

COMMISSION DECISION**of 15 December 1971****on the abolition, pursuant to Article 93 (2) of the EEC Treaty, of Belgian aid to undertakings in difficulty****(Only the Dutch and French texts are authentic)****(72/34/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;

Whereas an Agreement was concluded on 9 May 1968 between the Belgian State and the *Société nationale de crédit à l'industrie* (SNCI) concerning the granting of credits to undertakings in difficulty; whereas under that Agreement the Belgian State empowered SNCI to carry out on its behalf credit transactions at normal interest rates with undertakings whose profitability is in serious doubt and which in view of their situation cannot obtain help from public or private credit institutions on the terms normally imposed by such institutions;

Whereas the SNCI advances the amounts required for the credits in question; whereas if the undertaking does not fulfil its obligations – repayments and interest – the Belgian State pays the SNCI the amounts in arrears, charging them against budget appropriations;

Whereas the overall ceiling for these credits was originally 500 million Belgian francs and was then increased to 800 million; whereas that ceiling was reached during the autumn of 1969;

Whereas, when the credits provided for under the Agreement were exhausted, further credits were granted to undertakings in difficulty but they were, in that instance, directly charged against Article 600.1.A 'Brussels and special difficulties' of the Economic Affairs budget; whereas, more often than not, the rate of interest required for those credits is slightly below the market rate;

Whereas, since the beginning of 1971, no new case has been dealt with against appropriations charged directly to the Economic Affairs budget;

Whereas what is actually involved is either a credit guaranteed by the State and granted through the SNCI, or a credit granted directly by the Belgian State, in both cases covered by public funds; whereas a substantial part of the guaranteed credit will entail budgetary expenditure since the Belgian authorities themselves admit that it must be considered as lost; whereas, furthermore, the rate of interest required has been in a number of cases below the market rate;

Whereas the granting of these credits to undertakings in difficulty has disturbed the normal play of market forces by suppressing their effect, namely that of driving inefficient undertakings out of business; whereas artificial support for those undertakings may place an undue burden on the structure of sectors which have adjustment difficulties; whereas the commercial activities of those marginal undertakings and the prices they set in order to remain in business are likely to disturb the market; whereas the aid is therefore such as to affect competition and trade within the Community;

Whereas, consequently, the conditions for applying the prohibition provided for in Article 92 (1) of the EEC Treaty apply;

Whereas the field of application of the measures in question is not covered by any of the derogations set out in Article 92 (2) and (3) of the EEC Treaty; whereas in particular those measures of aid could be applied to all economic activities and in any part of Belgium; whereas they cannot therefore qualify under any of the derogations provided for in that Article, if only by reason of their field of application;

Whereas those measures of aid have, furthermore, an essentially protective purpose – prevention of the social consequences of the closure of certain undertakings – a purpose which cannot be reconciled with the concept of the development of economic and regional activities which is a prerequisite for derogations under Article 92 (3) (a) or (c) of the EEC

Treaty; whereas the extent to which such aid also promotes reorganization cannot be assessed for lack of information on that count;

Whereas, in accordance with the procedure laid down in Article 93 (2) of the EEC Treaty, the Kingdom of Belgium and the other Member States were, by letters of the Commission of 2 March and 10 March 1971, respectively, given notice to submit their comments; whereas the comments of the Belgian Government forwarded on 25 March 1971, 26 May 1971, 16 June 1971, and 29 September 1971 do not enable the Commission to modify its position as regards the measures in question;

Whereas it is necessary to ensure that the abolition of the aid in question is definitive; whereas it should not be possible for this aid to be granted through any other procedure; whereas, therefore, a decision based on the first subparagraph of Article 93 (2) should be adopted,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium shall forthwith discontinue providing credits to undertakings in difficulty, such credits having been originally granted under the Agreement of 9 May 1968 between the Belgian State and the *Société nationale de crédit à l'industrie* and subsequently under Article 600.1.A 'Brussels and special difficulties' of the Economic Affairs budget.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, on 15 December 1971.

For the Commission

The President

Franco M. Malfatti