

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 1 July 1999

on State aid which Spain is planning to implement in favour of Brilén SA

(notified under document number C(1999) 2131)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(1999/672/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given interested parties notice, in accordance with the abovementioned Articles, to submit their comments ⁽¹⁾ and having regard to those comments,

Whereas:

I. Procedure

- (1) By letter dated 2 December 1997, Spain notified the Commission of a proposal to grant aid to Brilén SA, a company located at Barbastro in the Autonomous Community of Aragon (Brilén). By letter dated 22 December 1997, the Commission requested additional information. The Spanish authorities responded by letter of 12 February 1998.
- (2) By letter dated 4 May 1998 the Commission informed Spain of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the planned aid. Spain submitted its comments by letter of 10 June 1998.
- (3) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Commu-*

nities ⁽¹⁾. The Commission invited interested parties to submit their comments on the aid.

- (4) The Commission received comments from interested parties. It forwarded them to Spain, which was given the opportunity to react; its comments were received by letters dated 2 October 1998 and 20 May 1999.
- (5) On 27 October 1998 a meeting was held between the Commission, the Spanish authorities and representatives of the company. By letter of 29 October 1998 the Commission invited the Spanish authorities to submit further comments. The Spanish authorities responded by letter dated 19 January 1999. By letter of 4 February 1999, the Commission requested clarification on certain points. The Spanish Government replied by letter dated 9 April 1999.

II. Description of the aid

The recipient

- (6) Brilén belongs to the Samca group, also based in Aragon and active chiefly in the mining, agriculture, chemical, textiles, construction and other sectors. The group has a total workforce of 4 000, with plants spread across the whole of Spain and in other countries including France, Italy and Argentina. Brilén has a workforce of 266 and in 1996 generated turnover of ESP 6 059 million.
- (7) Brilén produces and processes polyester and, as part of its activities in the textiles sector, has two product lines: polyester textile filament yarn and PET/staple fibre. The raw material for the manufacture of these products is

⁽¹⁾ OJ C 199, 25.6.1998, p. 12.

supplied by the company's in-house polymerisation plant (32 000 tonnes per year). Its extrusion capacity for textile yarn of 19 370 tonnes per year determined the maximum combined output of the two end-products.

- (8) Output in 1994 was 7 554 tonnes of filament yarn and 6 546 tonnes of PET/staple fibre, i.e. an extrusion capacity utilisation rate of 73 %.
- (9) [...] (*)
- (10) Given the obsolescence of its production technology and the poor health of the market in staple fibre, a business plan was implemented over the period 1992-96 in order to bring production into line with new market requirements. Consequently, the PET/staple production line was dismantled and the company focused on the production of filament yarn. Total production of filament yarn before the Investment (1997) was 9 987 tonnes, i.e. 52 % of total extrusion capacity.
- (11) The polyester filament yarn line produces continuous filament yarn presented in cops; spin-draw yarn (SDY) presented in bobbins; draw-winder yarn (DWY) presented in bobbins; pre-oriented yarn (POY) presented in bobbins; and warped and sized yarn presented in beams. The market for the intermediate products manufactured by Brilén is the textiles industry, including the garment, hosiery and decoration sectors.
- (12) The company exports about 30 % of its output to other Member States and about 5 % to the rest of the world, a pattern which is not expected to change significantly after the completion of the project.
- (13) The Spanish authorities stressed that the company acts as a major driving-force in the regional economy, both through its own business activity and through the indirect employment it generates.

The project

- (14) The Spanish authorities stated that the investment project was to be carried out between 1997 and 1998 and would relate exclusively to the technological rationalisation and upgrading of the polyester yarn production plant. While polymerisation capacity was to remain the same (32 000 tonnes), extrusion capacity for continuous filament yarn would increase from 9 500 tonnes per year to 11 500 tonnes, with an equivalent reduction in PET/flock production from 22 500 tonnes to 20 500 tonnes. Nominal textile yarn production capacity was to remain unchanged at 19 370 tonnes per year. Thus, after the project, the capacity utilisation rate was expected to be 59 %.
- (15) According to the Spanish authorities, the combined capacity for these products will not change following the investment. Instead there will be a reorientation of production with a switch from staple fibre, for which the prospects are disappointing owing to the evolution

of customers' quality and cost requirements, to polyester textile filament yarn, for which the market prospects are more promising.

