COMMISSION DECISION

of 20 July 1983

under Article 93 (2) of the EEC Treaty, on a proposal of the Belgian Government to aid an undertaking (No 118) in the textile and clothing industry

(Only the Dutch and French texts are authentic)

(83/508/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-mentioned provision, to the parties concerned to submit their comments and having regard to those comments,

Whereas :

I

By letter dated 6 December 1982 the Belgian Government informed the Commission of a plan to aid a firm manufacturing towelling, a sector of the Belgian textile and clothing industry that is regarded as highly competitive.

The aid of Bfrs 100 800 000, towards an investment of Bfrs 144 million, was to be awarded by the Belgian Government under the textile and clothing industry aid scheme to a firm employing a staff of 178. The investment would improve the firm's production plant and restore its output to an earlier level and would partly involve investment in new plant and machinery, some of it replacement investment.

The Commission opened the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty in respect of the plan and, by letter dated 28 January 1983, gave the Belgian Government notice to submit its comments.

II

Pursuant to the procedure laid down in Article 93 (2) of the EEC Treaty, the Belgian Government replied to the letter of formal notice in a letter dated 10 March 1983, in which it gave further details of the restructuring involved in the project. It stated that Bfrs 93 million of the Bfrs 144 million-worth of investment was for rehousing office staff and management following the expropriation of the firm's present offices and that the firm was taking the opportunity presented by the move to undertake a major programme to clean up some of the more polluting parts of its production processes by purchasing new dyeing and finishing machines and an advanced effluent purification system. The remaining Bfrs 51 million was for purchasing replacement machinery to modernize production, a type of investment that would normally be borne by the individual firm concerned.

The four Member States and two trade associations that replied to the Commission's invitation to comment pursuant to Article 93 (2) supported the view the Commission had formed of the plan. One Member State pointed out that the firms in the towelling sector of its textile industry had recently carried out a major restructuring operation unaided. Another Member State noted that 50 % of its intra-Community imports of towelling material came from Belgium and that in 1982 the volume of such imports had risen.

III

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

Article 92 (1) lays down the general principle that aid having the features there described is incompatible with the common market. The exceptions from this principle defined in Article 92 (3) specify objectives in the Community interest transcending the interests of the aid recipeient. These exceptions must be construed strictly when any regional or industry aid scheme or any individual award under a general aid scheme is

scrutinized. In particular, they may be applied only when the Commission is satisfied that the free play of market forces alone, without the aid, would not induce the prospective aid recipient to adopt a course of action contributing to attainment of one of the said objectives.

To apply the exceptions to cases not involving such a general benefit in return for the individual benefit conferred by the aid would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

In applying these principles in its scrutiny of individual awards under general aid schemes, the Commission must satisfy itself that the recipient is contributing a compensating benefit justifying the aid, in the sense that the aid is necessary in order to help achieve one of the objectives set out in Article 92 (3). Where this cannot be demonstrated, and especially where the investment would be carried out in any case, it is clear that the aid would not contribute to attainment of the objectives specified in the exceptions but would merely serve to bolster the financial position of the recipient.

The recipient in the present case cannot be said to be contributing such a compensating benefit.

The Belgian Government has been unable to give, or the Commission to discover, any justification for a finding that the planned aid falls within one of the categories of exceptions in Article 92 (3).

With regard to the exceptions granted by points (a) and (c) of Article 92 (3) for aids that promote or facilitate the development of certain areas, the prospective recipient is not located in an area where the standard of living is abnormally low or where there is serious unemployment within the meaning of point (a) and the award does not appear likely to facilitate the development of certain economic areas within the meaning of point (c).

As far as the exceptions in point (b) are concerned, the investment project does not have the features of a project of common European interest or of a project likely to remedy a serious disturbance in the economy of a Member State, as would be required for these exceptions to be applicable.

The Belgian textile and clothing industry aid scheme was approved by the Commission on 18 November 1981. Since its introduction, Belgian firms in the industry have been barred from aid under any other specific, regional or general scheme.

To qualify for application of the exception in Article 92 (3) (c), individual aid awards under this scheme must meet all the requirements of the scheme as approved by the Commission. These include the requirement, especially where the prospective recipient belongs to a sector of the industry that is sensitive or competitive, that the recipient be undertaking restructuring to regain viability or be cutting excess capacity with the help of the aid.

The modernization programme of the firm involved in the present case which manufactures towelling includes Bfrs 51 million-worth of investment directly intended to improve its production facilities, which would normally be borne by the firm itself.

No evidence has been provided in support of the proposal to grand aid towards this part of the investment programme that the firm's restructuring plan meets the requirements of the Belgian textile and clothing industry aid scheme, bearing in mind the fact that Belgian towelling manufacturing is highly competitive. The aid would help raise the firm's output, 80 % of which is sold in the Community, by 25 % and would therefore clearly affect trading conditions to an extent contrary to the common interest.

The Belgian Government has been unable to demonstrate, or the Commission to confirm, that this part of the proposed award meets all the requirements within the context of the Belgian industry aid scheme which would qualify it for application of the exception in Article 92 (3) (c).

The rest of the investment amounting to Bfrs 93 million is to cover expenditure on anti-pollution measures and to rehouse some departments as a result of action by the public authorities.

In the Community code on State aid to environmental projects the Commission has accepted that aid towards investment to meet new environmental standards can, in certain circumstances, be granted the benefit of one of the exceptions to the Treaty's State-aid rules.

The firm in question plans to take the opportunity presented by an enforced move to reorganize and centralize its management on the same site as its production facility and to computerize some management functions. This restructuring is in line with the objectives sought by the Belgian textile and clothing industry plan, which has been in force since 1 January 1982.

The latter investment and that on anti-pollution measures will not have a direct effect on the firm's output and will thus not tend to affect trading conditions to an extent contrary to the common interest,

HAS ADOPTED THIS DECISION :

Article 1

The Belgian Government shall not proceed with the award of aid to undertaking No 118 in the towelling sector for modernization of plant involving the purchase of new, more-efficient machinery to replace existing equipment.

The award of aid towards the cost of removal, reorganization, introduction of computers, and the purchase of less-polluting dyeing and finishing machinery and effluent purification equipment, however, is covered by the exception in Article 92 (3) (c) of the EEC Treaty.

Article 2

The Belgian Government shall inform the Commission, within two months of the notification of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 20 July 1983.

For the Commission

Frans ANDRIESSEN

Member of the Commission