COMMISSION DECISION

of 4 December 1996

concerning aid granted by Belgium under the Maribel *bis/ter* scheme

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(97/239/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular the first subparagraph of Article 61 (1) thereof,

Having given the parties concerned the opportunity to submit their comments, in accordance with the above-mentioned Articles,

Whereas:

I

By letter dated 9 July 1996 (1), the Commission informed the Belgian Government of its decision to initiate the procedure provided for in Article 93 (2) of the EC Treaty in respect of aid granted under the Maribel *bis/ter* scheme to undertakings which carry on their principal activity in one of the sectors most exposed to international competition.

In response to the request made by the Commission in its letter dated 4 February 1994, the Belgian authorities communicated to it, by note dated 29 March 1994, the amendments made to the Maribel scheme, which had become Maribel *bis*, the purpose of which is to grant to undertakings that are 'most exposed to international competition' benefits in addition to those provided for in the initial scheme. The Commission received further details on 12 September 1994 and on 7 March, 16 August, 28 September and 18 December 1995. This information has enabled the Commission to establish the following:

The Maribel scheme was introduced for an indefinite period by the Belgian Law of 29 June 1981 laying down the general principles of social security for wage earners. Under Article 35 of that Law, undertakings employing manual workers qualify for a reduction in social security contributions for all such workers. The reduction was initially set at 6,17 % of the earnings of the workers concerned. Since it was general and automatic, that measure was not deemed to constitute aid falling within the scope of Article 92 (1) of the EC Treaty. By Royal Decree of 12 February 1993, the reduction in social security contributions was set at Bfrs 1 875 per quarter and per worker employed, i.e. Bfrs 7 500 per year.

A further amendment introduced by Royal Decree of 14 June 1993 and known as 'opération Maribel *bis*' provides that the quarterly amount of Bfrs 1 875 is increased to Bfrs 6 250 (Bfrs 8 437 since 1 January 1994 under 'Maribel *ter*') where the employer carries on his principal activity in one of the sectors most exposed to international competition. Accordingly, the reduction in those sectors is, with effect from 1 January 1994 (or from 1 April 1994 for the transport activities concerned), Bfrs 33 748 per worker per year. The aid granted to the undertakings concerned, i.e. the difference between the basic reduction and the increased reduction, is therefore Bfrs 26 248 per worker per year.

For undertakings with fewer than 20 employees, the reduction in respect of their first five workers was set by Royal Decree of 12 February 1993 at Bfrs 2 825 per quarter and per worker employed (Bfrs 3 000 since 1 July 1993). For the sectors most exposed to international competition, this amount was increased to Bfrs 7 200 under Maribel *bis* and Bfrs 9 300 under Maribel *ter*. The benefit nevertheless satisfies the *de minimis* criteria and therefore does not fall within the scope of Article 92 of the EC Treaty. (The net aid, i.e. the difference between the reductions for these small undertakings and those for other undertakings, does not exceed ECU 1 744 over a three-year period.)

According to the additional information obtained from the Belgian authorities, the undertakings which qualify for the increased reduction are those which carry on their principal activity in sectors involving the extraction and processing of non-energy materials and by-products, the chemical industry, the metal-processing industry, the mechanical engineering industry, the instrument engineering industry and certain other processing industries, and in certain service and transport activities, including international road transport.

(1) SG(96) D/6225.

In 1995 the Maribel scheme cost Bfrs 18 billion (ECU 465,1 million), Bfrs 11,4 billion of which (ECU 294,59 million) was accounted for by the cost of the increase and therefore represents the amount of aid.

The matter of the introduction of increased reductions for certain undertakings was raised with the Commission by two companies. One of them argued that support for the sectors of the Belgian economy most exposed to international competition seemed to be incompatible with Article 92 of the EC Treaty, while the other complained that the granting of increased reductions to certain other undertakings was discriminatory and demanded to be afforded equal treatment.

The Commission decided to initiate the procedure laid down in Article 93 (2) of the EC Treaty after establishing that the increased reductions in social security contributions provided for under Maribel *bis* and *ter* constituted State aid falling under Article 92 (1) of the EC Treaty and that, in the light of the information in its possession, they could not qualify for any of the derogations laid down in Article 92 (2) and (3).

In the context of that procedure, the Commission invited the Belgian Government to submit its observations. The other Member States and interested parties were informed of the Commission's decision to initiate proceedings and invited to submit their observations by publication of a notice in the *Official Journal of the European Communities* (1).

The Belgian Government's observations were submitted to the Commission by letter dated 5 August 1996, registered on 8 August 1996.

The Commission also received observations from the Dutch Government and from several employers and workers organizations in the Netherlands. Those observations were passed on to the Belgian authorities by letters dated 26 September 1996 and 1 October 1996; the Belgian authorities commented on them in a letter received by the Commission on 17 October 1996.