- (16) The investment is to cover four areas of production and concerns chiefly the purchase of new machinery, including a spinning line to produce spun dyed yarn, a draw winder draw-twisters and draw-warping lines. It will also include construction works and other ancillary installations, including electricity, steam, compressed air, air conditioning, internal transport, control equipment and safety systems. The company's intention is to opt for a new technology which allows a high degree of intermingling of the yarn filaments. This will improve the company's competitiveness and reduce pollution in the subsequent texturing processes. The company will thus be able to increase its market share in polyester yarn in its different presentations (bobbins, cops and beams) by entering the medium-high price markets. The project will begin to reverse the effects of the policy of abandonment and disinvestment in this sector in Spain which the main European producers have been pursuing over the last decade, in favour of their own domestic plants. As a result of the project 25 new jobs will be created.
- (17) While 40 % of the planned investment will relate to activities falling outside the scope of the Code on aid to the synthetic fibres industry⁽¹⁾ (the Synthetic Fibres Code), the scope and provisions of which have periodically been amended, most recently in 1999⁽²⁾, namely the drawing, warping and sizing operations (i.e. these processes do not form part of the extrusion/texturisation process and are not integrated with such machinery), the remaining 60 % will relate to the spinning area of production and therefore falls within the scope of the Synthetic Fibres Code.
- (18) As far as external trade is concerned, it is expected that after the investment the company will increase its exports, particularly to non-member countries.
- (19) The Spanish authorities stated that the total eligible investment costs amounted to ESP 2 012 million (EUR 12,09 million) and that the proposed aid was ESP 201,2 million (EUR 1,21 million), with an aid intensity of 10 %. The aid was to be awarded under the approved regional economic incentives scheme⁽³⁾. The legal basis was Law No 50/1985 of 27 December 1985 (Law on regional incentives to correct economic imbalances between different parts of the country)⁽⁴⁾, Royal Decree No 1535/1987 of 11 December 1987⁽⁵⁾ (regulations implementing Law No 50/1985) and Royal Decrees Nos 491/1988 of 6 May 1988⁽⁶⁾ and 2486/1996 of 5 December 1996⁽⁷⁾ (definition of eligible area in Aragon). The aid was to be conditional on the maintenance of the 266 existing jobs and the creation of 25 new jobs.

⁽¹⁾ OJ C 94, 30.3.1996, p. 11.

⁽²⁾ OJ C 24, 29.1.1999, p. 18.

⁽³⁾ Commission notice published in OJ C 251, 29.9.1988, p. 4.

⁽⁴⁾ Spanish official gazette (BOE) No 3, 3.1.1986, p. 790.

⁽⁵⁾ BOE No 299, 15.12.1987, p. 36729.

⁽⁶⁾ BOE No 124, 24.5.1988, p. 15821.

⁽⁷⁾ BOE No 3, 3.1.1997, p. 89.

III. Comments by interested parties

(20) Comments were received from the International Rayon and Synthetic Fibres Committee (IRSFC) and from Brilén itself.

(21) The IRSFC stated that it was the representative body for the European man-made fibres industry, with its member companies accounting for 85 % of European Community production. It strongly supported full, rigorous and impartial implementation of the Synthetic Fibres Code. It stressed that, in the case concerned, the relevant product, in terms of the Synthetic Fibres Code, was polyester textile yarn and that the proposed aid was intended to assist an investment project which would increase Brilén's capacity for producing that fibre. It noted that, although Brilén's total production capacity for man-made fibres would remain below the levels of some years previously, the Code permitted only capacity for the relevant product to be taken into account. It stated that capacity utilisation for the relevant product in the EEA in 1996/97 averaged only 86 %, making it clear that the output of most producers was limited by demand rather than supply factors. Owing to the strong pressure from suppliers in Asia, it anticipated that imports from outside the EEA would maintain or even slightly increase their level and that structural overcapacity in this sector would continue at least until 2003.

(22) By letter dated 7 July 1998 Brilén submitted the following comments in response to the Commission's decision to initiate the procedure:

(23) Brilén did not agree with the Commission's statement that 'the company exports about 30 % of its output, a figure which is not expected to change significantly after the completion of the project.' The reality of the project was precisely the opposite: it was expected that the company would increase its exports, particularly to non-member countries, namely Argentina, Canada, the United States, Algeria and Israel.

(24) It did not agree that its investment project should be regarded as increasing its extrusion capacity. It stressed that there was no real increase in extrusion capacity, only a product substitution, namely a switch from standard staple fibre to specialised textile filament yarn. Between 1980 and 1994 the company had extrusion capacity of approximately 19 370 tonnes of fibre per year. Brilén was currently producing approximately 9 987 tonnes per year (96 dtex) of continuous filament, representing a capacity utilisation rate of only 52 %. After the polyester filament investment project, the company would produce 11 500 tonnes per year (100 dtex), increasing the capacity utilisation rate to 59 %.

