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COMMISSION DECISION

of 26 April 1972

concerning aid granted pursuant to the Belgian Law of 30 December 1970 on economic expansion

(Only the Dutch and French texts are authentic)

(72/173/EEC)

(OJ L 105, 4.5.1972, p. 13)

Amended by:

	Official Journal		
	No	page	date
► M1 Commission Decision 76/22/EEC of 18 December 1975	L 5	28	10.1.1976

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).



COMMISSION DECISION

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concerning aid granted pursuant to the Belgian Law of 30 December 1970 on economic expansion

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(72/173/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 the written and oral comments made by the Member States and other interested parties;

I

Whereas by letters of 25 November 1969 and 11 May 1970, the Belgian Government, in accordance with Article 93 (3) of the Treaty, communicated to the Commission a draft law on economic expansion designed to establish, in place of the laws on regional aid of 18 July 1959 and 14 July 1966, a new system of regional and sectoral aid;

Whereas the Commission initiated in respect of that draft law the procedure provided for in the first subparagraph of Article 93 (2) of the Treaty by reason of the nature and manner of implementation of certain aid and because of the too general and too imprecise character of the system as a whole, inasmuch as the scope of the proposed measures could not be judged from the implementing regulations and in particular from the definition of the geographical areas of application;

II

Whereas, following the vote of the Belgian Parliament, the draft law became the Law on economic expansion promulgated on 30 December 1970 and entering into force on 1 January 1971;

Whereas, furthermore a Royal Order of 6 January was published in the *Moniteur belge* of 13 January 1971 laying down certain provisional measures for the implementation of the Law of 30 December 1970 on economic expansion;

Whereas these measures constitute an infringement by Belgium of Article 93 (3) of the Treaty and application of the aid provided for in the Law of 30 December 1970 on economic expansion is therefore irregular;

III

Whereas the effect of the Royal Order of 6 January 1971 is that the implementing regulations in respect of the repealed laws for regional aid of 18 July 1959 and 14 July 1966, remain in force, and in particular:

- the Royal Order of 27 November 1959 defining the development areas; and
- the Royal Order of 17 February 1967 defining the economic areas in which the Law of 14 July 1966 is applicable;

Whereas the Belgian authorities are therefore able to grant aid under the Law in geographical areas defined for purposes of application of the repealed laws;

Whereas the Belgian Government, by making provision in the Law of 30 December 1970 for a definition of the new areas of application of regional aid, recognized that not all the areas covered by the repealed laws still corresponded as such to the requirements of regional develop-

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ment in Belgium and that therefore some areas formerly qualifying no longer needed aid;

Whereas the situation is that, in view of the aid already granted, in view of the investments made, the changed employment and unemployment position, the development of earnings, economic growth, increased communication and transport facilities and, in some areas, the proximity of an economic growth point, there are large areas in certain regions where regional aids are not warranted;

Whereas consequently some of the regional aid granted pursuant to the Law of 30 December 1970 is incompatible with the common market; whereas indeed aid to investment projects in developed areas which do not require such aid affects competition and trade in a manner contrary to the common interest, since it aggravates the disequilibrium between regions of the Community and is contrary to the fundamental objectives of the Treaty;

IV

Whereas the Belgian Government, upon being informed of the irregular character of the aid and of the incompatibility of some of the aid with the common market, attempted to define new development areas in Belgium and has meanwhile, for several months past, suspended the granting of regional aid;

Whereas, by letter of 24 September 1971, the Belgian Government, in accordance with Article 93 (3) of the Treaty, communicated to the Commission a draft law amending Article 11 of the Law on economic expansion together with a draft Royal Order listing new development areas; whereas, by letter of 11 October 1971, the Belgian Government informed the Commission of the criteria and reasons for the selection of those development areas;

Whereas it may be seen from the list of proposed new areas that they are to be found in practically every region of the country; whereas all 9 of the country's provinces and 41 out of 43 arrondissements would qualify for aid; whereas what is in question is not the size or the shape of the areas but conditions in the regions where these areas are located;

Whereas what is involved is therefore a system of regional aid which would cover practically the whole of the national territory;

Whereas such lack of regional specificity would lead to the aid being granted in regions where it would not be warranted, thereby making it incompatible with the common market; whereas the lack of regional specificity is confirmed, moreover, by the fact that the areas are not grouped into two categories permitting the intensity of aid to be varied according to the gravity of the problems, as was in fact laid down in Article 21 of the Law of 30 December 1970;

