COMMISSION DECISION

of 24 January 1991

concerning investment aid which the Belgian Government plans to grant to Mactac SA, Soignies

(Only the French and Dutch texts are authentic)

(91/305/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 those comments,

Whereas :

I

The Belgian Law of 17 July 1959 establishing and coordinating measures to promote economic expansion and the creation of new industries and the Royal Order of 17 August 1959 [1] introduced general measures to assist the Belgian economy, in the form in particular of interest subsidies on loans for investments, State guarantees for loans contracted by enterprises with banks which benefited from the subsidy, and exemption from the property tax for five years.

Having examined the said Law in accordance with Article 93 (1) and (2) of the EEC Treaty, the Commission concluded that it constituted a general aid scheme since it had no sectoral or regional objectives. As the scheme was applicable to all investments, irrespective of enterprise, region or sector, it could not qualify for exemption under Article 93 (3) (a) or (c) of the EEC Treaty. Because of this lack of specificity, the Commission was unable to assess the effects of the scheme in question on intra-Community trade and competition and, in particular, its compatibility with the common market.

The Commission has approved this type of general aid scheme in the past where one of the two following conditions has been satisfied : either the Member State concerned informs the Commission of a regional or sectoral plan or, failing that, notifies individual significant awards of aid.

Pursuant to Commission Decision 75/397/EEC [2], the Belgian Government is required to notify the Commission in advance of all individual significant awards of aid under the Law of 17 July 1959 to enable it to assess their compatibility with the common market.

As part of its task of keeping under constant review, in cooperation with the Member States, all aid systems existing in those States, the Commission suggested, by letters dated 3 August and 12 September 1990, that the Belgian Government abolish, as from 1 January 1991, the general aid system introduced by the Law of 17 July 1959.

II

By letter dated 31 May 1990, received on 5 June 1990, the Belgian Government, in accordance with the procedure in force, notified the Commission that the Walloon authorities planned to grant investment aid under the Law of 17 July 1959 to Mactac SA, based at Soignies in the province of Hainaut.

Mactac specializes in the manufacture, processing and sale of self-adhesive papers and supplies for silk-screen printing. The investment programme, totalling Bfr 775 million, concerns the construction of a new production line.

The planned aid will take the form of a capital grant of Bfr 93 million and exemption from property tax for five years, representing a net grant equivalent of 9,2 %. The Belgian Government has argued that the investment would introduce new technologies, and that it would benefit both the environment, as the proposed new adhesives are non-polluting, and the region.

The Commission concluded from its initial analysis of the notification that the aid proposal could not be considered compatible with the common market as it would distort competition and adversely affect trade within the meaning of Article 92 (1), and that it did not qualify for exemption pursuant to that Article.

[1] *Moniteur belge* 29. 8. 1959.

[2] OJ No L 177, 8. 7. 1975, p. 13.

The Commission noted that the Soignies area was not among the regions receiving regional aid pursuant to Article 92 (3) (a) of (c), that the investment to be aided does not satisfy the conditions set out in the Community framework on environmental aid since it would increase Mactac's production capacity and that aid for setting up a new production line would not facilitate the development of the sector in question within the meaning of Article 92 (3) (c). The Commission therefore decided to initiate the procedure provided for in Article 93 (2) of the EEC Treaty and gave the Belgian Government notice, by letter dated 11 July 1990, to submit its comments.

III

The Belgian Government submitted its observations under the procedure by letter dated 25 September 1990. It particularly emphasized the environmental aspects and Mactac's contribution to the creation of 51 new jobs in a region experiencing severe unemployment. The Belgian authorities claimed that the combination of these two aspects justified the proposed measure.

By letter dated 6 November 1990, the Belgian Government forwarded the comments of the recipient enterprise. The latter contended that the proposed measure should qualify for exemption pursuant to Article 92 (3) (c) since it would facilitate the development of Soignies, a less-favoured area. Nor was the aid liable adversely to affect trading conditions to an extent contrary to the common interest. Mactac also pointed out that the investment would provide for environmental improvements and energy savings, factors which had played a large part in the decision to grant the aid.

No other comments from interested parties were received following the publication of the Commission's letter of 11 July 1990 to the Belgian Government in the *Official Journal of the European Communities*(1).

IV

The capital grant and exemption from property tax proposed by the Belgian authorities constitute aid within the meaning of Article 92 (1) of the EEC Treaty as they would allow the recipient enterprise to be relieved, by means of State resources, of part of the costs of the investment which it would normally have to bear itself.

Self-adhesive papers are traded between the Member States and there is competition between manufacturers.