(25) It did not agree with the statement that the aid requested by Brilén would distort competition within the EEA. The aid requested represented only 10 % of the planned investment and only 1,6 % of the cost of sales and therefore could not significantly influence the investment decision or the company's competitiveness. Moreover, the expansion of Brilén's production of polyester

textile filament yarn was not geared to the major commodities markets, in which there clearly existed excess capacity and which were not — and could not be — the target markets for a company of the size of Brilén.

(26) It disagreed with the treatment of Brilén as one of the large firms in the sector rather than as a small or medium-sized enterprise (SME), for the following reasons:

There were in fact four manufacturing plants that coexisted within Brilén:

- a plant producing polyester staple;
- a polyester yarn spinning plant;
- a warping and sizing plant;
- a plant producing preforms for bottles.

(27) Within each of these product ranges, Brilén would qualify as an SME on turnover and workforce criteria. As far as yarn production in particular was concerned, the company had a workforce directly employed of approximately 180 workers and a turnover (1997) of approximately ESP 4 000 million (EUR 24,04 million). Furthermore, the Samca group to which Brilén belonged did not have any other interests or own any other companies in the sector, which meant that, except from a financial standpoint, the company was isolated industrially.

(28) Brilén's production accounted for only 5,5 % of the estimated total demand for polyester filament yarn in western Europe, which stood at 174 000 tonnes in 1997. The proposed increase in polyester filament yarn capacity thus represented merely 1 % of demand in western Europe.

(29) It disagreed with the claim that there was no shortage of supply, for the following reasons:

According to consultants PCI, the forecast for supply was that 'from 1998 onwards the market for polyester filament yarn will grow sharply and steadily until the year 2005'. It was expected that demand for polyester filament yarn would grow at a steady rate, while production capacity would stagnate.

It was acknowledged among companies in the sector that a large proportion of production capacity was obsolete.

Although surplus production capacity possibly existed on an aggregate basis, it was a fact that Brilén had since 1996 been facing excess demand for the products it manufactures and sells. It therefore doubted whether it was proper to apply a calculation based on the total supply of all products and total demand for each product to the analysis of the appropriateness of an investment by a company of the size of Brilén. It argued that the analysis of the appropriateness of the aid should focus on the real state of Brilén's business broken down by product rather than an aggregate data, in view of the company's small size.

The Intrastat statistics showed that Spain's trade balance for 1997 was in deficit to the tune of over 12 000 tonnes per year, corresponding to the volume of imports from non-member countries; a similar picture emerged if the situation was examined at Community level.

IV. Comments by Spain

- (30) By letter dated 10 June 1998, the Spanish authorities essentially reiterated the views expressed by Brilén in the course of the procedure, adding that the proposed aid, with an intensity of 10 % (gross), amounted to less than half of the regional aid ceiling, which for the Aragon Economic Development Area is 20 % net gram equivalent.

V. Assessment of the aid

- (31) The Commission must first determine whether or not the measure under examination constitutes State aid within the meaning of Article 87(1) of the Treaty. In the light of the information available the Commission's assessment is as follows:
- (32) Article 87(1) of the Treaty lays down the principle that, except where otherwise allowable, aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. Similarly, Article 61(1) of the EEA Agreement states that, except where otherwise allowable, such aid is incompatible with the functioning of the Agreement.
- (33) The proposal to award aid to Brilén undoubtedly falls within the scope of Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement as it would allow the company to carry out the investment in question without having to bear the full cost. The product which would be supported by the aid is polyester filament yarn falling under Combined Nomenclature (CN) codes 5402 42 00, 5402 43 10 and 5402 43 90. Since there is significant intra-EEA trade in these products (approximately 48 000 tonnes in 1997) the proposed aid would be likely to distort competition and affect trade within the meaning of Article 87(1) of the Treaty and Article 61(1) of the EEA Agreement.
- (34) Having established that the proposed aid to Brilén constitutes state aid, the Commission must decide whether or not it is incompatible with the common market.
- (35) The exceptions to that principle set out in Article 87(2) of the Treaty do not apply to the case in point, given the nature and objectives of the aid.

- (36) As far as the exception provided for by Article 87(3)(b) is concerned, the aid is clearly not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the Spanish economy. Nor has the Spanish Government attempted to justify the aid on such grounds.

- (37) As regards the exception provided for by Article 87(3)(d) of the Treaty, the aid is clearly not intended to promote culture and heritage conservation.

