COMMISSION

COMMISSION DECISION

of 28 November 1990

concerning the proposal by the Brussels Regional Authorities (Belgium) to provide aid in favour of Volkswagen Bruxelles SA, an undertaking producing passenger cars

(Only the French and Dutch texts are authentic)

(91/254/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,

Whereas,

I

Following several requests for information by the Commission, the Belgian authorities informed the Commission by letter from its Permanent Representation dated 6 December 1989 that the Brussels Regional Authorities (BRA) had decided on 27 June 1989 to approve a request for aid in support of six investment projects that Volkswagen Bruxelles SA would realize. The aid would be awarded in the form of a grant of 8 % of the investment sum of each project as well as an exemption from property taxes (précompte immobilier) for five years. The investment projects concern different sections of the production line of the company (pressings, pre-assembly and assembly of bodies, paint shop, final assembly, etc.) and would be realized between June 1988 and December 1990. The investment sum of each project falls below the notification threshold set out in the approved aid scheme in question, i.e. the Expansion Law of 17 July 1959 [1], as well as below the ECU 12 million threshold provided in the Community framework on State aid to the motor vehicle industry (the 'automobile framework') [2].

By letter of 22 December 1989, the Commission informed the Belgian authorities that the six projects would have to be considered in their totality, given that they concern one line of production of the same assembly plant, and that, taken together, they exceed the notification threshold of ECU 12 million provided in the automobile framework. Although the letter of 6 December 1989 did not follow the form of a notification under the automobile framework, the Commission nevertheless considered exceptionally that it constituted a notification under this framework and invited the Belgian authorities to complete this notification.

By letter of 8 March 1990 the Belgian authorities completed the notification by supplying additional information.

The total investment cost of the projects would amount to Bfrs 1 409 million or ECU 33 million and aid in the form of grants adds up to Bfrs 112,7 million, or ECU 2,7 million. The value of the property tax exemption for five years was not known. The impact of the investments on capacity and production could not be quantified. The investment would maintain existing employment.

On the basis of the Commission's decision of 17 June 1975, public assistance awarded under the general aid scheme initiated by the Law of 17 July 1959 constitutes aid within the meaning of Article 92 (1) of the EEC Treaty. The Commission considered that proposed aid to Volkswagen Bruxelles SA did not appear to qualify for exemption under the terms of the Community automobile framework on the grounds that the investment in question covered expenditure on modernization and the introduction of a second model at one plant, a common activity in the sector, and did not require assistance to be carried out by Volkswagen. Accordingly, the Commission opened the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the aid.

[1] On 3 August 1990 the Commission wrote to the Belgian Government, pursuant to Article 93 (1) of the EEC Treaty, proposing the termination of the general aid scheme provided for in the Law of 17 July 1959.

[2] OJ No C 123, 18. 5. 1989, p. 3.

By letter dated 4 May 1990, the Commission gave the Belgian Government notice to submit its observations. Observations were also invited from other Member States and from other interested parties by a notice in the *Official Journal of the European Communities* (1).

II

The Belgian authorities presented their observations by letters dated 6 June and 31 July 1990.

According to the Belgian authorities the investments being undertaken by Volkswagen Bruxelles SA were designed to improve plant efficiency without increasing existing capacity of 800 vehicles per day in two shifts. The plant at Forest, Brussels suffers from particular handicaps deriving from its location only 10 kilometres from the centre of Brussels. These are :

— the assembly building has very little room for expansion because it is situated between the Paris-Brussels railway line and the Forest commune centre which makes long-term planning particularly difficult,

— logistical costs are high because of the design of the plant and slow internal transport much of which must be vertically executed,

— maintenance and security costs are high because of poor access facilities,

— the plant design makes it very difficult to install a 'just in time' delivery system — a very important factor for such a large assembly plant,

— parking and urban traffic congestion costs are high,

— being in an urban location the plant has to invest heavily in meeting more exacting pollution norms than in an alternative setting.

The aid proposed by the BRA scarcely compensated for these specific handicaps.

From a regional policy perspective the proposed aid was justified by reference to the BRA's objective of restoring the share of industrial production and employment in the region. The company was the region's largest industrial employer and was committed to maintaining employment through the investment projects concerned.

