COMMISSION DECISION

of 4 February 1987

concerning aid to a Belgian steel pipe and tube manufacturer

(Only the French and Dutch texts are authentic)

(87/418/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 the parties concerned notice to submit their comments, in accordance with that provision, and having regard to those comments,

Whereas :

I

On 19 July 1984 the Belgian Government notified the Commission, in accordance with Article 93 (3) of the EEC Treaty, of its intention to provide further funding to a state-owned steel pipe and tube manufacturer in the Liège area by subscribing to a Bfrs 1,8 billion capital increase and a Bfrs 2,2 billion issue of conditional participating convertible bonds. The Commission had already authorized a package of aid for the firm in 1982.

The Commission later learnt (and the Belgian Government confirmed this by letter dated 29 July 1985) that, apart from the aid notified on 19 July 1984, the Government had previously given the firm further assistance without authorization by the Commission, and thus in contravention of Article 93 (3) of the Treaty.

The unauthorized aid and that notified on 19 July 1984 came to a total of Bfrs 9 085 million, to which must be added Bfrs 1 212 million of regional aid granted under the Economic Expansion Laws.

A preliminary scrutiny of the case showed that the firm was still making heavy losses in spite of a modernization programme and the aid it had already received. The firm's prospects for future recovery were also considered doubtful by the Commission, as the management was relying for an improvement in its financial position on a diversification into tubes at the top end of the quality range and to more profitable markets than those previously served by the firm. This strategy was thought unlikely to succeed, as the overcapacity in the industry would make it difficult for any firm to capture a new market share.

For these reasons, and because the aid was likely to cause major distortions of competition on a sensitive market, the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty in order to hear the views of all concerned.

By letter of 5 July 1985 it gave the Belgian Government notice of the opening of the procedure and called for its observations. Comments were also invited from other Member States by letters dated 12 July 1985 and from other interested parties by a notice in the *Official Journal of the European Communities* on 16 July 1985 [1].

In spite of the pending Article 93 (2) procedure, the Belgian Government went ahead with payment of the aid it had notified on 19 July 1984.

By letter of 6 June 1986, the Belgian Government notified its proposal to grant further aid to the company in the form of the conversion of Bfrs 3 010 million of guaranteed loans into capital.

On 1 August 1986 the Commission extended the Article 93 (2) procedure to this further aid and called on the Belgian Government to submit its observations. Comments were also invited from the other Member States by letter dated 10 November 1986 and from interested parties by a notice in the *Official Journal of the European Communities* on 19 November 1986 [2].

In spite of the procedure pending, the Belgian Government went ahead with conversion of Bfrs 2 510 million of debts into capital.

Thus, all the aid covered by the procedures, except for the proposed conversion of Bfrs 500 million of debts into capital, has already been provided in disregard of Article 93 (3) of the Treaty.

II

In its observations sent by letters of 29 July 1985 and 5 September 1986, in reply to the opening and extension of the procedure, the Belgian Government argued, in the first place, that the funding it had provided to the firm was not likely to distort competition.

Mainly because of cost overruns on the investment programme begun in 1982, the funding the Government had provided with the Commission's approval up to 1982 and the later unauthorized payments had not even been enough to restore the firm's financial position.

[1] OJ NO C 178, 16. 7. 1985, p. 2.
[2] OJ No C 293, 19. 11. 1986, p. 3.

The new funding notified in 1984 was required to pay for the remainder of the investment programme and to meet the firm's needs for working capital consequent upon the expansion of its sales that had taken place in the last few years.

Hence, the provision of funding by the State (which held over 99 % of the company's shares) should be regarded, the Belgian Government maintained, not as aid but as an investment of capital by a shareholder, which would not affect competition.

Moreover, the firm's sales on the Community market (25 898 tonnes or only 8,6 % of its output in 1984, as against 36 166 tonnes in 1979) were on too small a scale to affect trade between Member States.