- (38) With regard to the exceptions provided for in Article 87(3)(a) and (c) for aid that promotes or facilitates the development of certain areas, the Commission notes that the region in which Brilén is located is eligible for regional aid pursuant to Article 87(3)(c). The exception provided in Article 87(3)(c) of the Treaty is for aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

- (39) The Barbastro area is eligible for regional aid under Article 87(3)(c) of the Treaty. In that particular area, the regional incentives scheme approved by the Commission decision ⁽¹⁾, as subsequently amended ⁽²⁾, allows a maximum aid intensity of 20 % of the eligible investment. Aid is granted for investment in new fixed assets and is conditional on the maintenance of existing jobs. Furthermore, in accordance with the guidelines on national regional aid ⁽³⁾, an exception to the incompatibility principle established by Article 87(1) of the Treaty may be granted in respect of regional aid only if the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed.

- (40) In the case in point, the investment chiefly entails the purchase of new machinery and the construction of buildings and ancillary installations. The aim is to introduce new technology which will improve productivity and efficiency while reducing pollution levels. Grant of the aid is conditional on the company safeguarding the existing 266 jobs and creating 25 new ones. The investment in question may therefore facilitate the development of the Barbastro area. The intensity (10 %) and other aspects of the proposal to award aid under the regional incentives scheme in the form of a grant of ESP 201,2 million (EUR 1,21 million) towards an investment of ESP 2012 million (EUR 12,09 million) are in accordance with the terms on which the regional incentives scheme was approved by the Commission.

⁽¹⁾ Commission notice published in OJ C 251, 29.9.1988, p. 4.

⁽²⁾ OJ C 25, 31.1.1996, p. 3.

⁽³⁾ OJ C 74, 10.3.1998, p. 9.

- (41) However, the effects of regional aid on the synthetic fibres industry have to be controlled, even for the least developed areas of the Community. The conditions under which aid may be awarded to synthetic fibres producers have since 1977 been regulated by the Synthetic Fibres Code.
- (42) As Brilén is a producer of synthetic fibres and as the aid in question relates to the upgrading of a polyester yarn production plant, it could only be considered compatible with the common market if it was also in line with the Synthetic Fibres Code.
- (43) The Code requires the notification of any proposal to award aid to synthetic fibres producers in whatever form, irrespective of whether or not the Commission has authorised the scheme concerned and unless the aid would satisfy the *de minimis* ⁽¹⁾ criterion, where the aid would be awarded by way of direct support for:
- extrusion/texturisation of all generic types of fibre and yarn based on polyester, polyamide, acrylic or polypropylene, irrespective of their end-uses, or
 - polymerisation (including polycondensation) where it is integrated with extrusion in terms of the machinery used, or
 - any ancillary process linked to the contemporaneous installation of extrusion/texturisation capacity by the prospective beneficiary or by another company in the group to which it belongs and which, in the specific business activity concerned, is normally integrated with such capacity in terms of the machinery used.
- (44) The Code sets out in detail the criteria to be applied when the Commission scrutinises proposals falling within its scope. It states, among other things, that in assessing the compatibility of the proposed aid the fundamental consideration is the effect of that aid on the markets for the relevant products, namely the fibre/yarn whose production would be supported by the aid. Under the Code, investment aid will only be authorised:
- (a) for larger firms, that is, firms that are not SMEs, at up to 50 % of the applicable aid ceiling:
- if the aid would result in a significant reduction in the relevant capacity, or
 - if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity,
- (b) for SMEs, at up to 75 % of the applicable aid ceiling if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity,
- (c) for SMEs, at up to 100 % of the applicable aid ceiling:
- if the aid would result in a significant reduction in the relevant capacity, or
 - if the market for the relevant products was characterised by a structural shortage of supply and the aid would not result in a significant increase in the relevant capacity and the relevant products were innovative.
- (45) Contrary to the position taken by the Spanish authorities and the company, Brilén cannot be considered under the State aid rules to qualify as an SME. The definition laid down in the relevant Commission Recommendation ⁽²⁾ does not allow the size of a company to be determined on the basis of sectors or subsectors of its activity. In any event Brilén does not meet the independence criterion, being a subsidiary of the Samca group. Consequently, the criteria for investment aid to larger firms are applicable.
- (46) According to the notification, 40 % of the eligible cost of the investment relates to activities falling outside the scope of the Synthetic Fibres Code, namely the drawing, warping and sizing operations (i.e. these processes do not form part of the extrusion/texturisation process and are not integrated with such machinery), while the remaining 60 % relates to the extrusion area of production and therefore falls within the scope of the Code. Since the project is for investment in new fixed assets, the risk of diversion of aid between activities covered by the Code and activities outside its scope is necessarily extremely small. The Commission is therefore able to accept, in the same proportion, that 60 % of the proposed aid would be awarded in direct support for the extrusion of one of the generic types of synthetic fibre falling within the scope of control of the Code, namely polyester textile filament yarn, while the remaining 40 % of the proposed aid would be granted under a scheme approved by the Commission but falling outside the scope of the Code.
- (47) As regards the 60 % of the proposed aid which falls within the scope of the Synthetic Fibres Code, the Commission cannot accept the Spanish authorities' assertion that there will be no 'overall' increase in extrusion capacity, since what matters is the extrusion capacity for the individual fibres and yarns covered by the Code in view of their different markets. The extrusion capacity for polyester yarn was 9 500 tonnes per year prior to commencement of the project and will be 11 500 tonnes per year after its completion. Therefore, as the company itself acknowledges, the investment will give rise to an increase of 21 % in extrusion capacity for the relevant yarn.