In their letter of 31 July 1990 the Belgian authorities argued that elements of the investment expenditures amounting to Bfrs 180 million, or ECU 4,2 million, were innovative. These were :

1. installation of a robotized measuring device to check the dimensions of parts and components on receipt which would be innovative in its flexibility (investment : Bfrs 25 086 147) ;

2. installation of a computerized integrated system ('MONA') to optimize the scheduling of production and orders which would be innovative in terms of the choice and application of technology and would improve flexibility in catering for customer requirements (investment : Bfrs 95 000 000) ;

3. installation of robotized machinery for fitting windscreens adapted to requirement of the assembly line to accomodate three car types : the Golf, the Passat saloon and Passat Variant (investment : Bfrs 4 813 877) ;

4. installation of robotized computerized measuring machinery for bodywork which would facilitate frequent and more economic inspection of a wider range of models (investment : Bfrs 30 249 465) ;

5. installation of a computerized energy management system designed to reduce wastage and pollution effects (investment : Bfrs 8 000 000) ;

6. installation of a computer-assisted machine for shaping metal brake pipes (investment : Bfrs 17 279 430).

No other Member State or interested party submitted observations on the procedure.

III

Volkswagen Bruxelles SA is a subsidiary of Volkswagen AG located in Brussels (Forest) which produces Golf and Passat models. Vehicle production and average employment in recent years have been as follows :

	Production (units)	Employment (end year)
1986	194 353	5 636
1987	210 562	5 422
1988	185 499	5 866
1989	186 210	6 564

Some 95 % of production is exported, mainly to Germany, Holland, France and Italy. In 1989 net profits after tax amounted to Bfrs 1 724 million on a turnover of Bfrs 60 348 million.

(1) OJ No C 169, 11. 7. 1990, p. 11.

The parent company, Volkswagen SA, is one of the most profitable and financially-sound motor manufacturers in the Community and has car plants in Germany, Belgium and Spain as well as outside the Community. In recent years it has been the leading Community supplier of passenger cars. In 1989 Volkswagen Group passenger car sales in the Community amounted to 1 836 million units, representing 15 % of total Community sales.

The European private car industry has recovered in recent years from the serious crisis which it faced in the first half of the 1980s. In the EC new car registrations in 1989 rose for the fourth consecutive year, reaching a record level of 12,3 million, confirming the position of the EC as the world's largest car market. This strong growth in demand was combined with enormous cost-cutting exercises and technological modernization to result in a spectacular improvement in the financial performance of EC car manufacturers. More recently, however, these boom conditions have come to a halt. Demand in certain Member States has fallen sharply to date in 1990 and overall demand in the Community in 1990 and 1991 is expected to show a modest decline.

Several producers have recently announced their intentions to lay of staff on a temporary basis in order to reduce output in line with lower demand. Profit margins are also forecast to be hit, not only because of the market decline but also because of the more intense price competition by which producers intend to limit the impact of the fall in aggregate demand on their sales.

IV

The Commission confirms its view stated in the opening of the present procedure that the public assistance proposed by the BRA on the basis of the Expansion Law of 17 July 1989 constitutes aid within the meaning of Article 92 (1) of the EEC Treaty. The assistance relieves Volkswagen Bruxelles SA from part of the investment costs and from property taxes which it would normally have to bear, threatens to distort competition and affects intra-Community trade in passenger cars.

Trade and competition within this sector is particulary intense. Intra-Community trade in passenger cars in 1989 amounted to 4,67 million units, equivalent to 38 % of total Community sales.

V

Article 92 (1) provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. The exceptions provided for in Article 92 (2) are not applicable in this case because of the nature of the proposed assistance, which is not directed towards attainment of such objectives. The Belgian Government has not claimed otherwise.

Article 92 (3) of the Treaty lists aid which may be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community as a whole and not of a single Member State.

In order to ensure the proper functioning of the common market, and having regard to the principles embodied in Article 3 (f) of the Treaty, the exceptions provided for in Article 92 (3) must be construed narrowly when any aid scheme or any individual aid award is scrutinized. In particular, they may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the objectives of the said exceptions. The Commission has explained how it will apply Article 92 of the Treaty to the automobile sector in its framework on State aid to the motor vehicle industry.

