

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 May 1981

on a proposal by the Netherlands Government to grant aid for certain investments by a manufacturer of insulating material (Rockwool)

(Only the Dutch text is authentic)

(81/523/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 these comments,

Whereas:

I

Article 6 of the Netherlands Law of 29 June 1978 (Wet Investeringsrekening — WIR) ⁽¹⁾ on the promotion and guidance of investment introduced an 'additional premium for major schemes' for the benefit of projects where investment exceeds Fl 30 000 000. The amount of the premium depends on the number of jobs created and may account for up to 4 % of the investment in question.

When examining the Netherlands law at the draft stage, in the course of the procedure under Article 93 (1) and (3) of the EEC Treaty, the Commission pointed out that since the 'additional premium for major schemes' involved no sectoral or regional objectives it therefore constituted a general aid system, and that since the arrangements applied to all investment, without distinction by reference to given undertakings, regions or sectors, they could not qualify for the derogations under Article 92 (3) (a) or (c). In the absence of such specification, the Commission could not assess the system's effects on trade between Member States and on competition and therefore assess its compatibility with the common market.

In respect of such general aid systems it is now the well-established policy of the Commission to accept them subject to one of two conditions, namely, that the Member State concerned notifies to the Commission either a plan for regional or sectoral application or alternatively, where this is felt not to be possible, significant individual cases of application.

In line with this approach, and in accordance with Article 93 (3) of the EEC Treaty, the Commission requested prior notification in good time of individual cases of application of the 'additional premium

⁽¹⁾ Staatsblad 1978, No 368.

for major schemes', account being taken of the amount of investment concerned.

the firm, will require an investment of Fl 54 000 000 (approximately 19 300 000 EUA).

During discussions with the Netherlands authorities the Commission stated that it would assess each case on its own merits in the light of the rules contained in Article 92 *et seq.* or rules developed during administration of those provisions. The Netherlands Government could not infer that, by requesting regular prior notification, the Commission had taken a favourable view of the additional premium system.

The Netherlands Government complied with the Commission's request by including the prior notification procedure in Articles 6 (7) and 7 (3) of Chapter V of the Netherlands law of 29 June 1978.

II

By letters dated 4 January and 13 February 1979 the Netherlands Government informed the Commission, as required by the procedure, of its intention to grant the 'additional premium for major schemes' to a Netherlands insulating material manufacturer.

The 'additional premium' granted in this case would amount to Fl 1 900 000 (677 000 EUA), a percentage of the investment which represents the maximum rate of premium (4 %).

Moreover, the location of the investment project in a regional development area would qualify it for a subsidy of up to Fl 5 400 000 (1 924 000 EUA) under the Netherlands regional aid scheme (Investeringspremieregeling — IPR) in recognition of its expected contribution to improving the socio-economic balance of the Melick-Herkenbosch area (Limburg).

This assistance was to be granted to the firm for the purpose of extending its plant and increasing its production capacity for rockwool insulating material. The proposed investment will increase its annual capacity from 80 000 to 116 000 tonnes. The extension, which will create some 275 new jobs in

III

By telex registered on 25 May 1979 the Netherlands Government replied to the Commission's notice under Article 93. It stressed that application of the WIR scheme was automatic and did not allow aid to be granted selectively according to the desirability of the planned investment. It concluded that the rising demand for insulating material, the fact that the recipient firms' exports are concentrated on the Benelux market and the relatively small amount of the aid, meant that the grant of the additional premium for large projects to the firm in question would not influence trade adversely or in a way contrary to the Community's interest.

During the course of consultations with interested parties, the Government of one Member State stated that the aid would affect trade between Member States and was liable to distort competition, to the detriment of other producers of insulating material, including those in its own country.

The Government of another Member State informed the Commission that it considered that the Netherlands aid was unjustified considering the marked and steady decline observed on its own market for the production and use of rock fibres.

The recipient firm confirmed the forecasts of an increase in demand especially in the Benelux market (+ 15 %). It stressed that the project is part of the public policy of energy saving in operation in the Netherlands. It added that the proposed extension would create some 275 new jobs in the firm and that the grant of the 'additional premium for major schemes' would have no influence on the final selling price.

IV

The Community pattern of trade in insulating materials includes the Netherlands market. Rockwool is in competition with all the other insulating materials on the market (glasswool, plastics, etc.), all of which are manufactured in the Community.

Demand for insulating materials on any given market would seem to depend not only on traditional patterns of consumption but also on the less predictable factor of State measures to encourage insulation. Thus although the current unfavourable energy situation has stimulated demand for insulating materials generally, demand in Member States varies with time and according to the type of insulating material in question. In its description of its various subsidiaries the 1978 annual report of the group to which the Netherlands firm belongs, reveals how widely situations differ, particularly on the Community market. However, an overall increase in demand of some 15 % is expected on the Benelux market, on which the Netherlands firm intends to concentrate its efforts.

V

The new production capacity will help the firm to strengthen its general competitiveness on the market for insulating materials, particularly on the Netherlands market, as it will enable it to satisfy gradually the increased demand for insulating materials. Furthermore, according to information available, the new capacity will enable the firm at the same time at least to maintain its current volume of exports to the other Member States.

The Netherlands firm increased its sales by some 14 % in 1978, mainly as a result of an increase in volume. In view of the forecasts for the Benelux market in particular, it should be able to make full use of its production capacity. Moreover, the group's consolidated accounts for 1978 class the Netherlands production unit's results among the most satisfactory; the same is true of the 1979 results.