II

The observations submitted by the Belgian authorities may be summarized as follows:

— the Belgian Government proposed to modify the scheme by 'devising a new scheme which would be completely different from the existing one, while pursuing the same objectives'. According to the proposal, the increased reduction would be granted to employers who carry on their activity mainly in sectors corresponding to the following divisions of the NACE nomenclature:

  — agriculture, hunting, forestry and fishing (Sections A and B),

  — mining and quarrying (Section C),

  — manufacturing (Section D),

  — transport, storage and communication (Section I);

— it adduced the following arguments in support of the proposed scheme:

  — restriction of the reductions to manual workers was 'justified by the nature and structure of the scheme, since the social security and additional social security system, labour law and the organization of manual workers differ fundamentally from those of non-manual workers. This means that, among other things, the risks of redundancy and long-term unemployment are significantly higher for manual than for non-manual workers'. Limitation of the scheme to industry was also justified, according to the Belgian authorities, by the fact that 'it is industry which employs most of the manual and low-paid workers, with low pay reflecting the low skill levels of workers',

  — the aim of the increased reduction was to 'promote job creation in industry so that the Belgian economy does not in future come to rely too heavily on services',

  — the principle of a flat-rate reduction tended to encourage the sharing-out of available work and the creation of part-time jobs,

  — exclusion of the building industry was justified by the fact that it had its own, more favourable, social security and taxation systems.

III

In their observations, the Dutch Government and the Dutch employers and workers organizations took the view that the increased reduction granted to undertakings which carry on their principal activity in one of the sectors most exposed to international competition gave them a significant advantage over their competitors in the Netherlands and constituted aid that was incompatible with the common market.

IV

By omitting to notify the Commission in advance of the State aid elements of the Maribel *bis* scheme, the Belgian Government has failed to fulfil its obligations under Article 93 (3) of the EC Treaty. Aid granted on that basis is therefore illegal.

The fact that the Maribel *bis/ter* scheme reserves the benefit of the increased reduction in social security contributions to certain specific activities is an advantage

(1) OJ No C 227, 6. 8. 1996, p. 8.

constituting State aid caught by Article 92 (1) of the EC Treaty. By according this advantage to certain undertakings only, the scheme relieves them of some of their costs and confers on them financial advantages which improve their competitive position. Given that under the rules, the granting of the additional reduction is explicitly reserved to undertakings doing business principally in one of the sectors most exposed to international competition, the goods produced and services provided by those firms compete, by definition, with those produced and provided by foreign undertakings, including those from other Member States, and the aid in question therefore affects intra-Community trade.

The aid cannot qualify for any of the derogations laid down in Article 92 (2) and (3) of the EC Treaty.

The derogation provided for in Article 92 (2) cannot apply since the aid is neither granted to individual consumers, nor is it intended to make good the damage caused by natural disasters or exceptional occurrences, nor is it granted to certain areas of Germany.

The derogation laid down in Article 92 (3) (a) does not apply either, since the aid covers the whole of Belgium.

The same is true of the derogation laid down in Article 92 (3) (b), since the aid is not granted to promote an important project of common European interest or to remedy a serious disturbance in the Belgian economy.

Similarly, the derogation provided for in Article 92 (3) (c) is not applicable, for the following reasons. Since the aid takes the form of reductions in social security contributions, the Belgian Government argues that it is a measure to promote employment. Such an interpretation cannot be accepted in this case. In its guidelines on aid to employment [1], the Commission has set out the criteria whereby it assesses aid to employment in the light of the derogation laid down in Article 92 (3) (c). The aid granted under the scheme in question here does not fall into any of the categories to which the Commission can give sympathetic consideration: it is not linked to the creation of jobs in small and medium-sized enterprises (SMEs) or in regions eligible for regional aid, or to the hiring of certain groups of workers experiencing particular difficulties entering or re-entering the labour market; neither does it promote job sharing.

According to the above Guidelines, the Commission may authorize certain aid measures to maintain jobs in the event of natural disasters or exceptional occurrences and, under certain conditions, in regions eligible for the derogation provided for in Article 92 (3) (a). Where certain types of aid to maintain jobs are planned as part of a rescue and/or restructuring plan for an ailing undertaking, it may also allow them once it has assessed them in the light of the guidelines it has laid down for that purpose [2].

The aid granted under the Maribel *bis/ter* scheme does not fall into any of the above categories. First, it is in the nature of operating aid to the recipient undertakings without any social or economic compensatory contribution on their part, inasmuch as the increased reduction is granted on a continuous basis for all manual workers employed by them, even if their total workforce has declined.

Secondly, it is, by definition, aid whose primary purpose is to reduce the costs of undertakings which are either exporters or face competition from imports into Belgium of goods produced and services provided by foreign undertakings, including undertakings from other Member States. It is worth noting here that, in the statement on its overall plan for employment which it transmitted to the Commission on 27 December 1993, the Belgian Government pointed, among other things, to the contraction in exports as a justification for granting greater reductions in social security contributions.

