Commission approves aid for minimising chlorine transport

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The Commission has not laid down general rules on compatibility of State aid that has the objective to increase safety of citizens and their environment. This does not mean that such aid is always incompatible with the common market. The Commission's Decision of 16.6.04 approving a subsidy in favour of Akzo Nobel in order to ban structural chlorine transport in the Netherlands is an exceptional example.

Currently, Akzo Nobel, a large multinational company in the chemical sector, transports substantial quantities of chlorine within the Netherlands. This transport is done by train and crosses densely populated areas. Despite strict safety measures, chlorine transport is never completely free of risk and if an accident happens, this may have very serious consequences. The Dutch authorities estimated that an accident, in a worst-case scenario, may entail some 5 000 casualties.

The authorities and Akzo Nobel agreed on a solution that consists in relocating chlorine production and a mono-chlorine acetic acid plant from Hengelo to Delfzijl and investing in new chlorine production facilities in Rotterdam. This will bring chlorine production and demand in equilibrium in all three places. Limited transport will be necessary only in case of maintenance or other disruptions of the chlorine production process. The investment cost in Delfzijl is estimated at € 167 million. The investment cost in Rotterdam is estimated at some € 40 million. In order to realise the investments, the Dutch authorities agreed to grant a subsidy amounting to € 32.5 million.

There are no specific rules foreseen for aid to increase transport safety as in the case at hand. The Commission considered, however, that it is appropriate to make an analogy to the principles underlying the rules for aid for environmental protection. In accordance with Directive 96/49 concerning the transport of dangerous goods by rail, there is no prohibition of structural chlorine transport, and current chlorine transports in the Netherlands comply with all the safety standards foreseen in Community legislation, which nevertheless does not exclude the risk of an accident completely. In addition, in line with the Commission's Communication COM(2000) (1) on the precautionary principle of 2 February 2000, the Dutch authorities based the notified measure on various studies on the safety risks of chlorine transport prior to the conclusion of the covenant. Scientific studies on transport safety have been conducted as well for other hazardous substances, notably ammonia and LPG. The chosen measure has been carefully evaluated by the Dutch authorities in the light of a cost/benefit study that assessed various alternative measures to reduce the risk linked to chlorine transport. Other solutions that would have a lesser impact on the market do not appear to exist.

In its assessment in analogy to the principles underlying the environmental aid guidelines, the Commission took into account that the new investments will be located in an assisted area eligible for regional aid, but also that the new facilities will have a somewhat larger capacity than the old ones and that Akzo, if it would not invest in Delfzijl, would have had to stop chlorine production in Hengelo on the basis of mercury cell technology by 2010. Furthermore, the new technology has lower operating cost, but these are offset by, amongst others, high start-up cost. Taking all these aspects into account, the Commission has found the aid compatible with the common market.

The Dutch authorities will withdraw the environmental permit for the chlorine and MCA production in Hengelo. On the basis of the generally applicable rules Akzo will receive a € 31.7 million indemnification. This covers a part of the damage as estimated by an independent expert. The Commission concluded that this indemnification falls within the general system and therefore does not constitute State aid in the meaning of Article 87(1) of the Treaty.