Whereas the localization of the areas in the Belgian regions is to be based on a set of quantitative criteria in place of the four qualitative criteria laid down in Article 11 of the Law, namely present and foreseeable structural under-employment, actual or imminent decline of major economic activities, an abnormally low standard of living and slow economic growth; whereas the choice and application of the quantitative criteria involve an excessive weighting of certain criteria and a method of classification of areas in which the points attributed to an area for each of the criteria are aggregated in such a way that the nature and the gravity of the problems to be solved do not emerge and the principle of regional specificity cannot be properly applied.

Whereas, moreover, the method used to identify the socio-economic problems of the regions is based on an excessive subdivision of the country, with no correlation of the problems thus identified and no adequate consideration of them in their regional context;

Whereas certain situations are defined by means of out-of-date or irrelevant statistics; whereas in respect of none of the quantitative criteria employed or devised have thresholds been determined that would make clear the meaning of the qualitative descriptions used in Article 1 of the Law, such as 'abnormally low' or 'major'; in effect, conditions in

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each area are expressed, for all the criteria, in terms of the variation from national averages calculated by the same methods, the least variation being taken into account;

Whereas on the basis of insufficiently justified exceptions to that classification it is proposed to determine development areas in 41 out of 43 arrondissements of the country thereby covering the whole country with growth points;

V

Whereas there are in Belgium regions where regional aid is warranted, and whereas the rejection of all the new areas, involving the prohibition of aid until new areas have been determined on proper grounds, would unduly penalize those regions;

Whereas regions which need aid cannot be determined accurately and consistently until technical problems affecting the statistics, quantitative criteria and methods have been resolved; whereas, therefore, any decision will have to be of a temporary nature;

Whereas, generally speaking, an examination of the socio-economic situation at the regional level does not always enable all important problems to be recognized; whereas most Member States therefore use statistics collected for smaller administrative units; whereas in this particular case the Belgian Government used as a basis for the selection of areas to be aided statistics collected for arrondissements which it declared to be the smallest administrative units for which the necessary statistics are available for the whole of the country;

Whereas consequently the Commission, also, had to assess the situation on the basis of arrondissement statistics, while, however, taking into account correlations between neighbouring situations and relating problems to the wider regional context in order to gauge their regional significance;

Whereas by applying so far as possible all the qualitative criteria of the Law of 30 December 1970 on the basis of the various studies made by the Commission, and by making suitably cautious use of the incomplete information supplied by the Belgian Government (present and foreseeable unemployment, decline of certain activities, average income per head and rate of growth), it may be seen that certain problems exist and consequently that certain regions require aid; whereas by cross checking and the use of certain thresholds to distinguish the main factors while avoiding a rigid and mechanical application of criteria yet observing quantitative and qualitative correlations between those criteria, by grouping areas in various ways so that intraregional relations are not neglected, it is possible to ascertain, on the basis of the coherence and correlation of situations, whether the problems which emerge have adequate regional significance;

Whereas, finally, to assess these situations, the Commission also took into account the situation in other Community regions; whereas it found in this connection that the two least well placed Belgian regions have a gross domestic product which is 76 % of the 1969 Community average and that the lowest percentage in the Community is 33 %; whereas it also took into account the situation in frontier regions;

Whereas the Commission, in the light of those considerations, reached the conclusion that in present circumstances aid within the following regions could be considered as compatible with the common market: in the province of Antwerp, the arrondissement of Turnhout; in the province of West-Vlaanderen, the arrondissements of Diksmuide, Ieper, Tielt and Veurne; in the province of Oost-Vlaanderen, the arrondissements of Eeklo and Oudenaerde; in the province of Hainaut, the arrondissements of Ath, Charleroi, Mons, Mouscron, Soignies and Thuin; in the province of Liège, Verviers and Waremme; in the province of Limburg, the arrondissements of Hasselt, Maaseik and Tongeren; in the province of Luxembourg, the arrondissements of Arlon, Bastogne, Marche, Neufchâteau and Virton; in the province of Namur, the arrondissements of Dinant, Namur and Philippeville;

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Whereas it is for the Belgian Government to determine within those regions the localization and the extent of the areas to be aided in the light of regional development requirements;

VI

Whereas additional information supplied by the Belgian Government in its letters of 10, 13 and 20 March 1972 enable the Commission to ascertain that certain socio-economic situations are not confined within the limits of administrative units but extend into neighbouring arrondissements, a circumstance which warrants the granting of regional aid also in the following areas envisaged by the Belgian Government:

- by way of extension to the arrondissement of Turnhout, the area covering the communes of Oostmalle and Westmalle;
- by way of extension to the arrondissement of Turnhout and the province of Limburg, the area covering the communes of Aarschot, Averbode, Begijnendijk, Betekom, Booischot, Diest, Heist-op-den-Berg, Langdorp, Messelbroek, Molenstede, Rillaar, Scherpenheuvel, Testelt, Webbekom, Wiekevorst, Zichem;
- by way of extension to the arrondissement of Oudenaerde, the area covering the communes of Appelterre-Eichem, Denderhoutem, Denderleeuw, Geraardsbergen, Grimmingen, Idegem, Iddergem, Moerbeke, Nederboelare, Nederhasselt, Ninove, Okegem, Onkerzeel, Outer, Schendelbeke, Viane, Zandbergen;
- by way of connection between the two parts of the arrondissement of Mouscron, the area covering the communes of Aalbeke, Lauwe, Menen, Rekkem;

VII

Whereas, independently of the regular review to which all systems of aid are subject, this conclusion can only be provisional until the studies undertaken with experts of the Belgian administration have succeeded in clarifying the technical questions affecting the determination of development areas in Belgium; whereas in the light of these studies and of the effect of the regional aid which will have been granted in the meantime, a fresh development areas plan should be put before the Commission for consideration;

Whereas, owing to the complexity of the questions to be studied and the importance of the end in view, a two year period should be allowed before a further decision is taken;

Whereas the principle of regional specificity requires that areas located in regions where aid will be granted should be differentiated according to the gravity of the regional problem and that maximum aid intensity should also be so differentiated; whereas the proposals for differentiation, to be prepared by the Kingdom of Belgium, should be communicated to the Commission in order that it may express its views on the matter;

VIII

Whereas, in addition to regional aid, Article 5 of the Law of 30 December 1970 contains outline provisions allowing sectoral aid to be granted outside the development areas; whereas, in accordance with the Law, a prerequisite for application of those provisions is a Royal Order defining the criteria and mode of application of such sectoral aid; whereas the criteria and mode of application must be communicated to the Commission beforehand in order that it may express its views thereon;

Whereas, in order to assess the effects of sectoral aid on competition and trade it is essential to know the sector to which it will be applied; whereas it is practically impossible for a regulation implementing those outline provisions to set out in advance the sectors qualifying for aid even though it may define general criteria for selection;

Whereas, therefore, the Commission must be enabled to express its views beforehand on cases to which the provisions will be applied;

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whereas it is necessary to distinguish between sectoral aid granted to a sector as a whole and sectoral aid granted to a limited number of undertakings;

Whereas, where such aid is granted to a sector as a whole, it is sufficient that the Commission be provided, in the same way as when a special system of aid is instituted, with the required information on the characteristic features of the sector, the problems requiring attention, the ends in view, and the mode of application and intensity of the aid;

Whereas, on the other hand, where sectoral aid is granted to a limited number of undertakings, the Commission must be provided with details of significant cases so that it may express its views thereon;

Whereas the granting of sectoral aid should to that extent be made subject to appropriate conditions;

Whereas, since investments vary in size according to the nature of sectors and their activities and to the size of the aid, which for a given figure is relatively greater the smaller is the investment, a double criterion is needed (size of the investment and relative size of the aid) to define significant cases; whereas a threshold of 100 million Belgian francs may be taken in respect of the size of the investment and an intensity of 15 % in net subsidy equivalent (according to the Community method of assessing regional aid) in respect of the relative size of the aid;

Whereas the examination of the effect of the Law in question on sectors concerned with Annex II products comes within the scope of agricultural aid policy treated in item VI of the Council Resolution of 25 May 1971 on new guidelines for the common agricultural policy (OJ No C 52 of 27 May 1971), and whereas, furthermore, aid granted to those sectors is governed by the Council Directive of 17 April 1972 on agricultural reform; whereas, therefore, this Decision could not apply to aid granted in respect of Annex II products,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium shall forthwith take the measures required to modify the system of regional aid provided for in the Law of 30 December 1970 on economic expansion so that aid is granted only:

- to the following regions, within areas to be determined nationally: in the province of Antwerpen, the arrondissement of Turnhout; in the province of West-Vlaanderen, the arrondissements of Diksmuide, Ieper, Tielt and Veurne; in the province of Oost-Vlaanderen, the arrondissements of Eeklo and Oudenaerde; in the province of Hainaut, the arrondissements of Ath, Charleroi, Mons, Mouscron, Soignies and Thuin; in the province of Liège, the arrondissements of Huy, Liège, Verviers and Waremme; in the province of Limburg, the arrondissements of Hasselt, Maaseik and Tongeren; in the province of Luxembourg, the arrondissements of Arlon, Bastogne, Marche, Neufchâteau and Virton; in the province of Namur, the arrondissements of Dinant, Namur and Philippeville;
- to the following areas:
 - by way of extension to the arrondissement of Turnhout, the area covering the communes of Oostmalle and Westmalle;
 - by way of extension to the district of Turnhout and the province of Limburg, the area covering the communes of Aarschot, Averbode, Begijnendijk, Betekom, Booischot, Diest, Heist-op-den-Berg, Langdorp, Messelbroek, Molenstede, Rillaar, Scherpenheuvel, Testelt, Webbekom, Wiekevorst, Zichem;
 - by way of extension to the arrondissement of Oudenaerde, the area covering the communes of Appelterre-Eichem, Denderhoutem, Dederleeuw, Geraardsbergen, Grimmingen, Idegem, Iddergem, Moerbeke, Nederboelare, Nederhasselt, Ninove, Okegem, Onkerzeel, Outer, Schendelbeke, Viane, Zandbergen;

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- by way of connection between the two parts of the district Mouscron, the area covering the communes of Aalbeke, Lauwe, Menen, Rökkem;

Regional aid may no longer be granted for new investments in the areas covered by the Laws on regional aid of 18 July 1959 and 14 July 1966 which do not coincide with the regions and areas listed above, nor in the other areas envisaged by the Kingdom of Belgium.

Article 2

Without prejudice to the review laid down in Article 93 (1) of the Treaty, the Kingdom of Belgium shall communicate to the Commission a fresh development areas plan to which all regional aid, whether abolished or not, covered by the Law of 30 December 1970 on economic expansion would apply, so that a further decision may be taken on this matter within two years.

The Kingdom of Belgium shall, as soon as possible, take measures necessary to group development areas into two categories according to the gravity of the regional problems and to make a similar differentiation in respect of maximum aid intensity. Such measures shall be communicated to the Commission in the form of proposals so that it may express its views on the matter.

Article 3

The granting of sectoral aid provided for in Article 5 of the Belgian Law of 30 December 1970 on economic expansion shall be subject to the following conditions:

- the criteria and mode of application, which in accordance with the said Article 5 are to be the subject of an implementing regulation, must be communicated to the Commission beforehand so that it may express its views thereon;
- where sectoral aids are to be granted to a sector as a whole, the information concerning the establishment of a system of specific aid (the characteristic features of the sector, the problems requiring attention, the ends in view, and the mode of application and intensity of the aid) shall be communicated to the Commission beforehand so that it may express its view thereon;
- where sectoral aids are to be granted to part of a sector or to a limited number of undertakings, significant cases as defined in Article 4 shall be notified to the Commission beforehand so that it may express its views thereon.

Article 4

Cases in respect of which investment reaches or exceeds ►M1 three million European units of account ◄, irrespective of the size of the aid, and cases in respect of which the size of the aid equals or exceeds, in net subsidy-equivalent, 15 % of the amount of the investment, irrespective of the size of the investment, shall be regarded as significant cases of application of sectoral aid under the Belgian Law of 30 December 1970 on economic expansion.

Aid intensity shall be calculated according to the Community method of assessing aid as established for the purpose of applying regional aid coordination principles⁽¹⁾.

Article 5

This Decision shall not apply to regional and sectoral aid in respect of the production of and trade in products listed in Annex II to the Treaty.

(¹) Cf. Communication of the Commission to the Council concerning general systems of regional aid, Annex.
Procedure for application of the principles of coordination of general systems of regional aid (OJ No C 111, 4.11.1971, p. 10).

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Article 6

This Decision is addressed to the Kingdom of Belgium.