The aid currently granted under the Maribel *bis/ter* scheme is therefore nothing more than operating support for undertakings, its direct purpose being the enhancement of their international competitiveness at the expense of their competitors in other Member States. Such aid entails a direct risk of adversely affecting the position of rival undertakings from other Member States and can in no way be said to be in the common interest. It is therefore incompatible with the common market.

V

The observations submitted by the Belgian Government in its letters of 5 August 1996 and 17 October 1996 prompt the Commission to make the following comments.

First, as the Commission pointed out in its communication on the monitoring of State aid and reduction of labour costs, which it sent to the Member States by letter dated 13 September 1996 [3], the fact that the reductions are granted for manual workers only does not in itself mean that the scheme constitutes a State aid scheme, because it does not designate a specific group of undertakings as the recipients. The Belgian authorities' argument that the limitation to manual workers is justified 'by the nature and structure of the scheme' is therefore not relevant here.

On the other hand, the limitation of the scheme to certain sectors of the economy (mainly industry) cannot be justified on the grounds that it supports the employ-

[1] OJ No C 334, 12. 12. 1995, p. 7.

[2] *Community guidelines on State aid for rescuing and restructuring firms in difficulty,* (OJ No C 368, 23. 12. 1994, p. 12).

[3] SG(96) D/8024.

ment of manual workers, since only 47 % of workers in this category are covered by the increased reduction (582 516 workers out of a total of 1 235 954; figures valid at 30 June 1993); furthermore, the other sectors of the economy, which account for 53 % of the manual workforce, comprise certain fields, in services and in building and construction, which are particularly important for this category of jobs. Limitation of the measure to certain sectors does therefore make it selective and has the effect of reserving the additional advantage to undertakings facing keener international competition [1], despite the fact that the words 'sectors most exposed to international competition' are no longer used explicitly. This is borne out by points made in the letter addressed to the Commission by the Belgian authorities on 9 August 1995, which stated: 'The "facelift" of Article 1 of the Royal Decree, i.e. the deletion of the phrase "which carries on its principal activity in one of the sectors most exposed to international competition", does not pose any problem for the national social security institution as regards the description of the employers in question since reference to the NACE code is sufficient'.

The scheme is therefore not intended to promote the hiring of manual workers as such and is not a measure to encourage job creation, but it does alleviate the burden of social security contributions on undertakings, irrespective of the contribution they make to employment: the aid continues to be granted in respect of each manual worker employed by the undertaking, even if its workforce was reduced during the previous year.

The Belgian authorities' declared objetive to 'promote job creation in industry so that the Belgian economy does not in future come to rely too heavily on services' cannot be achieved through measures which are incompatible with the EC Treaty. Neither does the means used in this case correspond to the declared objective since, as stated earlier, the measure constitutes operating aid for undertakings and not aid for creating jobs.

Lastly, the Belgian authorities argue that, even after the increased reduction under the Maribel *bis/ter* scheme, employers' social security contributions are still much higher in Belgium than in the Netherlands and that the reduction does not therefore distort competition.

That argument cannot be accepted. The Commission has always maintained the view, which has been explicitly confirmed by the Court of Justice [2], that, although the general conditions in which businesses operate can vary from one Member State to another, a Member State cannot single out a particular factor from those general conditions, in the case in point social security contributions, and offset, by means of reductions the additional costs arising from that factor for its own undertakings as compared with their competitors in other Member States while at the same time disregarding other factors in the situation which could favour its own undertakings.

VI

In the observations they sent to the Commission in the course of the procedure, the Belgian authorities mentioned that they might devise a new scheme which, while pursuing the same objectives, would differ from the existing one. If the Belgian authorities were to decide to go ahead with this idea, the plan would have to be notified to the Commission under Article 93 (3) of the EC Treaty to enable it to decide whether the scheme is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The increased reduction in social security contributions in respect of manual workers granted under the Maribel *bis/ter* scheme to employers who carry on their principal activity in one of the sectors most exposed to international competition constitutes illegal State aid because it was not notified to the Commission in advance in accordance with Article 93 (3) of the EC Treaty. It is furthermore incompatible with the common market within the meaning of Article 92 (1) of the EC Treaty and cannot qualify for any of the derogations laid down in Article 92 (2) and (3).

Article 2

Belgium shall take appropriate measures to terminate forthwith the granting of the increased reductions in social security contributions referred to in Article 1 and shall recover the illegal aid from the recipient undertakings. The aid shall be repaid in accordance with the

[1] See points 21 and 22 of the Commission communication on the monitoring of State aid and reduction of labour costs (SG(96) D/8024).

[2] Judgment of 10 December 1969 in Joined Cases 6 and 11/69, *Commission v. France* [1969] ECR 523; Judgment of 2 July 1974 in Case 173/73, *Italy v. Commission* [1974] ECR 709.

procedures and provisions of Belgian law, with interest charged, from the date the aid was granted until the date it is actually repaid, at a rate equal to the percentage value on that date of the reference rate used for the calculation of the net grant equivalent of regional aid in Belgium.

Article 3

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

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 December 1996.

For the Commission

Karel VAN MIERT

Member of the Commission