STATE AIDS (BUSINESS CENTRES): THE BELGIAN TAX CASE

Subject:	State aids Procedure
Industry:	Business Centres
Parties:	Commission of the European Communities Council of the European Communities Belgium
Source:	Commission Statement IP/03/1032, dated 16 July 2003

(Note. There is usually a certain interest in cases in which one European Community institution takes legal proceedings against another. In the present case, the Commission is proposing to take the Council to court in connection with a case involving the compatibility of Belgian state aid to coordination or business centers. The Commission's case is that, in matters of state aid, the Council's role under the Treaty is restricted. The Council may act before the Commission investigates a case, or while Commission inquiries are in progress, but not after the investigation is complete and a decision has been taken; and, in this instance, the Commission had taken the decision in February of this year. The decision ran counter to the Belgian tax scheme; but, in addition to seeking a Court order of annulment of the Commission's decision, Belgium also "appealed" – successfully – to the Council. The Court will presumably have to rule on the substance of the matter when hearing Belgium's application and on the question of jurisdiction when hearing the Commission's application.)

The Commission has decided to bring an action before the Court of Justice seeking the annulment of the Council decision which authorised Belgium to renew the application of a preferential tax scheme to certain coordination centres whose approval was to expire before the end of 2005. The Council took this decision on 16 July; the Commission considers that the Council's decision is unlawful, because it came after a final decision taken by the Commission on 17 February. In general only the Commission has power to rule on the compatibility of state aid with the Treaty. In matters of state aid the Council's role under the Treaty is restricted. The Council may act before the Commission investigates a case, or while Commission inquiries are in progress, but not after the investigation is complete and a decision has been taken. For the Council to take a decision on a case that the Commission has already decided upsets the institutional balance of powers laid down in the Treaty. It also casts doubt on the integrity and effectiveness of the system of control of state aid. The Commission has therefore decided to bring the matter before the Court, as it did in similar circumstances in March 2002, when the Council allowed Portugal to grant aid to pig farmers.

On 11 November 1998 the Commission adopted a notice on the application of the state aid rules to measures relating to direct business taxation, and on 11 July 2001 it launched a wide-ranging inquiry into 15 tax schemes, one of which was the Belgian coordination centres scheme. On 17 February 2003, after thorough investigation, the Commission decided that the tax arrangements applying to coordination centres were incompatible with the rules on state aid.

As a transitional measure the Commission authorised coordination centres to continue their activities until the expiry of the approval they had been granted by the tax authorities. But it prohibited any renewal of approvals that had run their course. The Council decision on coordination centres overturns the Commission decision. The Commission will argue in Court that, by taking this decision, the Council is infringing the Treaty, which does not empower it to change state aid decisions already adopted by the Commission.

The scheme had previously been approved twice, in 1984 and 1987; the Commission therefore acknowledged that the coordination centres had a legitimate expectation that the scheme was permissible, and it did not order that the aid already granted be recovered. It also authorised existing coordination centres to go on being assisted under the scheme until their approvals expired, and in any event no later than 31 December 2010. But it took the view that coordination centres whose approval expired in the ordinary way before that date were not entitled to renewal of the preferential tax scheme.

Belgium contested this point, and applied to the Council for authorisation to renew the arrangements under the third subparagraph of Article 88(2) of the Treaty. That provision empowers the Council to decide that an aid measure is to be considered compatible with the common market if such a decision is justified by exceptional circumstances. At its meeting on 16 July the Council granted Belgium's request.

When it made its application to the Council, Belgium also brought several actions before the Court, essentially seeking the annulment of the Commission's decision of 17 February. On 26 June, pending a judgment on the substance of the case, the President of the Court made an order suspending the Commission decision in so far as it prohibited the renewal of the scheme in the case of centres whose approval expired after 17 February.

The reasoning and indeed the wording of the President's order suggest that the aid granted on this basis will not be recoverable from the centres even if the Court should ultimately dismiss Belgium's action on the substance. ■

The Commission has decided to initiate a formal investigation concerning aid amounting to €178 million for a €219 million investment planned by car maker De Tomaso in Cutro (Calabria, Southern Italy). At this stage, the Commission has not been able to establish that the planned aid meets the criteria of the Community framework for state aid to the motor vehicle industry.