

COMMISSION DECISION
of 18 July 2001
on the training aid granted by Belgium to Sabena
(notified under document number C(2001) 2350)
(Only the Dutch and French texts are authentic)
(Text with EEA relevance)
(2001/698/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, 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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provisions cited above ⁽²⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 5 August 1997, Belgium notified the Commission of a training aid scheme (hereinafter referred to as the 'scheme') for Sabena. It furnished the Commission with supplementary information by letters dated 29 September 1997, 2 December 1997, 18 January 1999, 24 March 1999 and 26 May 1999. *Inter alia*, this information showed that the scheme had already started on 18 November 1997.
- (2) By letter dated 25 October 1999, the Commission informed Belgium of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of this aid. Belgium replied by letter of 26 November 1999, submitting its comments.

- (3) The Commission decision to initiate the procedure was also published in the *Official Journal of the European Communities* ⁽³⁾. The Commission called on interested parties to submit their comments.

- (4) The Commission has received comments from interested parties. On 27 March 2000, it transmitted them to Belgium, which has had the opportunity to react. No comments were received from Belgium.

II. DETAILED DESCRIPTION OF THE AID

- (5) The scheme was to run from 1 March 1997 to 31 December 1998. It concerned 522 employees from the airline, 122 of them from the 'Technics' department, 360 from the 'Cargo' department and 40 from the 'Commercial and maintenance' department:
 - in the 'Technics' department, replacing Boeing 737 and A310 aircraft with A330s, standardising the fleet with the Swissair and Austrian Airlines fleet, fully integrating electronics and computers and the increasing use of composite materials meant that personnel needed to be retrained and given more versatile skills,
 - in the 'Cargo' department, expanding the range of more directly client-centred tasks and reorganising activities as a result of the cooperation agreement with Swissair Cargo meant that personnel skills had to be more versatile and basic qualifications reviewed,
 - In the 'Commercial and maintenance' department, a proportion of the personnel were to be transferred to more complex duties (sales staff, cabin crew, check-in staff), again requiring greater versatility.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1.

⁽²⁾ OJ C 351, 4.12.1999, p. 12.

⁽³⁾ See footnote 2.

- (6) The training was organised and funded by the Flemish Employment and Placement Service, Vlaamse Dienst voor Arbeidsbemiddeling en Beroepsopleiding (VDAB). All training was carried out by Sabena's technical and training departments at Brussels National Airport, except for computer, language, communication and social training courses which were held at VDAB premises.
- (7) The scheme cost a total of BEF 64 116 000 (EUR 1 589 000 million), comprising BEF 46 538 790 in 1997 and BEF 17 578 352 in 1998. These costs break down as follows:

	1997	1998
— Expenses for trainers' personnel	11 537 856	7 650 000
— Trainers' and trainees' travel expenses	0	0
— Other current expenses (materials, supplies, etc.)	0	0
— Depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question	0	0
— Cost of guidance and counselling services with regard to the training project	0	0
— Trainees' personnel costs, considering only the hours during which the trainees effectively participated in the training, after deduction of any productive hours or of their equivalent	34 650 934	9 578 352
— Other costs related to the scheme	350 000	350 000
Total cost of the scheme	46 538 790	17 578 352

- (8) The financing schedule provided for contributions from the European Social Fund under Objective 4 of 25,31 % in 1997 and 29,65 % in 1998. The breakdown for the years 1997 and 1998 is as follows:

	1997	1998
— Funding from the European Union (ESF)	11 777 560	5 213 040
— Funding from the Flemish Region (VDAB)	4 532 824	0
— Funding from other public bodies:		
— Sabena sectoral fund for at-risk groups	1 162 000	0
— Paid training leave	6 082 736	5 213 040
Total public funding	23 555 120	10 426 080
— Funding from the Sabena airline	22 983 670	7 152 272
— Funding from other private sources	0	0
Total private funding	22 983 670	7 152 272
Total funding	46 538 790	17 578 352

- (9) In their letter of 26 May 1999, however, the Belgian authorities pointed out that the actual expenditure for 1997 had been less than initially anticipated because there had been delays in carrying out the scheme and a number of training courses had been postponed until 1998.
- (10) The main reason for the Commission decision to initiate the procedure laid down in Article 88(2) of the EC Treaty were that the measure in question was State aid within the meaning of the provisions of Article 87(1) of the EC Treaty, in that it provided for a contribution of public funding to an undertaking, affected trade between Member States and was likely to distort competition. Moreover, the measure was not covered by the exemptions laid down in Article 87(2) and (3) of the EC Treaty since the total public funding awarded exceeded the intensity threshold for State aid for training which the Commission could accept.