The Belgian Government also stressed the importance of the firm's survival for the Liège area, already hard hit by the decline of the steel industry. Finally, it repeated the forecasts of the firm that it would break even in 1985 and would return to profit from 1986. The forecasts assumed that the supply contracts the firm had secured in 1980 with its main customer, the Soviet Union, which gave it a large, though now somewhat reduced, captive market would continue and that the firm would be able to penetrate more profitable markets elsewhere.

The three other Member States and four associations of steel pipe and tube producers that also made representations to the Commission under the procedure expressed strong fears that to penetrate new markets, which were already severely depressed by overcapacity, the firm would have to embark on a destabilizing price-cutting policy. Such a policy, made possible by massive subsidies, would seriously distort competition between Community producers. These fears had been strengthened by recent developments — import restrictions in the USA, the installation of new capacity in the USSR and other Eastern bloc countries and in some developing countries — which had made the market even more sensitive and put Community producers in a vulnerable position. Finally, the respondents pointed to the efforts other Member States had made to reduce excess capacity in the sector, whereas the Belgian firm, although highly dependent on exports, had actually increased its capacity in recent years.

III

Except for Bfrs 500 million of the debt conversion, to which the Article 93 (2) procedure was extended on 1 August 1986, the government funding with which this Decision is concerned was provided by the Belgian Government unlawfully in breach of its obligations under Article 93 (3) of the Treaty. All the funding, moreover, involved aid falling within Article 92 (1), which is ineligible for any of the exceptions provided for in Article 92 (2) and 3 of the Treaty for the following reasons.

IV

The Court of Justice has established [1] — and the Commission has issued a notice to this effect to the Member States [2] — that provisions of new capital to firms by governments are in the nature of aid falling within Article 92 (1) of the Treaty where a private investor in a market economy would not have provided the financing in similar circumstances. This will be the case, for example, where the financial position of the company, and in particular the structure and volume of its debt, is such that no normal return (through dividends or capital gains) can be expected on the capital invested within a reasonable period. It will also be the case where a subscription of capital by the government in a company under mixed public and private ownership takes its holding significantly above that it had under the original distribution.

On the other hand, a government's provision of capital will not be aid where a private investor in a market economy would have provided the financing in similar circumstances. In particular, in the case of a company in public ownership an injection of capital into the company for new investment and expenditure directly related thereto will not normally be aid where there is no structural overcapacity in the industry in the common market and the company is financially sound. The same will apply to a firm under mixed ownership where the government's subscription of funds is in proportion to its existing holding and is matched by subscriptions by private shareholders.

In the present case, the firm to which the Belgian Government has provided new capital is in an industry suffering from substantial structural overcapacity. This is clearly demonstrated by the statistics: the figures the Belgian Government itself has supplied show that in the major western countries (USA, Japan and the EEC) an estimated 35 to 40 % of installed capacity is surplus to

[1] Judgment in Case 323/82, Intermills v Commission, (1984) ECR 3809.
[2] Bull. EC 9/1984, point 3.5.1.

requirements. Moreover, the demand for seamless tubular goods from the oil industry, which is already at a low level, is likely in the next few years to decline further as drilling activity slows in response to the depressed conditions on the oil market. In these circumstances, and in view of the further factors discussed below, it is doubtful that the financial position of the company, which has been making heavy losses for several years, will improve. Finally, the company's previous private shareholders have withdrawn in two stages (in 1980 and 1982), leaving the Government to bear all the risk of keeping it in business alone.

Consequently, the Belgian Government's funding of the firm cannot be regarded as a subscription of capital on normal commercial terms, but as aid on a substantial scale falling within Article 92 of the Treaty.

V

For several years, world demand for steel pipes and tubes has been weak and the market fiercely competitive. The situation is worse for seamless pipes and tubes than for welded (world production of seamless tubes, which was some 26,7 million tonnes in 1981, has since declined by about 20 %) and is particularly bad for pipes and tubes for the oil industry, which account for about 85 % of the business of the firm in question: the prices for oil industry tubular goods fell by nearly 50 % between 1982 and 1984 and continued falling in 1985.

The firm itself forecasts that 'this weakness of demand will continue for a few years yet owing to the fall in demand for oil and the enormous tube stocks built up in 1981', and that consequently 'up to 1990 producers will probably not be able to operate at rates averaging much above 60 %.'

Community seamless pipe and tube producers manufacture a high proportion of their output for export outside the EEC. In 1984, the EEC's apparent consumption of pipes and tubes was only about half the 4,3 million tonnes produced. Nevertheless, other markets within the Community are important enough for the industry — about a quarter of Member States' exports of pipes and tubes go to other EEC countries — to mean that any support given to one of the Community producers will directly affect intra-Community trade. Article 92 of the Treaty prohibits aid which directly affects trade between Member States. The substantial overcapacity in the industry throughout the world and the resulting price instability on the world market, the import restrictions imposed by the USA, the largest market, and the new capacity being installed in developing and Eastern bloc countries are putting Community producers in a vulnerable position and are causing them to fall back on the Community market. Consequently, any support given to one of the producers (even if, at the time the support was given, the producer was exporting almost all its output outside the EEC) is bound to affect the competitive position of the others. Indeed, in the present conditions on the seamless tube market, it is possible that government support of a producer that exports to third countries will cause other Community producers to go out of business or to have to curtail their activities.

It is concluded that the aid to the producer, which exports about 90 % of its output outside the Community but which produces 17 % of the total Community production of seamless pipes and tubes between 127 and 416 millimetres in diameter, which are its core business, is highly likely to affect trade between Member States within the meaning of Article 92 (1) of the Treaty. Furthermore, for the reasons set out below, the aid is ineligible for any of the exceptions provided for in Article 92.

VI

Article 92 (1) of the Treaty provides that aid having certain features is in principle incompatible with the common market.

The exceptions provided for in Article 92 (2) are inapplicable to the present aid because of its nature and objectives.

The discretionary exceptions provided for in Article 92 (3) are available in certain specified circumstances where the aid serves the wider Community interest rather than simply the national interests of the Member State concerned. To maintain a properly functioning common market and observe the principle enshrined in Article 3 (f) of the Treaty, the exceptions provided for in Article 92 (3) must be construed strictly when the Commission examines any aid scheme or individual award of aid.

Article 92 (3) (a) allows exceptions for aid that promotes the economic development of areas where the standard of living is abnormally low or where is serious underemployment. It is true that the Liège area has been hard hit by redundancies, particularly due to the restructuring of the steel industry.

However, on previous occasions (1) the Commission has established after a thorough study of economic and social conditions in the Belgian regions that none of the regions suffers from an abnormally low standard of living or serious underemployment. The Belgian Government did not challenge this finding at the time, nor has it presented any new evidence since capable of modifying the assessment.

Article 92 (3) (c) allows exceptions for aid that facilitates the development of certain economic activities or certain economic areas where such aid does not adversely affect trading conditions to an extent contrary to the common interest. As far as the exception for aid for regional development is concerned, the Commission notes that the aid granted under the Economic Expansion Law of 30 December 1970 did not exceed the ceiling for regional aid laid down in Decision 82/740/EEC. This aid was thus granted lawfully. However, the exception for aid for the development of economic activities which does not affect trading conditions is inapplicable to the remainder of the aid. For many years the firm has been in serious financial difficulty, which the Belgian Government has already made attempts to overcome. In 1982 the Commission authorized it to grant the firm a first aid package for an ambitious investment programme to build a 150 000-tonne capacity rolling mill, doubling the firm's capacity for seamless tubes.

The confident predictions then made by the Belgian Government, on which the Comission based its decision, have not been fulfilled. The Commission was assured that the major expansion of output would secure the firm's future under a long-term supply contract with the Soviet Union. This has not been achieved, and the firm is now in fact trying to withdraw from the Soviet market, which is thought to be insufficiently profitable. These unfulfilled expectations have also meant that the financial recovery forecast by the Belgian Government in 1982 has failed to materialize, and the firm has consequently been unable to generate from its own resources the increase in working capital needed to sustain its sharply increased turnover following the conclusion of the supply contracts with the Soviet Union (up from Bfrs 5,75 billion in 1981 to Bfrs 13,04 billion in 1984).

In 1984 the firm made a loss after depreciation and interest charges (amounting to 6,9 % and 8,4 % of turnover, respectively) of over 14 % of turnover. An even bigger loss was expected for 1985. Even with a financial restructuring (to which the present aid, if it were authorized, would contribute) to reduce interest charges to a 'normal' level of 4 % of turnover, the firm would still make a loss. As the internal cost-saving measures planned by the firm (increases in productivity and workforce reductions) will not stem these losses, the management looks to improvements in commercial performance to do so. This strategy relies heavily on reducing dependence on the Soviet market and capturing shares of other markets now more profitable. It is assumed that the firm will not find it necessary to cut prices to capture shares of other markets. If it did have to cut prices, however, this would quickly wipe out the gains expected from the diversification. The strategy involves an expansion of sales outside the EEC, the Soviet Union and the USA from 32 000 tonnes in 1984 to between 120 000 and 220 000 by 1989, on a total market expected to remain virtually static at around 3 million tonnes. Thus, an increase in the firm's capacity, which in 1982 was presented as intended to supply a captive market, and which for this reason, on the basis of the figures furnished by the Belgian Government, the Commission considered could legitimately be financed by aid, is now to be diverted from its original purpose and used to increase the excess supply on the markets still open to EEC exporters. The Commission cannot allow further aid under these circumstances, and would not have allowed the initial aid package in 1982 had it then had the same economic facts before it as it has today.

The current conditions on the world market for seamless steel pipes and tubes (excess capacity running at around 35 to 40 % and part of the output previously sold on the largest export market, the USA, now being switched to the markets still open) mean that it will be difficult to succeed in a commercial policy of expanding market share without cutting prices. Given that the aid is unlikely to bring about the firm's lasting recovery, it cannot be said to be conducive to the economic development of the region concerned. By giving a particular producer on a depressed market a competitive advantage over its rivals and allowing it to expand its market share through a destabilizing price policy, the aid will adversely affect trading conditions to an extent contrary to the common interest. Consequently, the aid is ineligible for the exceptions provided for in Article 92 (3) (c), and this conclusion is not upset by the fact that without the aid the firm would have gone out of business.

As for the exceptions provided for in subparagraph (b) of Article 92 (3), it is clear that the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Belgian economy.

It is concluded that the aid in question would give the firm a position on the market that it would not have attained solely on merit, by its own efficiency and performance, and that the aid would not contribute to development sufficiently to compensate for the resulting distortion of trade involving Community firms.

(1) Decision 82/740/EEC of 22 July 1982 on the designation of development areas pursuant to Article 11 of the Belgian Law of 30 December 1970 (OJ No L 312, 9. 11. 1982, p. 18.) amended by Decision 85/544/EEC of 31 July 1985 (OJ No L 341, 19. 12. 1985, p. 19).

Consequently, the aid does not meet the conditions required for application of any of the exceptions provided for in Article 92 (2) and (3) of the Treaty.

All but Bfrs 500 million of the aid has already been provided unlawfully by the Belgian Government, in breach of its obligations under Article 93 (3) of the Treaty, and must therefore be recovered.

This applies *a fortiori* as none of the aid, either the Bfrs 9 085 million or the Bfrs 3 010 million debt conversion, fulfils the substantive conditions of Article 92 (2) and (3),

HAS ADOPTED THIS DECISION:

Article 1

The Belgian Government unlawfully paid Bfrs 9 085 million of aid, referred to in its letters of 19 July 1984 and 29 July 1985, to a Belgian steel pipe and tube manufacturer in contravention of Article 93 (3) of the treaty. The aid cannot be considered compatible with the common market under Article 92 (2) or (3) of the Treaty.

The further Bfrs 3 010 million of aid to the same company, referred to in the Belgian Government's letter of 6 June 1986, can likewise not be considered compatible with the common market, by virtue of Article 92 of the Treaty. The Belgian Government unlawfully provided Bfrs 2 510 million of this aid to the company in contravention of Article 93 (3) of the Treaty.

Belgium is hereby required to recover the aid referred to in this Article which it provided unlawfully.

Article 2

Belgium shall inform the Commission, within two months from the date of 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, 4 February 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission