

COMMISSION DECISION

of 22 March 1977

concerning aid planned by the Belgian Government towards the extension of capacity of an oil refinery at Antwerp

(Only the French and Dutch texts are authentic)

(77/260/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 to the parties concerned to submit their comments and having regard to these comments,

I

Whereas on 16 June 1976 the Belgian Government, pursuant to the provisions of Article 93 (3) of the EEC Treaty and of Article 1 of Commission Decision 76/22/EEC of 18 December 1975⁽¹⁾, on the aids granted under the Belgian law of 17 July 1959, informed the Commission of its intention to grant assistance to a new refinery in Antwerp;

Whereas the Belgian Government later specified that this aid would be granted to a large oil group for the rebuilding of an existing refinery whose processing capacity had been raised from 4.5 million to 13.5 million tonnes per year of crude oil;

Whereas this aid was prepresented as being intended to facilitate investments for environmental protection; while this investment was originally estimated by the Belgian authorities at Bfrs 1 900 million, and later at Bfrs 4 395 million, while the rebuilding of the refinery involved total investments of Bfrs 12 000 million;

Whereas, by virtue of the information it had supplied earlier to the Commission, the Belgian Government may, under the law of 17 July 1959, grant aid to certain firms in the form of interest relief of between 2 and 4% for two to four years, usually on a maximum of 50% of the amount of investments considered;

Whereas, in the case in point, the aid planned would take the form of an interest relief grant of 4% for

four years on Bfrs 1 270 million; whereas it is of a kind that would adversely affect trade between Member States and threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty bearing in mind the situation in the refinery sector and trade in petroleum products in the Community.

II

Whereas the plan notified to the Commission, the Belgian Government is merely reintroducing in another form a former plan to give similar assistance to the same refinery which was prohibited by Commission Decision 73/293/EEC of 11 September 1973⁽²⁾, whereas the Belgian Government originally planned to give assistance to the entire investment involved in the refinery, but later offered to confine the assistance to anti-pollution investments;

Whereas the Commission, in its abovementioned Decision, concluded that the planned assistance could not be justified by the economic and social situation in the region where the investment was to be made;

Whereas it also considered that the refining industry in Belgium and the Community was characterized by present and future production capacity widely in excess of needs, and that State aid to facilitate further development of this capacity was thus as adversely to affect trading conditions to an extent contrary to the common interest within the meaning of Article 92 (3) (c) of the EEC Treaty;

Whereas the Commission also considered that, even confined to anti-pollution investments, the aid was incompatible with the common market, since firms should bear the costs of eliminating their own pollution, and should only be assisted in doing this if it could be shown that they were experiencing difficulties in making the necessary adaptations to their existing production plants.

⁽¹⁾ OJ No L 5, 10. 1. 1976, p. 28.

⁽²⁾ OJ No L 270, 27. 9. 1973, p. 22.

III

Whereas the Belgian Government estimated the anti-pollution investment eligible for assistance at Bfrs 4 395 million, but in doing so it confused two types of equipment, the first type, costing Bfrs 3 029 million, equipment to improve the quality of the refinery's products while only the second type, costing Bfrs 1 366 million, will be used to reduce or eliminate the refinery's pollution of its environment ;

Whereas when considering the figures for the planned assistance, a distinction should be made between assistance for investment in the first type of equipment and assistance for investment in the second type.

IV

Whereas, firstly Bfrs 3 029 million are invested in production equipment for improving the quality of the refinery's products from the point of view of their sulphur and lead content to meet the obligation and self-interests of all refiners to market products fulfilling the specifications of the public authorization and the consumer, whether in Belgium or for export markets ;

Whereas the Commission's prediction in its above-mentioned Decision of 1973 concerning surplus refining capacity in Belgium has been fully confirmed and continues to be valid for the future, both in Belgium and in the Community as a whole ;

Whereas, in these circumstances, a State aid intended to reduce the cost of investments carried out by refinery to extend its production capacity, especially when the extension is very wide, as in the case, is of a kind adversely to affect the conditions of trade to an extent contrary to the common interest ;

Whereas this is the case, both when aid is granted for the entire investment and when it is intended for certain types of production equipment in isolation ;

Whereas such aid cannot be considered compatible with the common market and eligible for a derogation under Article 92 (3) (c) EEC, neither can it be considered eligible for derogation under subparagraphs (a) and (b) of the same paragraph, since the Commission's remarks in this respect in its aforementioned Decision of 1973 are still valid.

V

Whereas, secondly, the investment carried out to reduce or eliminate pollution of its environment by

the new refinery from the point of view of water, air and noise, does not exceed Bfrs 1 366 million ;

Whereas, by a Communication dated 6 November 1974, the Commission informed the Member States of the general criteria it intended to apply henceforth to State aids founded on specific motives of environmental protection ;

Whereas the Council recommendation of 3 March 1975⁽¹⁾ on cost allocation and public intervention in environmental matters follows the same principles ;

Whereas the cost of investments that enterprises must make to fulfil the obligations imposed by the authorities in respect of environment, and in other respects, should normally be borne by the firms themselves ; whereas assistance can be justified only when it is shown that the recipient firms are experiencing difficulties in meeting these obligations with their existing plant and that economic or social problems could result for certain activities or certain regions ;

Whereas, in the present case, no justification can be found in the situation of the recipient firm, the region where it is located or the industry of which it is a part ;

Whereas, however, the Commission considers that it should bear in mind the need for the authorities to react rapidly against the degradation of the Community environment, and the difficulty existing firms might meet in adapting themselves to the new obligations which are thereby imposed upon them ;

Whereas, for this reason, it specifies in the above-mentioned memorandum (Part III, 1) that it could, during a transitional period and on the basis of the exception provided for at Article 92 (3) (b) of the EEC Treaty, regard as compatible with the common market aids which the Member States granted for additional anti-pollution investments carried out by firms in production plants already operative on 1 January 1975, and that this possibility is not limited to uses such as the above ;

Whereas, the Commission specified that, when existing production capacity was extended, that part of the investment corresponding to the increase was not eligible for aid.

⁽¹⁾ OJ No L 194, 25. 7. 1975, p. 1.

Whereas, in the case in point, the production capacity of the refinery has been tripled; whereas that part of the anti-pollution investment which corresponds to initial capacity therefore represents only Bfrs 460 million at the most out of a total of Bfrs 1 366 million,

HAS ADOPTED THIS DECISION :

Article 1

The Kingdom of Belgium may not implement its plan for aid to anti-pollution investment at a refinery in Antwerp unless the interest relief grant is on a sum of not more than Bfrs 460 million.

Article 2

This Decision is addressed to the Kingdom of Belgium,

Done at Brussels, 22 March 1977.

For the Commission

Raymond VOUEL

Member of the Commission