The Netherlands firm's investment is part of a major programme, by the group to which it belongs, also involving the French and United Kingdom markets, aimed at strengthening its overall competitiveness. It was, in fact, announced that the investment in the Netherlands would be made over a longer period of time than originally planned, in order to make allowance for the production capacity which would gradually be coming into operation in France and the United Kingdom. The Netherlands scheme therefore seems to be an investment suited to the firm's development and one which in any event the

firm had every interest in carrying through in order to at least maintain its share of the market, in view of the foreseeable market developments. Finally, it emerges from the 1979 annual report of the group that the planned investment is currently being implemented.

VI

The aid proposed by the Netherlands Government is therefore liable to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring the undertaking in question or the production of its goods.

Article 92 (1) of the EEC Treaty provides that, in principle, any aid fulfilling the criteria which it sets out is incompatible with the common market. The derogations from this principle set out in Article 92 (3) of the EEC Treaty specify objectives pursued in the Community interest and not in that of the individual recipient of the aid. These derogations must be strictly interpreted in the examination of both of any regional or sectoral aid scheme and of any individual case of application of general aid systems. In particular, they may be applied only where the Commission can establish that in the absence of the aid the free play of market forces would not of itself induce the recipient undertakings to act in such a manner as to contribute to the attainment of one of the objectives specified by those derogations.

To derogate in this way in favor of aids offering no compensatory benefit would be tantamount to allowing trade between Member States to be affected and competition to be distorted without any justification in terms of the interest of the Community, while at the same time granting undue advantages to certain Member States.

When applying the principles set out above in its examination of individual cases of application of general aid systems, the Commission must be satisfied that there exists on the part of the recipient undertaking a specific compensatory justification in that the grant of aid is required to promote the attainment of one of the objectives set out in

Article 92 (3) of the EEC Treaty. Where this cannot be demonstrated, and especially where the proposed investment nevertheless takes place, it is clear that the aid does not contribute to the attainment of the objectives of the derogations but serves to increase the financial power of the undertaking in question.

In the case in question there does not appear to be such a compensatory justification on the part of the recipient of the aid.

The Netherlands Government has not been able to give, nor has the Commission found, any grounds to establish that the proposed aid meets the conditions justifying one of the derogations for which provision is made in Article 92 (3) of the EEC Treaty.

As regards the derogations of Article 92 (3) (a) and (c) of the EEC Treaty concerning aid to promote or to facilitate the development of certain areas it cannot be considered that the Melick-Herkenbosch area suffers from an 'abnormally low' standard of living or from 'serious under-employment' within the meaning of subparagraph (a). As regards the derogation of subparagraph (c), the Netherlands Government has already taken account of the contribution which the investment concerned is expected to make to improving the socio-economic balance of the area by granting assistance under the Netherlands regional aid scheme (*Investeringspremieregeling* — IPR). The Netherlands Government, in its comments submitted to the Commission, itself emphasized that the 'additional premium for major schemes' was not granted on account of regional considerations.

In respect of the derogations envisaged in Article 92 (3) (b) of the EEC Treaty, the investment concerned does not constitute an 'important project of common European interest', or a project designed to remedy a serious disturbance in the economy of a Member State the promotion of which merits a derogation under Article 92 (3) (b) of the EEC Treaty from the principle of the incompatibility of aids laid down by Article 92 (1). Moreover, when stating its

views on the WIR, the Commission recalled that the Netherlands are part of the Community's central regions. These regions do not suffer from the most serious social and economic problems in the Community, but they are the regions where there is a real risk of an upward spiral of aids and where any aid is likely, more than elsewhere, to affect trade between Member States. Furthermore, the information available on the socio-economic situation in that country does not point to the conclusion that it is suffering from a serious disturbance in its economy within the meaning of the Treaty. In individual cases of application the 'additional premium for major schemes' is not granted for the purpose of dealing with such a situation. To take any other view would enable the Netherlands, in the present climate of slow growth and high unemployment throughout the Community, to divert to their advantage investment which might be made in other, less well-placed, Member States. Recent social and economic trends in the Community justify maintaining this approach as regards both the premium itself and possible cases of application.

Finally, as regards the derogations provided for under Article 92 (3) (c) in favour of 'aid to facilitate the development of certain economic activities', examination of the development of the insulating material industry in the Community and the Netherlands reveals that market conditions, together with State measures to encourage insulation which are in this case aids to consumers, are such that the industry can develop in a normal fashion using its own resources and without State assistance for manufacturers. The additional premium for major schemes cannot, therefore, be regarded as having the object of facilitating the development of an economic activity within the meaning of Article 92 (3) (c).

Moreover, the new investment is liable to enable the recipient firm to consolidate its position on the market, as it will allow it to meet the anticipated rise in demand for insulating materials on the Netherlands market while maintaining at least its overall level of exports to other Member States. There are therefore no grounds for maintaining that the proposed assistance would not affect trading conditions to an extent contrary to the common interest.

In view of the foregoing, the abovementioned aid proposed by the Netherlands Government does not fulfil the conditions necessary for it to benefit from any of the derogations referred to in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

fication of this Decision of the measures which it has taken to comply with it.

Article 1

The Kingdom of the Netherlands shall refrain from implementing its proposal, notified to the Commission by letter dated 4 January 1979 from its Minister for Foreign Affairs, to grant the 'additional premium for major schemes' in favour of investment made at Melick-Herkenbosch by a Netherlands insulating material manufacturer.

Article 2

The Kingdom of the Netherlands shall inform the Commission within two months of the date of noti-

Article 3

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 27 May 1981.

For the Commission

F. H. J. J. ANDRIESEN

Member of the Commission
