapter V of the Netherlands Law of 29 June 1978.

II

By letter dated 17 April 1980, the Netherlands Government informed the Commission, as required by the procedure, of its intention to grant the additional premium available for major schemes for the establishment, in Veendam in the province of Groningen, of a rock salt plant producing annually 850 000 tonnes of brine for use in the commercially integrated production of magnesium oxide. The two operations involved would be carried out by two joint subsidiaries set up by a Dutch petrochemicals group and a regional public holding company.

The total cost of the investment is estimated at Fl 85 million ; 18 new jobs would be created. The project would receive a grant of Fl 0·285 million in the form of an additional premium for major schemes under the WIR system, and Fl 7·3 million under the IPR regional aid system.

A substantial proportion of the magnesium oxide, all of which is produced from the salt extracted at Veendam, is intended for export to the other Member States.

III

The Netherlands Government replied to the Commission's request observations on 8 January 1981, thereby failing to comply with the deadline set by the Commission, which had asked for observations to be submitted by 30 June 1980. The Commission had extended this deadline to 15 August 1980 at the request of the Dutch Government.

IV

The aid proposed by the Netherlands Government is therefore liable to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the undertaking in question or the production of its goods.

The assistance planned by the Netherlands Government is for a rock-salt plant producing 850 000 tonnes of brine a year, all of which would be used for the production of magnesium oxide. The two operations would be carried out by two joint subsidiaries set up by the same undertakings. A substantial proportion of the output of this commercially integrated process would be exported to the markets of other Member States.

Article 92 (1) of the EEC Treaty provides that, in principle, any 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.

The Commission is required to apply these principles both consistently and fairly in order to verify that a compensatory justification exists in each case of application of a general aid system. That this test was not applied in the past, even in a very similar case, is not sufficient reason to discard it ; this is particularly so in the present case, where no such compensatory justification exists on the part of the recipient undertaking.

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 Groningen area suffers from an 'abnormally low' standard of living or from 'serious underemployment' within the meaning of subparagraph (a). As regards the derogation of subparagraph (c), the Netherlands Government has already taken account of the contribution which the investment concerned is expected to make to improving the socio-economic balance of the area by granting assistance under the Netherlands regional aid scheme (Investeringspremieregeling - IPR). 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).

Even if it were established that there was a need to increase capacity for the production of magnesium oxide for the manufacture of blast furnace refractory bricks, the effect of the project here considered appears too indirect to have any appreciable impact on the restructuring of the steel industry in the Community.

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.

Lastly, the derogation provided for by Article 92 (3) (c) of the EEC Treaty relates to 'aid to facilitate the development of certain economic activities' ; analysis of the production of magnesium oxide from rock salt, and particularly the forecasts submitted for demand for these products, shows that the interplay of market forces alone, without public intervention, should produce normal development in the industry. The fact that a substantial proportion of the output of magnesium oxide produced from rock salt is intended for export to the other Member States, although it has not been shown that there is scope for an increase in production capacity, prevents the conclusion that the assistance would not adversely affect 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 17 April 1980 from its Minister for Foreign Affairs, to grant the 'additional premium for major schemes' in favour of investment made at Veendam by a Netherlands undertaking in the chemical 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, 18 September 1981.

For the Commission

Frans ANDRIESSEN

Member of the Commission