⁽¹⁾ OJ C 68, 6.3.1996, p. 9.

⁽²⁾ OJ L 107, 30.4.1996, p. 4.

- (48) Even though capacity utilisation rates in this sector at EEA level have improved in recent years, they have remained on average rather unsatisfactory and have increased only through rationalisation. The capacity utilisation rate for polyester filament yarn within the EEA was, as the Commission pointed out in its Decision to initiate the procedure, approximately 74 % in 1994, 78 % in 1995 and 82 % in 1996. The Spanish authorities have not challenged these figures. Although capacity utilisation rose to 89 % in 1997, draft figures for 1998 show a utilisation rate of 84 %. According to the Code, the capacity utilisation rate for production of the relevant fibre or yarn, averaged on an annual basis over the previous two years, would be expected to be at least 90 % if there were a structural shortage of supply. Consequently, there does not appear to be a structural shortage of supply in the relevant market, i.e. the market in polyester filament yarn.
- (49) Although, according to available data, consumption of textured polyester fibre within the EEA did increase from 458 000 tonnes in 1995 to 569 000 tonnes in 1997 and imports from outside the EEA rose from 68 000 tonnes to 104 000 tonnes over the same period, the trend would appear to be chiefly the result of strong pressure from suppliers in Asia, where excess capacity is huge and rising, rather than supply factors within the EEA.
- (50) Furthermore, the company points out that the aid requested amounts to only 10 % of the planned investment and represents only 1,6 % of the cost of sales, so that it cannot be regarded as significantly influencing the investment decision.
- (51) The remaining 40 % of the proposed aid relates to processes, namely drawing, warping and sizing operations, that do not form part of the extrusion/texturisation process and are not integrated with such machinery. It therefore falls outside the scope of the Synthetic Fibres Code. As a result of the proportional calculation applied, the aid intensity of 10 % remains unchanged. The investment linked to the aid is for the purchase of new fixed assets and, in any event, the creation of 25 new jobs appears to be ensured in as much as, according to the company, the amount of the aid granted will not perceptibly influence the investment decision as a whole. It consequently satisfies the conditions on which the abovementioned regional incentives scheme was approved by the Commission.

VI. Conclusions

- (52) Brilén is a larger firm producing synthetic fibres that fall within the scope of the Synthetic Fibres Code. 60 % of the notified aid would be awarded in direct support for the extrusion of one of the generic types of synthetic fibre and would lead to an increase in production

capacity for the relevant fibre of 21 %. The capacity utilisation rates for polyester filament yarn within the EEA have in recent years remained on average below the 90 % level. Consequently, there does not appear to be a structural shortage of supply in the relevant market as defined by the Code.

- (53) Accordingly, the Commission finds that the part of proposed aid to Brilén falling within the scope of the Synthetic Fibres Code and amounting to ESP 120 720 000 (EUR 725 541,81) cannot be considered compatible with the Code and is therefore incompatible with the common market and the functioning of the EEA Agreement.
- (54) On the other hand, the Commission does not raise objections in respect of that part of the aid, amounting to ESP 80 480 000 (EUR 483 694,54), which falls within a Commission-approved scheme but outside the scope of the Code,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 725 541,81 which Spain is planning to implement in favour of Brilén SA is incompatible with the common market.

This aid may accordingly not be implemented.

Article 2

The State aid amounting to EUR 483 694,54 which Spain is planning to implement in favour of Brilén SA is compatible with the common market in accordance with Article 87(1) of the Treaty.

Implementation of this aid is accordingly authorised.

Article 3

Spain shall inform the Commission, within two months following notification of this Decision, of the measures taken to comply with it.

Article 4

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 1 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission