

COMMISSION

COMMISSION DECISION

of 22 July 1982

on the designation of development areas pursuant to Article 11 of the Belgian Law of 30 December 1970

(Only the Dutch and French texts are authentic)

(82/740/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⁽¹⁾ to the parties concerned to submit their comments, in accordance with Article 93, and having regard to those comments,

Whereas :

I

By letter dated 14 November 1980, the Belgian Government notified in accordance with Article 93 (3) of the EEC Treaty, a plan showing the designated development areas in which it intends to apply the regional aid measures provided for in the Economic Expansion Law of 30 December 1970, consisting largely of interest subsidies, capital grants, State guarantees and tax reliefs for industrial firms and firms in the service sector.

The Belgian Government notified the plan with the intention of complying with its obligation under Article 2 of Commission Decision 72/173/EEC of 26 April 1972 on the aid granted under the Belgian Economic Expansion Law of 30 December 1970⁽²⁾. The first paragraph of that Article requires greater selectivity in the geographical scope of regional aid and provides that the plan must specify those areas which lose development status and those which do not. The second paragraph of that Article provides that the development areas must be classified in two cate-

gories according to the severity of the problems facing the regions concerned and that the maximum aid intensity must be differentiated as between those two categories.

The plan notified provides for the granting of regional aid throughout almost the entire territory of Belgium, the proposed development areas being located in each of the nine provinces and in 40 of the country's 43 'arrondissements' (administrative districts), accounting for more than 80 % of the population. While only parts of many of these 'arrondissements' are designated as development areas, these areas still cover 55 % of the population. A single aid intensity ceiling is adopted for all the areas proposed.

The Belgian authorities used fundamentally different methods for selecting assisted areas in Flanders and in Wallonia.

On 5 December 1980 the Commission asked for further information within one month. By telex dated 22 December 1980, the Belgian Government requested that this deadline be extended until 8 February 1981, to which the Commission agreed by telex dated 13 January 1981. No further information was received thereafter from the Belgian Government. The Commission was consequently obliged to make its first scrutiny of the plan on the basis of the information in its possession.

II

The plan, notified more than six years after the appointed date, does not meet the requirements of Article 2 of Commission Decision 72/173/EEC which stipulates greater selectivity in the geographical scope of the regional aid and a classification of the development areas into two categories according to the severity of the problems facing the regions concerned.

⁽¹⁾ OJ No C 316, 4. 12. 1981, p. 4.

⁽²⁾ OJ No L 105, 4. 5. 1972, p. 13.

Upon scrutinizing the plan, the Commission discovered certain deficiencies in the methods employed, in particular that they do not make it possible to place the phenomena observed in a sufficiently wide regional context or to establish the causes thereof.

In order to assess the degree of compatibility with the common market, within the meaning of Article 92 of the aids proposed by the Belgian Government, the Commission first of all compared the regions concerned in the Community context and then sought to establish whether there were sufficiently serious disparities at national level to warrant the granting of regional aids.

Having concluded its scrutiny, the Commission decided to initiate the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the Belgian Government's plan to grant regional aid in the following 'arrondissements': those of Antwerpen and Mechelen in the province of Antwerpen; those of Halle-Vilvoorde, Leuven and Nivelles in the province of Brabant; those of Kortrijk, Ostende, Roeselare and Tielt in the province of West Flanders; those of Aalst, Oudenaarde, Eeklo, Sint-Niklaas and Dendermonde in the province of East Flanders; those of Ath, Soignies, except its southern part (municipalities of La Louvière and Le Rœulx), and Tournai in the province of Hainaut; those of Huy, except its southern part (municipalities of Clavier, Ferrières, Hamoir and Ouffet); those of Verviers, except its southern part (municipalities of Amel, Büllingen, Burg-Reuland, Bütgenbach, Lierneux, Malmédy Saint-Vith, Stavelot, Stoumont, Trois-Ponts and Waimes), and Waremmé in the province of Liège; that of Namur, except its southern part (municipalities of Gesves, Mettet and Ohey), in the province of Namur. For the purposes of the procedure, the Commission gave the Belgian Government notice, by letter dated 19 November 1981, to submit its comments.

Since the Belgian Government's plan contained no provisions to that effect, the Commission, in the letter giving notice, classified the development areas into two categories, according to the severity of the problems facing the regions concerned, and stated that the maximum intensity of regional aid should be limited to 20 % of the investments in net grant equivalent in the development areas located in the 'arrondissements' of Charleroi, Mons, the southern part of the 'arrondissement' of Soignies, as defined above, and in the northern part of the 'arrondissement' of Thuin (municipalities of Anderlues, Binche and Morlanwelz) in the province of Hainaut, in the 'arrondissement' of Liège in the province of Liège and in the 'arrondissements' of Hasselt, Maaseik and Tongeren in the

province of Limburg; and further stated that the maximum aid intensity should be limited to 15 % net grant equivalent in the development areas located in the 'arrondissement' of Turnhout in the province of Antwerpen, in the 'arrondissement' of Diksmuide, Veurne and Ieper in the province of West Flanders; in the 'arrondissements' of Mouscron and Thuin, except its northern part, as defined above, in the province of Hainaut; in the southern parts of the 'arrondissements' of Huy and Verviers, as defined above, in the province of Liège, in the 'arrondissements' of Arlon, Bastogne, Marche-en-Famenne, Neufchâteau and Virton in the province of Luxembourg; in the 'arrondissements' of Dinant; in the southern part of the 'arrondissement' of Namur, as defined above, and in the 'arrondissement' of Philippeville in the province of Namur.

In its aforementioned letter giving notice, the Commission limited to a period of three years, subject to a review of the socio-economic situation, the grant of regional aid in the 'arrondissement' of Mouscron in the province of Hainaut and the classification of the 'arrondissements' of Hasselt, Maaseik and Tongeren in the province of Limburg in the category of regions in which aid of up to 20 % net grant equivalent are permitted.

III

The Kingdom of Belgium submitted its comments by letters, dated 1 and 22 February 1982, from the office of its Permanent Representative to the European Communities. Further information and explanations were supplied at bilateral meetings between the Belgian authorities and the Commission.

In its comments of 1 and 22 February 1982, the Belgian Government criticizes the methods employed by the Commission in its socio-economic analysis. The criticisms differ depending on whether they emanate from the Flemish or Walloon regional authorities. While agreeing with the Commission's basic contention that only large homogeneous economic units should be recognized as assisted areas, the Flemish regional authorities consider that the methods employed by the Commission are confusing and result in the underrating of regional problems in Flanders and the overrating of those in Wallonia. The Walloon regional authorities, on the other hand, criticize the Commission on the grounds that it recognizes only excessively large geographical units which conceal local differences, that it employs methods which do not permit the correct selection of areas on the basis of the nature of their economic problems, and that it underrates the problems of Wallonia in comparison with those of other European regions.

In its comments of 1 and 22 February 1982, the Belgian Government again submits two entirely different methods and approaches for Flanders and Wallonia which, moreover, make no reference to the European context. The selection made is almost the same as the original one, the proposed development areas still being located in each of the country's nine provinces and in 39 'arrondissements' out of 43, which include nearly 75 % of the Belgian population, whilst the development areas themselves still cover 50 % of the total population of the country compared with 55 % in the original plan. A single intensity ceiling is again proposed.

In the course of the procedure initiated under Article 93 (2) of the EEC Treaty, three Member States besides the Kingdom of Belgium submitted comments to the Commission. One of those States entirely endorses the Commission's position; another is critical of the Commission's approach in certain respects but, by and large, supports the Commission's position; the third considers that the Commission should not take a decision on the Belgian aid scheme until after the current review of the principles of coordination of regional aid systems has been completed and the proposals which the Commission is expected to make on the cumulation of all forms of aid to industry have produced a solution.

In the course of the procedure several other interested parties submitted their comments to the Commission advocating the retention of aid in certain regions.

IV

The assistance proposed by the Belgian Government for certain regions is likely to affect trade between Member States and distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring certain undertakings or the production of certain goods.

Article 92 (1) provides that aid answering the criteria it contains is, in principle, incompatible with the common market. The derogations provided for in Article 92 (3) (a) and (c) — the only ones which might be applicable to the regional aid case in question — specify the pursuit of objectives which are in the interests of the Community rather than in the interests of recipients. These derogations must be strictly interpreted when any regional or industry aid scheme or any individual case of application of a general aid scheme is scrutinized. In particular, they must be

allowed only in cases where the Commission can establish that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the aims of the derogations.

To grant a derogation in respect of aid where no such aim can be served would be tantamount to agreeing to a distortion of intra-Community trade and competition with no justification on grounds of the Community interest, while granting certain Member States undue advantages.

In applying the principles set out above to the scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are experiencing difficulties which are serious enough, in a Community-wide comparison, to warrant the grant of aid, at the level proposed; in other words that the aid is necessary to ensure attainment of the objectives set out in Article 92 (3) (a) or (c) of the EEC Treaty. Where this cannot be demonstrated, it is evident that the aid does not contribute to the attainment of the objectives of the derogations, but is essentially designed to favour the undertakings in question.

Following a communication from the Commission on the coordination of general systems of regional aid, the representatives of the Governments of the Member States meeting in the Council recognized in their first resolution of 20 October 1971⁽¹⁾ that regional aid, when it is adequate and judiciously applied, forms one of the essential instruments of regional development and enables the Member States to follow regional policies aimed at a more balanced growth of the various regions of the same country and of the Community. Accordingly, and on the basis of the principles of coordination of regional aid systems in force, which aim to limit the risks of outbidding, the Commission must, when assessing the compatibility of regional aid with Article 92 (3) (a) and (c), take account both of the socio-economic situation in the regions concerned in comparison with the rest of the Community, and of any serious disparities between regions in the same country.

The detailed socio-economic analysis of the regions of Belgium shows that the derogation provided for in Article 92 (3) (a) of the EEC Treaty cannot be granted, since there is not an abnormally low standard of living

⁽¹⁾ OJ No C 111, 4. 11. 1971, p. 1.

or serious under-employment in the Belgian regions. This was not disputed by the Belgian Government either in its original proposal or in the comments it submitted in the course of the Article 93 (2) procedure. Consequently, only the derogation provided for in Article 92 (3) (c), whereby aid to facilitate the development of certain economic areas may be considered to be compatible with the common market, where it does not adversely affect trading conditions to an extent contrary to the common interest, can be considered in the case in point.

In order to determine whether the aids proposed by the Belgian Government for certain regions are compatible with the common market, the Commission applied the principles described above. The Commission placed the Belgian regions in question in a Community context by comparing gross domestic product and the employment situation in those regions with the corresponding Community averages and then sought to establish whether there were disparities between the regions at national level which might justify the grant of regional aid. For this purpose, the Commission used certain indicators of economic development and employment, namely taxable income, unemployment, employment trends, the structure of economic activities, net migration and demographic factors.

Unlike the methods employed by the Belgian authorities, this approach, through the analysis of the structure of activities and other indicators of causal factors, made it possible to identify the nature of the economic problems of the regions concerned and to establish whether they were structural. The criticisms voiced by the Flemish regional authorities are not well-founded, since the Commission systematically used the same indicators for the analysis of the Walloon and the Flemish regions, and the sole reason why the areas that might qualify for the derogation of Article 92 (3) (c) are larger in Wallonia is that regional problems in Wallonia are more extensive and more severe than in Flanders. Having regard to the considerations herein expounded, the Commission may not, in view of the principle of regional specificity⁽¹⁾, determine the assisted areas by reference to highly localized phenomena, as suggested by the Walloon regional authorities. A comparative analysis was made of the situation of all the Belgian regions, including Wallonia, in the light of the situation of the regions of the Community as a whole.

The Belgian Government's comments of 1 and 22 February 1982 are aimed at maintaining, virtually intact, the plan originally notified to the Commission, and the greater part of the national territory — with the exception of the urban areas in the centre and north of the country — would thereby be eligible for regional aid. Such a scheme would not comply with the principle of regional specificity laid down in the principles of coordination of regional aid systems, as it would confer hardly any compensatory benefits on regions suffering from real structural handicaps; nor would it satisfy the requirements of the first paragraph of Article 2 of the Commission Decision of 26 April 1972, referred to above, which requires greater selectivity in the designation of development areas. To maintain a single aid intensity ceiling would be a departure from the requirements of the second paragraph of that Article.

The comments submitted by other interested parties contain no argument that would change the assessment of the regions of Belgium based on the Commission's socio-economic analysis referred to above. For both practical and legal reasons, the Commission cannot establish a temporal link, as suggested by one Member State, between the implementation of the new principles of coordination of regional aid systems and its obligations under Article 93 of the EEC Treaty.

On the basis of the socio-economic analysis of the regions of Belgium, referred to above, it is established that the situation is sufficiently serious in the following Belgian regions and sub-regions to justify the derogations provided for in Article 92 (3) (c) of the EEC Treaty: Westhoek, the Kempen region, the Liège iron and steel area, the Hainaut coalfields and iron and steel area, the Ardennes-Condroz-Gaume region and the textile area of Mouscron-Comines.

These regions and sub-regions correspond to the following administrative units or parts of administrative units:

- Westhoek: 'arrondissements' of Diksmuide, Ieper and Veurne,
- Kempen: province of Limburg, 'arrondissement' of Turnhout; municipalities of Aarschot, Begijnendijk, Bekkevoort, Diest, Geetbets, Holsbeek, Kortenaaken, Linter, Scherpenheuvel-Zichem, Tieltinge and Zoutleeuw (hereinafter referred to as 'Noord Hageland') in the 'arrondissement' of Leuven,
- Liège iron and steel area: 'arrondissement' of Liège,

⁽¹⁾ OJ No C 31, 3. 2. 1979, p. 11.

- Hainaut coalfields and iron and steel area : 'arrondissement' of Charleroi and Mons, southern part of the 'arrondissement' of Soignies (municipalities of La Louvière and Le Roeulx), northern part of the 'arrondissement' of Thuin (municipalities of Anderlues, Binche and Morlanwelz),
- Ardennes-Condroz-Gaume : province of Luxembourg, 'arrondissements' of Thuin (except the northern municipalities mentioned above), southern part of the 'arrondissement' of Namur (municipalities of Gesves, Mettet and Ohay), southern part of the 'arrondissement' of Huy (municipalities of Clavier, Ferrières, Hamoir and Ouffet), southern part of the 'arrondissement' of Verviers (municipalities of Amel, Büllingen, Burg-Reuland, Bütgenbach, Liernaux, Malmédy, Saint-Vith, Stavelot, Stoumont, Trois-Ponts and Waimes),
- textile area of Mouscron-Comines : 'arrondissement' of Mouscron.

The socio-economic analysis referred to above also shows that the seriousness of the problems facing the province of Limburg in the Kempen region, the Liège iron and steel area and the Hainaut coalfields and iron and steel area, justify the retention of a maximum aid ceiling of 20 % of the investment in net grant equivalent (or 3 500 ECU per job created up to a maximum of 25 % of the investment in net grant equivalent); but that the same does not apply to the other regions and sub-regions qualifying for the derogation provided for in Article 92 (3) (c) of the EEC Treaty, where the ceiling on aid must not exceed 15 % of the investment in net grant equivalent (or 2 500 ECU per job created, up to a limit of 20 % of the investment in net grant equivalent). By classifying the areas in separate categories on the basis of the seriousness of the problems in the regions concerned, the Commission complies with the principle of regional specificity referred to above, and mitigates the effect of the failure of the Kingdom of Belgium to comply with the second paragraph of Article 2 of Commission Decision 72/173/EEC.

The socio-economic analysis shows that the particular socio-economic situation in the textile areas of Mouscron, with the changes observed over the past few years and problems that are highly localized, justifies the grant of regional aid in that area for a period of no longer than three years. The proximity of Noord Hageland to the developed areas in the provinces of Brabant and Antwerpen and the fact that the present employment situation in that sub-region could be assessed only on the basis of estimates, constitute grounds for limiting the grant of regional aids to a

three-year period in that area also. The situation in the two areas will be reviewed before this period expires.