III. COMMENTS FROM BELGIUM AND OTHER INTERESTED PARTIES

- (11) In their reply dated 26 November 1999, the Belgian authorities pointed out first of all that the actual expenses in 1997 were much less than anticipated and that the aid from the European Social Fund was not paid in the absence of European Commission authorisation relating to competition factors. According to the Belgian authorities, the final figures for the actual total costs for the scheme and the financing schedule for the scheme for 1997 were as follows:

Expenses for trainers personnel	5 800 118
Travel expenses (trainers and trainees)	0
Other current expenses	0
Depreciation of tools and equipment	0
Consultants	0
Trainees' personnel costs	7 065 847
Other expenses (administrative staff and coordination)	290 351
Total cost of the scheme	13 156 316
ESF (European Social Fund)	2 509 550
VDAB (Flemish Employment and Placement Service)	1 246 319
Other bodies:	
— Sabena Sect. Fund — at risk groups	253 170
— Paid training leave	1 010 061
Total public sector funding	2 509 550
Sabena	8 137 216
Other private sources	0
Total private sector funding	8 137 216
Total funding	13 156 316

- (12) The Belgian authorities added that the sum of BEF 1 010 061 paid under the paid training leave system, comprising BEF 674 594 to cover loss of wages and BEF 335 467 to cover employers' social security contributions, was not in fact State aid but rather a general measure applied without any margin of discretion throughout Belgian territory. They therefore concluded that the State aid for 1997 should total BEF 3 289 079 since the maximum intensity of aid should not exceed the 25 % rate. Since the Belgian authorities had contributed BEF 1 499 489, the European Social Fund contribution ought to be limited to BEF 1 789 590 in 1997.
- (13) For 1998, the Belgian authorities specify that no aid was granted by the European Social Fund to carry out the scheme, and that the VDAB nonetheless contributed BEF 10 000.
- (14) The SAS and Lufthansa airlines submitted comments as interested parties. Both parties made the point that Sabena was one of their main competitors in Europe and that the aid granted by the Flemish Region distorted competition. They therefore asked the Commission to find the aid incompatible with the common market. Lufthansa further pointed out that Sabena had received a considerable injection of State aid in 1991 and invoked the 'one time-last time' rule to justify the rejection of any further aid.

IV. ASSESSMENT OF THE AID

- (15) Under the terms of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is incompatible with the common market and with the Agreement insofar as it affects trade between Member States and between the Contracting Parties.
- (16) The share of the funding borne by the VDAB and other Belgian public bodies for 1997 and 1998 should be assessed in the light of the above provisions.
- (17) 'State aid', within the meaning of the above provisions, is taken to mean the aid granted by the central, regional or local authorities of a Member State or by the public or private bodies set up or appointed to administer such aid ⁽⁴⁾. In this case, there is no doubt but that the VDAB and other Belgian public bodies contributing to the funding of the scheme were set up to administer the aid for vocational training from the Flemish Region or the Belgian State.
- (18) In other respects, the measures to fund the scheme affect trade between the Member States as soon as they benefit a company whose air transport activities, which are such as to have a direct impact on trade, cover the majority of EEA Member States. This is particularly the case since Council Regulations (EEC) No 2407/92 ⁽⁵⁾, (EEC) No 2408/92 ⁽⁶⁾ and (EEC) No 2409/92 ⁽⁷⁾ (the 'Third Air Package') liberalising the Community civil aviation market came into force on 1 January 1993. Moreover, such public funding distorts competition since it is granted to just one undertaking which is in direct competition with other Community airlines within the common market.

⁽⁴⁾ See the Judgment of the Court of Justice in Case 78/76, *Steinike and Weinlig v the Federal Republic of Germany*, of 22 March 1977, [1977] ECR, p. 596, paragraph 21.

⁽⁵⁾ OJ L 240, 24.8.1992, p. 1.

