II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 January 1990

on State aid to SA Sucrerie Couplet, Brunehaut-Wez, Belgium — specific case

(Only the Dutch and French texts are authentic)

(90/379/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 regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector [1], as last amended by Regulation (EEC) No 1069/89 [2], and in particular Article 44 thereof,

Having given formal notice [3] to the parties concerned, in accordance with Article 93 (2) of the Treaty, to submit their comments,

Whereas :

I

By letter of 22 February 1989, the Belgian Permanent Representative notified the Commission, pursuant to Article 93 (3) of the Treaty, of a proposed aid measure in accordance with the Belgian Law of 17 July 1959 on economic growth, in favour of SA Sucrerie couplet, Brunehaut-Wez, for the construction of a 'pearl' sugar production unit (amount concerned : Bfrs 9 630 000, i.e. (ECU 221 006).

By a telex message of 21 March 1989 the Commission asked the Belgian authorities for additional information. The Belgian authorities replied by letter of 7 April 1989.

The measure is as follows :

The investment concerns the construction of a 'pearl' sugar production unit, a new type of production, and is intended for the manufacture of sugar products : 'pearl' sugar (sugar in a bead-like form) and 'fondant' sugar (icing sugar) used in the food industry (pastrymaking and confectionery).

The manufacture of icing sugar follows on directly form that of 'pearl' sugar and constitutes an integral part of the 'pearl' surgar production unit.

According to the Belgian authorities, there is a growing demand for this type of product in the food industry (Liège waffles, gingerbread, sugar-coated bread, brioches, 'gateaux de Verviers', etc.). The recipient of the aid is SA Sucrerie couplet, Brunehaut-Wez, a family-owned factory with A and B quotas for the production of 21 796 100 kilograms of white sugar. It also markets by-products of the sugar manufacturing process, namely pulp, molasses, skimmings, etc. The investment will not affect production levels but will enable the company to diversify by marketing annually 2 000 tonnes of 'pearl' sugar and from this, with the addition of an anti-caking agent, 2 000 tonnes of 'fondant' sugar and 700 tonnes of icing sugar.

The manufacture of these new products requires the construction of new buildings and the purchase of new equipment.

The investment scheme concernes a total sum of Bfrs 80 278 446, broken down as follows :

[1] OJ No L 177, 1. 7. 1981, p. 4.
[2] OJ No L 114, 27. 4. 1989, p. 1.
[3] OJ No C 297, 25. 11. 1989, p. 6.

	Bfrs	ECU
Buildings	15 065 802	345 727
Equipment	65 212 644	1 496 489
Total	80 278 446	1 842 216

The new premises are to be erected on land already owned by the company near the existing refinery; the value of the land is not therefore included in the 'buildings' part of the investment.

The investments in new equipment amount to Bfrs 48 762 644 (ECU 1 118 997) for the manufacture of 'pearl' sugar and to Bfrs 16 450 000 (ECU 377 492) for the manufacture of icing sugar.

The aid, in the form of a capital grant, is equivalent to 12 % of the cost of the investment. It is supplemented by a three-year period of exemption from property tax.

The Belgian authorities state that the investment will not lead to any increase in basic sugar production. It is simply a means of disposing of that sugar in the form of products which they believe to be in growing demand. In addition, the Belgian authorities consider that this measure will help the refinery to adapt to new technologies and to diversify into the production of a technically more advanced product in a sector which is currently experiencing serious outlet difficulties.

II

1. The Commission considered that:

— the investment in question must be regarded as a means of achieving a more advanced stage in the sugar-manufacturing process: it is intended to enable the sugar refinery to manufacture a specific end product, in this case, 'pearl' sugar,

— the aid is earmarked for a sector in which, generally speaking, there is overproduction,

— investment by sugar undertakings for the production of sugar (in whatever form) must normally be financed by those undertakings from the processing margin of which all community sugar manufacturers are assured when Community prices are fixed each year, in the light of consumer prices for the various types of sugar,

— accordingly, any investment subsidy granted at any stage of sugar production would confer an unwarranted advantage on the recipients and discriminate against those who do not receive it,

— in the light of the above, the granting of fresh investment aid in this sector is regarded in principle as both unnecessary and unlikely to help the development or operation of the sugar sector,

— this measure does not, therefore, qualify under any of the exceptions provided for in Article 92 (3) and is incompatible with the common market.

2. Therefore, by letter of 4 July 1989, the Commission informed the Belgian Government that it had decided to initiate, in respect of the aid in question, the procedure provided for in Article 93 (2).

Under this procedure, the Commission gave the Belgian Government notice to submit its comments.

The Commission also gave the other Member States and interested parties notice to submit their comments.

III

By letter of 17 July 1989, the Belgian Government replied to the Commission's letter of notice. It submitted the following comments:

— the investment in question has absolutely no bearing on the sugar manufacturing process, but is simply intended to enable basic sugar to be processed into more advanced products. Sugar production will therefore not be increased, since that would aggravate overproduction in the sector as a whole,

— although the sector in question does, generally speaking, suffer from overproduction, this is not true in the case of the two specific applications targeted by the investment in question. On the contrary, the investment is for products intended to fill gaps in the market where demand is not satisfied. Therefore, by enabling the refinery to manufacture more advanced products the supply of which is insufficient, the investment should contribute to a reduction in the overall surplus in the sugar sector,

— it should be pointed out that the 'pearl' sugar hitherto supplied to firms by the sugar industry is manufactured by a caking process identical to the manufacture of lump sugar for direct human consumption. This process does not fully meet the technical specifications fixed by the industries using 'pearl' sugar,

— the process used by the company in question is quite new and represents a technological breakthrough in the manufacture of this product. With this newly developed process, the company will be able to supply a product which meets the quality standards required by the user industries as none of the traditional products currently on the market can,

— in addition, the physical hardness characteristics of the product which has been developed are such that it cannot be used for normal consumption and can be disposed of only through a very specific outlet which the market has to date been unable to supply satisfactorily,

— since the company can be classified as an SME (small or medium-sized enterprise) and given that, at national level, an almost monopolistic position is held by an integrated industrial group with a financial structure which cannot be compared to that of the promoter of the project in question, the investment will enable an independent producer to develop a specific product for a growing market outlet, achieving a qualitative improvement which will benefit the food industry throughout Europe.

IV

The arguments that:

— there will be no increase in the production of sugar products,

— the specialized product in question is not in surplus,

and

— the product meets the technical requirements of the user industries, are not pertinent to the case in point.

The Commission does not argue that there will be an increase in the production of sugar products. Sugar production is regulated by the quota system and clearly the measure in question is not likely to alter that system. Nevertheless, the existence of strong specific demand for the products in question, which are so specialized, does not mean that granting the aid in question would lead to a lasting reduction in the existing sugar surplus; there are many possibilities for substitution among the various types and presentations of sugar at consumer level.

In addition, if the company in question realizes this investment, it will be in a position to satisfy existing demand. This fact should guarantee the profitability of the investment even without the aid, since outlets for the new product are assured and it is therefore in the interest of the company to make the investment, if it considers it expedient.

Regarding the company's status as an SME, it should be noted that the product in question is part of the sugar sector. The fact that the company is a small business and that the process it will be using is technologically new and advanced cannot alter the position which the Commission has held consistently since 1972 regarding investment aids in the sugar sector.

Accordingly, the Commission finds no new factor enabling it to make an exception in this case to its consistent position not to authorize investment aids in the sugar sector; this position was communicated to the Member States by letter of 1 February 1972 concerning its proposals for measures in the sugar sector. In that letter, the Commission advised the Member States of its view that investment aids in the sector could no longer be considered compatible with the common market. Its position was restated in a letter of 28 January 1977 to the Member States concerning the ban on aid for isoglucose. The Member States did not contest the Commission's position.

V

The Community market in sugar suffers from structural surpluses. In 1987/88, self-sufficiency was at 113,7 % (1).

Total production in Belgium amounted to 805 000 tonnes in 1987/88, and could reach an estimated 925 000 tonnes in 1988/89.

In the 1987/88 marketing year, total intra-Community trade in unprocessed sugar (white or raw) amounted to:

(tonnes)

	intra-Community	to/from Belgium
Imports	1 800 000	175 000
Exports	1 800 000	376 000

Trade between Belgium and the other Member States therefore constitutes a significant proportion of all intra-Community trade; imports account for 22 % of Belgian production and exports for 47 %.

'Pearl' sugar and icing sugar as finished products are produced in most Member States.

The effect of the proposed aid measure would be to compound the pressures already exerted on intra-Community trade by the fact that Belgium is situated in an overproducing area of the Community; it is the sixth largest sugar producer.