The socio-economic analysis suggests that, by reason of its vigorous economic growth over the past few years, the province of Limburg may be classified as eligible for up to 20 % of the investment in net grant equivalent (or the alternative ceiling referred to above for a period of no longer than three years, it being understood that the situation in the province will be reviewed before this period expires).

The socio-economic analysis shows that the situation in the 'arrondissement' of Oudenaarde is such that it may no longer be designated as an assisted area; but that to avoid compromising the efforts that have been made to ensure diversification, transitional arrangements are needed whereby this 'arrondissement' may continue to be eligible for regional aids up to a ceiling of 15 % of the investment in net grant equivalent (or the alternative ceilings referred to above) until 31 December 1983.

The socio-economic analysis shows that the situation in the region of Ardennes-Condroz-Gaume is such that a ceiling of 15 % of the investment in net grant equivalent (or the alternative ceiling mentioned above) should be applied to regional aid, but that the particular situation in the former iron and steel area of Athus — municipalities of Aubange and Messancy in the 'arrondissement' of Arlon, municipalities of Musson, Saint-Léger and Virton in the 'arrondissement' of Virton — calls for the retention of transitional arrangements whereby a ceiling of 20 % of the investment in net grant equivalent (or the alternative ceilings) may continue to apply until 31 December 1983.

In view of the serious employment situation brought about by the crisis in the industries of the European Coal and Steel Community in the Liège iron and steel area and in the Hainaut coalfields and iron and steel area, exclusion from the status of development area could be waived for individual cases of application of regional aid in the 'arrondissements' of Ath, Tournai and Waremme and in the northern parts of the 'arrondissements' of Huy and Verviers, after prior notification to the Commission, in accordance with Article 93 (3) of the EEC Treaty, and provided that the Commission is satisfied that the aid has the effect of directly alleviating the employment situation resulting from the difficulties brought about by the crisis in the industries of the European Coal and Steel Community in the coalfields and iron and steel areas adjacent to the 'arrondissements' or parts of 'arrondissements' referred to above.

V

To enable it to keep the system under constant review, as required by Article 93 (1) of the EEC Treaty, the Commission must be provided with an annual report on the implementation of the scheme and must examine a number of specific cases.

The Commission has introduced or will introduce special rules for the grant of aid to undertakings in specific sectors that also cover assistance granted under regional aid legislation,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium may grant aids on the basis of the plan for the designation of development areas notified to the Commission, by letter dated 14 November 1980, only in the following 'arrondissements' or parts of 'arrondissements' and under the conditions laid down herein:

- (a) Up to a limit of 20 % of the investment cost in net grant equivalent, or 3 500 ECU per job created up to a limit of 25 % of the investment in net grant equivalent:
 - province of Hainaut:
 - 'arrondissement' of Charleroi; 'arrondissement' of Mons; southern part of the 'arrondissement' of Soignies, comprising the municipalities of La Louvière and Le Roeulx; northern part of the 'arrondissement' of Thuin, comprising the municipalities of Anderlues, Binche and Morlanwelz,
 - province of Liège:
 - 'arrondissement' of Liège,
 - province of Limburg:
 - 'arrondissement' of Hasselt; 'arrondissement' of Maaseik; 'arrondissement' of Tongeren,
 - province of Luxembourg:
 - southern part of the 'arrondissement' of Arlon, comprising the municipalities of Aubange and Messancy; southern part of the 'arrondissement' of Virton, comprising the municipalities of Musson, Saint-Léger and Virton.

The inclusion of the southern part of the 'arrondissement' of Arlon and Virton in the province of Luxembourg, in this category of regions where the maximum aid intensity may be up to 20 % of the investment in net grant equivalent shall be terminated on 31 December 1983.

The inclusion in this category of the 'arrondissements' of Hasselt, Maaseik and Tongeren in the province of Limburg shall be limited to a period of three years from the date of this Decision; the

Commission shall review the socio-economic situation of those 'arrondissements' before that period expires.