⁽⁶⁾ OJ L 240, 24.8.1992, p. 8.

⁽⁷⁾ OJ L 240, 24.8.1992, p. 15.

- (19) In addition, the training scheme did not qualify as a 'general measure' since it had been set up by a specific region within a Member State and the Flemish Region and the VDAB have some power of discretion in selecting the companies which are to receive funding for training schemes of this type⁽⁸⁾. Indeed, according to the information provided by the Belgian authorities, in the case in point, the public funding of the vocational training was conditional upon Sabena's first being recognised by the Flemish Region as a 'firm in difficulty' pursuant to Article 4 of the Flemish ministerial decree of 14 February 1994⁽⁹⁾. Such recognition, implying that the VDAB management committee was consulted in advance, is by no means automatic, as the Belgian authorities pointed out in their letter to the Commission of 24 March 1999. Furthermore, not all undertakings recognised as firms in difficulty receive public funding for their training schemes in exactly the same conditions because, as the Belgian authorities specified in their letter of 26 May 1999, in Flanders there is no automatic link between recognised status as a 'firm in difficulty' and the award of aid for training.
- (20) In these circumstances, the funding of the scheme by the VDAB and other Belgian public bodies under the Sabena sectoral fund for at-risk groups, with the exception of contributions to cover paid training leave, is indeed State aid within the meaning of Article 87(1) of the EC Treaty and Article 61(1) of the EEA Agreement.
- (21) This does not apply, however, to that part of the funding for the scheme used to cover paid training leave. The paid training leave system, as the Belgian authorities make clear in their reply dated 26 November 1999, is a general system applied in all sectors of the economy throughout Belgian territory, entitling employees wishing, on their own personal initiative, to undertake specific training, either during or outside normal working hours, to receive time credit. All applications give automatic access to paid training leave and the competent authorities, in this case the Federal Ministry of Employment and Labour, have no discretionary power in this respect. Consequently, the Belgian paid training leave system must be regarded as a general measure and the amounts paid in this context are not therefore State aid within the meaning of the provisions.
- (22) By starting the training scheme notified before the Commission gave a decision, the Belgian Government has failed to fulfil its obligations under Article 88(3) of the EC Treaty.
- (23) It is therefore necessary to examine the compatibility of this aid with Article 87(2) and (3) of the EC Treaty and Article 61 of the EEA Agreement. In this respect, contrary to the argument put forward by the airline Lufthansa in its comments as an interested party, the fact that Sabena had received aid for restructuring in 1991 is no obstacle to its being covered by one of the relevant exemptions provided for in Article 87(2) and (3) especially as the 'one time last time' rule, in any case, applies only to aid for restructuring.
- (24) The provisions of Article 87(2)(a), (b) and (c), of the EC Treaty and Article 61(2)(a), (b) and (c) of the EEA Agreement are not applicable in this case.
- (25) Article 87(3)(a) and (c) of the EC Treaty and Article 61(3)(a) and (c) of the EEA Agreement lay down exemptions for aid intended to promote or facilitate the development of certain areas. The aid in question is not covered by these provisions since the Zaventem municipality, which is the location of the training scheme in question, is not eligible for regional aid.

⁽⁸⁾ See the Judgment of the Court of Justice in Case C-241/94, *French Republic v Commission of the European Communities* ('Kimberly Clark'), of September 1996, [1996] ECR I-4551.

⁽⁹⁾ *Moniteur belge*, 27.4.1994, p. 11211.