According to information in the Commission's possession, there are 36 producers in the Community and a further seven in the EFTA countries, Mactac's share of the European market being 10 %. Although the market for self-adhesives (obtained by the application of various chemical products to processed paper) is an expanding new market, the arrival of new specialized producers has increased competition and pushed down sales prices.

In 1989, the Belgo-Luxembourg Customs Union (UEBL) exported self-adhesive paper and board (CN code 4811 21 00) totalling ECU 83,5 million to other Member States, which represents 26 % of total intra-Community exports, and imported from other Member States goods worth ECU 15,6 million. The recipient firm exports 75 % of its production to other Member States.

Where financial aid from the State strengthens the position of some enterprises in relation to their competitors in the Community, it must be regarded as affecting such competitors.

In view of these considerations, the aid proposed by the Belgian Government is liable to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the firm concerned.

Article 92 (1) provides that aid having the features therein described is in principle incompatible with the common market.

The exceptions provided for in Article 92 (2) of the EEC Treaty are not applicable in the case in point in view of the nature and objectives of the aid in question.

V

Article 92 (3) of the EEC Treaty lists aid which may be compatible with the common market. Compatibility with the EEC Treaty must be determined in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market, and having regard to the principle embodied in Article 3 (f) of the EEC Treaty, the

(1) OJ No C 229, 14. 9. 1990, p. 8.

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 the patterns of behaviour that would serve one of the said objectives.

Applying the exceptions to cases not contributing to such an objective or where aid is not needed to this end would mean conferring advantages on the industries or undertakings of certain Member States, thus strengthening their financial position, adversely affecting trading conditions between Member States and distorting competition without any justification based on grounds of the common interest referred to in Article 92 (3).

In view of the foregoing, the aid in question does not qualify for any of the exceptions provided for in Article 92 (3).

Article 92 (3) (a) and (c) allows exceptions for aid that promotes or facilitates the development of certain areas, but there is no region in Belgium which has an abnormally low standard of living or serious underemployment within the meaning of subparagraph (a); as regards the exception in subparagraph (c), the Soignies area in the province of Hainaut, where the firm concerned is located, is not included in the special regional aid zones set out in Commission Decision 82/740/EEC [1], as last amended by Decision No 88/612/EEC [2], on the definition of development areas in Belgium.

In the course of the procedure, the Belgian Government and the recipient enterprise stressed the serious problems of high structural unemployment and low *per capita* GDP in the Soignies area. On the basis of indicators defined by the Commission, they submitted that Soignies fulfilled the conditions for being considered a region qualifying for regional aid pursuant to Article 92 (3) (c).

The first point to be noted in this connection is that the scheme to be applied here has no regional objectives. In the course of the Commission's examination of the Law of 17 July 1959 pursuant to Article 93 (1) of the EEC Treaty referred to in the last recital of point 1 of this Decision, the Belgian Government emphasized in its letter of 12 November 1990 that the Law was not simply a general aid scheme but also a horizontal aid system which provided for:

— aid to protect the environment, in accordance with the Commission framework,

— aid for energy savings and the rational use of energy,

— aid to small and medium-sized undertakings,

— aid to reduce structural and long-term unemployment,

— aid to promote the rational utilization of raw materials.

It must therefore be concluded that regional development is not one of the objectives of the Law of 17 July 1959.

A second problem concerning the application of the regional exemption provided for in subparagraph (c) to the aid plan in question concerns the eligibility of the *town* of Soignies for regional aid. It should first be noted that the *region* of Soignies is not listed as an eligible region under the aid scheme introduced by the Law of 30 December 1970 which was authorized by Decision No 82/740/EEC. The Commission also notes that it has never been requested by the Belgian Government to amend the abovementioned Decision in order to include the region of Soignies in the list of eligible regions.

The principles for the coordination of regional aid schemes and the method for the application of Article 92 (3) (c) to regional aid established by the Commission were published in the C series of the *Official Journal of the European Communities* [4]. According to that method, assessment of aid is based in particular on structural unemployment and the gross domestic product of a region in relation to the national average. The Belgian Government and Mactac referred in their letters of 25 September 1990 and 6 November 1990 to that method, pointing out that on the basis of the thresholds in force for Belgium [5], the region of Soignies in practice satisfied the conditions for entitlement to regional aid.

The Commission considers that the fact that a region reaches or exceeds the thresholds of the method is not sufficient to apply the exemption of Article 92 (3) (c) *if* the Member State in question does not regard the region in question as eligible under its regional policy and therefore does not adopt measures under national law establishing a regional aid scheme in that region.

[1] OJ No L 312, 9. 11. 1982, p. 18.
[2] OJ No L 335, 7. 12. 1988, p. 31.
[3] OJ No C 31, 3. 2. 1979, p. 9 and OJ No C 212, 12. 8. 1988, p. 2.
[4] OJ No C 163, 4. 7. 1990, p. 5.

The application of regional development measures to the whole of a given region, and not to enterprises in isolated geographical points of a region, is not simply an administrative necessity but a response to the need for action throughout the area in question, in accordance with the spirit and letter of Article 92 (3) (c) which provides for aid 'to facilitate the development ... of certain *economic areas*'.

This interpretation is confirmed in point 9 (iii) of the abovementioned coordination principles which states that regional aid may not be granted in a pinpoint manner, i. e. to isolated geographical points having virtually no influence on the development of a region as a whole.

In so far as such aid is not granted to all enterprises located in the region experiencing the socio-economic difficulties described in the method, an individual award to a single enterprise located at a given geographical point (e.g. a town) of the region in question would necessarily have a very limited effect and would not contribute to the development of the region. The aid will not be sufficiently in the Community interest as required by the EEC Treaty.

It must be concluded from the foregoing that the aid which the Belgian Government plans to grant to Mactac alone (investment aid leading to only 51 new jobs) does not satisfy the tests of Article 92 (3) (c) with regard to regional aid.

As to the exceptions provided for in Article 92 (3) (b), the aid in question is not intended to remedy a serious disturbance in the Belgian economy and the Belgian Government has not put forward any such justification. The other exception provided for in paragraph 3 (b) concerns aid to promote the execution of an important project of common European interest. In its framework on State aid in environmental matters which it communicated to Member States by letters dated 7 November 1974, 7 July 1980 and 23 March 1987, the Commission stated that such aid could qualify for exemption pursuant to Article 92 (3) (b) provided that it was granted to finance additional adaptation investments in existing plants, other than investments leading to increased production capacity.

The Mactac investment, however, concerns the setting-up of a new production line leading to a 36 % increase in overall capactiy. Aid to such an investment does not satisfy the criteria for exemption pursuant to Article 92 (3) (b).

With regard to the exception in Article 92 (3) (c) for aid to facilitate the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest, the Commission pointed out in its letter of 11 July 1990 to the Belgian Government that the construction of a new production line does not facilitate the development of the industry in question within the meaning of paragraph (3) (c). It considered that it was quite normal, and in each producer's own interests, to maintain or increase its market presence, to develop and market new products, and to use the most modern and efficient techniques for a new line. It also noted that the Belgian authorities had not been able to show the need for the aid and assumed that, given the financial position of the firm and its parent company, market forces alone were sufficient to ensure that the project was carried out without State aid.

In their comments following the opening of the procedure, the Belgian Government and Mactac placed particular emphasis on the regional and environmental aspects of the investment and did not reject the assessment set out by the Commission in its letter of 11 July 1990 as described above.

Mactac SA stressed the fact that it allocates a large part of its budget to research and development costs and that the results obtained are often copied by new producers. The view of the Commission is that the aid in question is an investment aid to finance the construction of a new production line and not an aid covered by the Community framework on State aid for research and development (1). Thus the firm's research activities do not justify aid for a productive investment.

Mactac also referred to the higher investment, compared with the setting-up of a traditional line, required for a new coating system involving resins in suspension in water instead of resins dissolved in solvents derived from

(1) OJ No C 83, 11. 4. 1986, p. 2.

oil. Reference should be made in this connection to the framework on a Community approach to State aid in environmental matters, which is based on the 'polluter pays' principle.

Lastly, Mactac pointed out that two of its competitors were in the process of building new factories for the production of self-adhesive materials in France and Luxembourg with State aid. First, aid to an enterprise cannot be justified on the ground that aid is granted to its competitors. As regards the specific aids to which Mactac referred, one concerns an aid to the setting-up of Fasson at Rodange in Luxembourg and the other the setting-up of Raflatac at Pompey (Meurthe-et-Moselle) in France.

It should be noted that both the new plants benefited under regional aid schemes. By Decision of 5 November 1986, the Commission approved regional aid not exceeding 30 % net grant equivalent for the European Development Pole in which Rodange is located and, by Decision of 27 July 1989, it approved a nominal 10 % regional planning grant (PAT) for the setting-up of Raflatac at Pompey. While it is true that both investments could also have gone ahead without the aid, they would not necessarily have been in the form of new plants in the regions in question.

Consequently the aid proposed by the Belgian Government does not fulfil the conditions for exemption under Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The Belgian Government shall not implement the plan of the Walloon authorities, notified to the Commission by letter dated 31 May 1990, to grant aid under the Law of 17 July 1959 in the form of a capital grant of Bfr 93 million and a five-year exemption from the property tax for investments to be carried out by Mactac SA at Soignies.

Article 2

The Belgian Government shall inform the Commission, within two months of 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, 24 January 1991.

For the Commission

Leon BRITTAN

Vice-President