With regard to the exceptions provided for in Article 92 (3) (a) for aid that promotes the development of certain regions, the Brussels region in which the investments are taking place does not suffer from an abnormally low standard of living or from serious under-employment within the meaning of those exceptions.

As to the exceptions provided for in Article 92 (3) (b), the facts of the case provide no grounds whatsoever for considering that the aid in question is intended to promote a project of common European interest or to remedy a serious disturbance in the Belgian economy. Furthermore, the Belgian Government has not presented any such arguments to justify the aid in question.

As to the exceptions provided for in Article 92 (3) (c), when opening the present procedure the Commission stated that under the assessment criteria set out in the automobile framework the aid proposed by the BRA could be considered as aid for innovation, modernization or rationalization. In subsequent correspondence the

Belgian authorities argued that consideration of the aid should draw on, *inter alia,* regional considerations, in particular the need to redress the sectoral imbalance in the Brussels region in favour of industry. The Commission cannot accept, however, that any element of the proposed aid be considered regional aid, primarily because the Brussels region does not qualify for regional aid under the Community rules. While the location of a car assembly plant in a major urban centre can, and does in this case, pose particular problems, the considerable advantages enjoyed by the Volkswagen plant in Brussels must also be borne in mind. Specifically, the plant is very close to a very sophisticated road and communications network, is adjacent to the Paris to Brussels railway line, is within a relatively short distance of many of the major markets in the Community and can draw on a large and well-trained pool of labour.

Accordingly the Commission maintains that the proposed aid should be assessed by reference to the framework guidelines for investment aid for innovation, modernization or rationalization. These provide that the Commission will take a strict attitude towards aid for modernization and innovation on the grounds that these are normal commercial activities undertaken by a firm operating in a competitive environment which should be financed from own resources or commercial borrowings. Where investment is shown to give rise to the introduction of genuinely innovative products or processes at Community level, aid may be authorized. Proposals for aid for rationalization would be carefully examined to verify that it brings about a necessary radical change in the structure and organization of the company's activities and that the financing required goes beyond that which companies should normally be expected to finance from own resources.

The investment projects in question, with the exception of those elements totalling Bfrs 180 million which the Belgian authorities claim to be innovative, are largely designed to rearrange and make more efficient use of the existing site and to subsidize the purchase of machinery for production, thereby improving profitability. They are linked in particular to the introduction of a second model, the new Passat. As such they represent a reasonably common activity in the industry. They cannot be considered as investments in rationalization as defined in the Community framework. The fact that the plant in Brussels gives rise to particular physical constraints and additional costs should be regarded as no more than one of the many factors to be considered in going ahead with such an investment at that location. It does not change the basic objective of the investment of modernizing the plant and increasing its flexibility. This, in itself, does not constitute a valid case for authorizing aid on the basis of any of the criteria set out in the Community framework. Moreover, the more intense competition and difficult market conditions experienced by producers in recent times, as outlined earlier, further reduce the case for granting aid for improving efficiency and profitability. Accordingly the Commission considers that there are no valid grounds for granting aid to these investment projects.

VI

The Commission carried out a thorough technical examination of the investment projects claimed by the Belgian authorities to be innovative to ascertain if they satisfied the Community framework criteria for eligibility for aid in this domain, i.e. that they relate to the introduction of genuinely innovative products or processes at Community level. The Commission also drew on the assessment criteria applied in other recent cases in the motor vehicle industry where the question of the eligibility of State aid purporting to be assisting investments of an innovative nature was considered, namely the Peugeot SA case [1], the Renault case [2] and the Valeo case [3]. The conclusions it came to were as follows :

1. the investment of Bfrs 25 086 147 on the installation of a robotized three-dimensional measuring device to check the dimensions of parts and components when they are received related to technology which is recent but not innovative. There are a number of similar machines in existence. The Commission is satisfied, however, that the application of this machine in a purpose-built inspection area together with the associated conveying equipment can be considered innovative at a Community level. The design of the off-line inspection area allows the automated inspection of a large number of components. The variety of components that can be automatically checked in an extremely flexible way is large. The facility is fully programmable either at a local level or hooked in to VW's main computer systems with the possibility of having specifications downloaded from VW's engineering database ;

2. the expenditure of Bfrs 95 million on the installation of a computerized integrated system ('MONA') to optimize the scheduling of production material and customer orders can be regarded as a particularly interesting and innovative application of existing technology in its integrated use of a relational database, fourth-generation language and cooperative processing within the context of a production environment, together with factory control and management architecture ;

[1] OJ No L 123, 4. 5. 1989, p. 52.
[2] OJ No L 220, 11. 8. 1988, p. 30.
[3] OJ No L 143, 26. 5. 1989, p. 44.

3. the expenditure of Bfrs 4 813 877 on the installation of robotized machinery for fitting windscreens involves essentially the automatic applications of sealant to windscreens. Neither the technology here nor its application is new; the first applications were in existence in the Community as long as 10 years ago and its use is widespread even if not the industry standard. Accordingly this investment cannot be regarded as innovative at a Community level;

4. the installation of a robotized and computerized measuring machine for bodywork is based on similar technology to the machinery considered in point 1, but on a larger scale. It measures the dimensions of a vehicle body against the pre-determined standard dimensions. Again, the technology involved is not innovative. Indeed, the parent company in Germany has similar machines. However, the use of this device in an off-line quality control environment which is fully integrated in the body assembly line and the use of the telescopic arms to take vehicles off-line and on-line again after measurement, can be considered innovative. Accordingly the investment of Bfrs 30 249 465 in this machinery can be considered innovative at a Community level;

5. the investment of Bfrs 8 million in a computerized central energy management system ('ZEUS') is designed to optimize the flow of electricity, fluids and gases (e.g. air, gas, water). The system allows the archiving of information to facilitate the prediction of trends and optimization of such items as heating or water flows. The distribution of energy is automated and can be altered by time schedule or commands. Such an energy and liquid control system is a modern and interesting application but cannot be considered innovative. Several other plants within the Community have implemented such energy control systems in the automotive area. In any case such process control technology has been in existence within the chemical and petroleum sectors for several decades. Accordingly this investment cannot be considered innovative;

6. the investment of Bfrs 17 279 430 in the shaping of metal brakepipes by computer numerically controlled (CNC) cannot be considered innovative. CNC machines have been in existence for up to two decades. Such numerically-controlled equipment is no longer considered state of the art. It provides a certain amount of flexibility but flexible manufacturing systems (FMS) have now replaced this type of technology.

In conclusion, of the Bfrs 180 428 920 investment expenditure by Volkswagen Bruxelles SA submitted by the BRA as being of an innovatory nature, the Commission considers that Bfrs 150 335 610 represents investment in innovation as defined in the Community framework on State aid to the motor vehicle industry, and hence is eligible for State aid under the general aid scheme initiated by the Expansion Law of 17 July 1959 to an amount equivalent to 8 % of the investment, or Bfrs 12 026 849 and for exemption from property tax, 'précompte immobilier' up to a period of five years,

HAS ADOPTED THIS DECISION:

Article 1

The aid proposed by the Brussels Regional Authority to Volkswagen Bruxelles SA in the form of an 8 % investment grant towards a series of investment projects amounting to Bfrs 1 409 million under the Expansion Law of 17 July 1959 and exemption from property tax ('précompte immobilier') for five years and notified to the Commission by the Belgian authorities on 6 December 1989 is, with the exception of aid relating to those projects deemed innovative by the Commission and amounting to Bfrs 150 335 610, incompatible with the common market within the meaning of Article 92 of the EEC Treaty and shall therefore not be awarded. Grand aid up to a maximum amount of Bfrs 12 026 849 may be granted towards the cost of those projects deemed innovative, and the corresponding exemption from property tax in respect of these same investments may be granted up to a period of five years.

Article 2

Belgium shall inform the Commission of the measures taken to comply with this Decision within two months from its notification.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 28 November 1990.

For the Commission

Leon BRITTAN

Vice-President