- (26) In addition, the provisions of Article 87(3)(b) and (d) of the EC Treaty and Article 61 of the EEA Agreement are not applicable in the case in point, since the measure in question does not seek to promote the execution of a project of European interest, to remedy a serious disturbance in the economy of a Member State, or to promote culture and heritage conservation.
- (27) There may, however, in the case in point be grounds to apply the exemption provided for in Article 87(3)(c) of the EC Treaty and in Article 61(3)(c) of the EEA Agreement for aid to facilitate the development of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, since this is the exemption which the Commission uses as a basis to authorise aid for vocational training, subject to certain limits and certain conditions.
- (28) In the letter sent to the Belgian authorities on 25 October 1999 to inform them of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty, the Commission announced that it intended to apply the 'Framework on training aid' of November 1998 ⁽¹⁰⁾. Since then, the Framework has been superseded by Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽¹¹⁾. In the case in point, however, the applicable rules are identical, and so it makes no difference whether the November 1998 Framework or Regulation (EC) No 68/2001 is applied.
- (29) This approach is advantageous to the scheme notified since the legal framework prior to 1998 excluded the option of exemptions for training aid under Articles 87(3)(c) of the EC Treaty and Article 61(3)(c) of the Agreement. Chapter V.2 of the Commission communication concerning the application of ex-Articles 92 and 93 of the EC Treaty and of Article 61 of the EEA Agreement to State aid in the aviation sector, published in December 1994, restricted the scope of this exemption to State aid for restructuring ⁽¹²⁾. The provisions of the communication of December 1994 on aid for training must be read in the light of the Framework on training aid of November 1998 and Regulation (EC) No 68/2001.
- (30) The Framework applies to the air transport sector, as is explicitly stated therein (point 18 of the Framework). Moreover, the funding in question qualifies for the exemption laid down in the Framework since the measures are designed to help the firm's workforce to adapt to structural or technological change (point 5 of the Framework) and the training is provided by Sabena itself or by the VDAB, a public training centre (point 19 of the Framework).
- (31) The amount of public funding granted as aid must not, however, exceed the threshold for the intensity of aid which may be accepted by the Commission. The admissible intensity for the scheme is 25 % given that it is a specific training scheme for a large firm outside an assisted area (point 32 of the Framework). Moreover, the eligible costs are clearly defined in point 30 of the Framework, as follows:
1. expenses for trainers' personnel;
 2. trainers' and trainees' travel expenses;
 3. other current expenses (materials, supplies, etc.);
 4. depreciation of tools and equipment, to the extent that they are used exclusively for the training scheme in question;
 5. cost of guidance and counselling services associated with the training project;
 6. trainees' personnel costs up to the amount of the total of the other eligible costs referred to in (1) to (5). Under trainees' personnel costs only the hours during which the trainees actually took part in the training, after deduction of any productive hours or of their equivalent, may be taken into account.

⁽¹⁰⁾ OJ C 343, 11.11.1998, p. 10.

⁽¹¹⁾ OJ L 10, 13.1.2001, p. 20.

⁽¹²⁾ OJ C 350, 10.12.1994, p. 5.

In this case, the eligible costs are equivalent to the total of the expenses for trainers' personnel plus the trainees' personnel costs up to the limits of the expenses for trainers' personnel since the other eligible costs (travel expenses, other current expenses, depreciation, counselling services) are zero. The eligible costs thus total BEF 11 600 236 for 1997, on the basis of the information provided by the Belgian authorities in their letter of 26 November 1999, and BEF 15 300 000 for 1998, according to the information notified by the Belgian authorities, making a total of BEF 26 900 236 in eligible costs for both years. Consequently, the maximum amount of public funding that can be granted to the scheme as aid totals BEF 6 725 059, with an admissible intensity of 25 %. However, the information notified by the Belgian authorities and given in their letter dated 26 November 1999 showed that the public funding of the scheme through aid actually totalled BEF 4 019 039. This included a limited ESF contribution of BEF 2 509 550 for 1997, a zero ESF contribution for 1998, limited contributions of BEF 1 246 319 from the VDAB and BEF 253 170 from the Sabena Sectoral Fund in 1997, a VDAB contribution of BEF 10 000 in 1998 and took account of the fact, mentioned above, that the funding for paid training leave did not qualify as State aid. In these circumstances, the Commission has no objections to the funding of the scheme, which can benefit from the exemption for training aid laid down in Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

V. CONCLUSIONS

- (32) The Commission notes that Belgium contravened Article 88(3) of the EC Treaty by illegally implementing a training aid scheme for Sabena notified to the Commission on 5 August 1997. However, in consideration of the changes to the financing schedule notified by Belgium in its letter dated 26 November 1999, the Commission is of the opinion that the scheme is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid for training awarded to Sabena as notified to the Commission on 5 August 1997 and implemented by Belgium as outlined in its letter dated 26 November 1999, is compatible with the common market within the meaning of Article 87(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement.

Article 2

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 18 July 2001.

For the Commission
Loyola DE PALACIO
Vice-President