- (b) Up to a limit of 15 % of the investment in net grant equivalent, or 2 500 ECU per job created up to a limit of 20 % of the investment in net grant equivalent:
 - province of Antwerp:
 - 'arrondissement' of Turnhout,
 - province of Brabant:
 - 'Noord Hageland', comprising the municipalities of Aarschot, Begijnendijk, Bekkevoort, Diest, Geetbets, Holsbeek, Kortenaeken, Linter, Scherpenheuvel-Zichem, Tielt-Winge and Zoutleeuw in the 'arrondissement' of Leuven,
 - province of West Flanders:
 - 'arrondissement' of Diksmuide; 'arrondissement' of Veurne; 'arrondissement' of Ieper,
 - province of East Flanders:
 - 'arrondissement' of Oudenaarde,
 - province of Hainaut:
 - 'arrondissement' of Mouscron; 'arrondissement' of Thuin, except its northern part as defined in paragraph (a),
 - province of Liège:
 - southern part of the 'arrondissement' of Huy, comprising the municipalities of Clavier, Ferrières, Harmoir and Ouffet; southern part of the 'arrondissement' of Verviers, comprising the municipalities of Amel, Büllingen, Burg-Reuland, Bütgenbach, Lierneux, Malmédy, Saint-Vith, Stavelot, Stoumont, Trois-Ponts and Waimes,
 - province of Luxembourg:
 - 'arrondissement' of Arlon, except its southern part as defined in paragraph (a); 'arrondissement' of Bastogne; 'arrondissement' of Marcheen-Famenne; 'arrondissement' of Neufchâteau; 'arrondissement' of Virton, except its southern part as defined in paragraph (a),
 - province of Namur:
 - 'arrondissement' of Dinant; southern part of the 'arrondissement' of Namur, comprising the municipalities of Gesves, Mettet and Ohey; 'arrondissement' of Philippeville.

The grant of aid in the 'arrondissement' of Oudenaarde in the province of East Flanders shall terminate on 31 December 1983.

The grant of aid in the 'arrondissement' of Mouscron in the province of Hainaut and in Noord Hageland in the 'arrondissement' of Leuven shall be limited to a period of three years from the date of this Decision; the Commission shall review the socio-economic situation of these areas before that period expires.

Article 2

Notwithstanding this Decision, the Kingdom of Belgium may grant regional aid in the 'arrondissements' of Ath, Tournai and Waremme and in the northern parts of the 'arrondissements' of Huy and Verviers which do not have the status of development areas, after prior notification to the Commission, in accordance, with Article 93 (3) of the EEC Treaty, and provided that the Commission has taken a decision finding that the aids have the effect of directly alleviating the employment situation resulting from the difficulties brought about by the crisis in the industries of the European Coal and Steel Community in the coalfields and iron and steel areas adjacent to the 'arrondissements' or parts of 'arrondissements' referred to above.

Article 3

Before the end of June each year, the Kingdom of Belgium shall submit a report to the Commission specifying the amount of regional aid granted, the amount of aided investment, and the number of cases involved. The regional breakdown of this information shall be based on the 'level III' regions of the nomenclature of territorial statistical units of the Statistical Office of the European Communities, and the sectoral breakdown on the two-digit classes of the general industrial classification of economic activities within the European Communities, also produced by the Statistical Office.

In addition, the Kingdom of Belgium shall provide the Commission, on request, with such information as

it needs to examine a certain number of individual cases.

Article 4

The provision of aid pursuant to this Decision shall be without prejudice to any specific rules on aid to certain industries applicable either at present or in the future.

Article 5

The Kingdom of Belgium shall inform the Commission within three months of the date of this Decision of the measures it has taken to comply therewith.

Article 6

This Decision replaces Articles 1 and 2 of Commission Decision 72/173/EEC on aid granted under the Belgian Economic Expansion Law of 30 December 1970.

Article 7

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 22 July 1982.

For the Commission

Frans ANDRIESEN

Member of the Commission