The company in question is a family-owned sugar refinery which is independent from the large sugar groups dominating the market.

The company's chief outlets and its sales in 1987/88 are summarized in the following table:

Sugar

	Quantity (kg)	Value (Bfrs)
National	7 510 755	227 340 497
EEC	267 860	8 079 107
Outside EEC	14 096 050	401 970 491
Total	21 874 665	637 390 095

(1) The agricultural situation in the Community — 1988 report.

VI

By virtue of Article 44 of Regulation (EEC) No 1785/81, Articles 92, 93 and 94 of the EEC Treaty apply to the production of and trade in the products covered by the aid in question.

The aid which is the subject of this Decision would give the company in question a special advantage as it would receive financial support from the Belgian Government, placing it in a more favourable position than operators not receiving it.

The aid would therefore distort competition between the recipient of the aid and other operators, both in the Belgian sugar sector and in the other Member States, who do not receive it.

It could adversely affect the quantities of these products imported into Belgium thereby affecting trade between Member States and distorting or being likely to distort competition.

The measure accordingly fulfils the criteria laid down in Article 92 (1), which provides that such aid is incompatible in principle with the common market.

VII

The exceptions to that rule, which are set out in Article 92 (2), are clearly not applicable in this case. In addition, the Belgian Government did not invoke these exceptions under the procedure provided for in Article 93 (2). The exceptions provided for in Article 93 (2). The exceptions provided for in Article 92 (3) refer specifically to the common European interest and not to the interest of individual sectors of the national economy. Such exceptions must be strictly interpreted when scrutinizing any regional or sectoral aid scheme or any individual case of application of general aid schemes.

They may be allowd only in cases where the Commission is able to establish that the aid is required in order to achieve one of the objectives set out in those provisions. To allow such exceptions in respect of aid which does not offer such guarantees would amount to allowing trade between the Member States to be affected and competition to be distorted without any justification from the point of view of Community interest and would result in unfair advantage for certain Member States.

In the case in point the aid scheme does not offer such guarantees. The Belgian Government was unable to provide any justification, and the Commission could find none, showing that the aid in question fulfils the conditions required for the application of one of the exceptions set out in Article 92 (3).

It is not a measure intended to promote a project of common European interest as referred to in Article 92 (3) (b) in that, by virtue of its possible effect on trade, it is contrary to the common interest.

Nor is it a measure intended to remedy a serious disturbance in the economy of the Member State concerned, within the meaning of that provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) in the case of aid intended to encourage or facilitate the development of certain economic areas and certain economic activities, it should be pointed out that the aid cannot palliate existing difficulties caused by overproduction in the sector. The granting of any investment aid in this sector would be detrimental to the smooth operation of the common organization of the markets in the sugar sector, since the organization does not distinguish between the different types and presentations of sugar, including those concerned in this case.

The fact that, according to the Belgian authorities, the product which is the subject of the aid, 'pearl' surgar, could at the present time supply unsatisfied demand cannot induce the Commission to make an exception to its practice regarding aid in this sector. As the Commission made clear when it initiated the procedure provided for in Article 93 (2), the fact that demand for the product is unsatisfied should in itself make the investment profitable without the help of State aid.

The aid in question is not likely to facilitate the development of an activity without affecting trade to an extent contrary to the common interest.

The aid cannot therefore be considered as meeting the conditions under which one of the exceptions provided for in Article 92 (3) (a) and (c) could be applied.

This measure is all the more incompatible because the investment aid in question would be granted alongside Community measures currently in force which require

that investment by sugar undertakings which is intended for the production of sugar (in any form) must in principle be financed by those undertakings from the processing margin of which all Community sugar manufacturers are assured when Community prices are fixed annually, in the light of consumer prices for the various types of sugar.

Accordingly, any investment subsidy granted at any stage of sugar production would constitute an unwarranted advantage to the recipients and discriminate against those who do not receive it.

The aid in question is therefore incompatible with the common market within the meaning of Article 92 of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The proposed aid measure, in accordance with the Belgian Law of 17 July 1959, in favour of SA Sucrerie Couplet, Brunehaut-Wez, for the constrution of a 'pearl' sugar production unit (amount concerned: Bfrs 9 630 000) is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and the aid cannot be granted.

Article 2

The Belgian Government shall inform the Commission, within two months from notification of this Decision, of the measures taken to ensure compliance therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 31 January 1990.

For the Commission

Ray MAC SHARRY

Member of the Commission