COMMISSION DECISION

of 17 May 1982

concerning the subsidizing of interest rates on credits for exports from France to Greece after the accession of that country to the European Economic Community

(Only the French text is authentic)

(82/364/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 in accordance with the above Article to the parties concerned to submit their comments,

Whereas :

I

On 1 January 1981, Greece became a Member of the European Economic Community. As from that date, the Treaty rules on State aids are applicable to Greece and in trade relations between the Nine and that country. Before that date, when financing exports of capital goods to Greece, the Member States could apply the credit conditions agreed upon internationally in the 'Arrangement on guidelines for officially supported export credits' ('the consensus') to which the European Economic Community became a party when the Council on 4 April 1978 adopted a Decision to that effect. That Decision is based on Article 113 of the Treaty and concerns credits for exports to third countries.

The terms and interest rates agreed upon in the consensus vary according to the GNP per head of the recipient countries, which are divided accordingly into three categories : rich, intermediate and poor.

With the accession of Greece to the European Economic Community, which is a party to the consensus as such, Greece automatically changed its status from an 'intermediate' to a 'rich' country, to which slightly higher interest rates apply. Therefore all parties to the consensus had to notify the OECD, which acts as the secretariat for the consensus, prior commitments entered into in respect of export credit terms for sales of capital goods to Greece, the contracts for which were being negotiated and had not yet been concluded.

The position created by Greek accession was discussed several times [1] in the Policy Coordination Group for Credit Insurance, Credit Guarantees and Financial Credits ('Export Credit Insurance Group') of the Council whose competence is exclusively in the field of export credits in relation to third countries [2]. At the Group's meeting of 13 March 1980, Commission representatives explained that Article 92 of the Treaty would apply in relations to Greece as from 1 January 1981. No problems would arise as to transactions concluded and executed before that date. In respect of prior commitments in the form of offers made as part of the negotiations for contracts pending at the date of accession, one could imagine that the Commission, when assessing such cases, would apply a bona fide criterion.

At the meeting of the Export Credit Insurance Group on 11 November 1980 it became evident that, while two Member States had taken steps to ensure that there were no commitments beyond the deadline of 31 December 1980, other Member States had entered into prior commitments going beyond that date.

A compromise formula to the effect that Article 92 would not be formally implemented in respect of contracts signed before 28 February 1981 was envisaged but not pursued in view of the position of France, which considered this period too short. Finally, when the Group during its meeting on 11 December 1980 noted that differences of opinion which had arisen still subsisted, the Commission representative stated 'that the Commission's departments reserved the right, pursuant to Article 92 and Article 93 of the Treaty, to examine commitments concluded after 1 January 1981 on a case by case basis' [3].

When on 23 February 1981 the Government of the Federal Republic of Germany submitted to the Commission a request for a derogation in respect of contracts for an electricity generating station on the

[1] 5921/80, CCG 18 of 25 March 1980, 11248/80, CCG 56 of 17 November 1980.
[2] Mandate of the Group (OJ No 66, 27. 10. 1960, p. 1339/60).
[3] See 12461/80, CCG 75 of 16 December 1980.

grounds that the French Government was maintaining its offer of subsidized interest rates, the Commission concluded that such a derogation could not be granted in view of the fundamental principles of Community policy involved. This position was made known to the German Government (1) as well as to all other Member States (2) and included a warning that the Commission would use the full powers granted to it under the Treaty to enforce this position.

At a meeting of the Export Credit Insurance Group on 6 May 1981, the German delegate informed the meeting that France was continuing to maintain its subsidized credit offers in respect of the contracts on which the Commission had stated its position, as well as others. This was confirmed by the French delegate.

On 12 May 1981, therefore, the Commission decided to initiate the procedure under Article 93 (2) of the Treaty (3) in respect of the prior commitments entered into by the French Government and notified by it to the OECD secretariat with a stated date of expiry of 30 June 1981. In accordance with the relevant provisions, all Member States (4) and other interested parties (5) were asked to submit their comments.

II

In the comments which it submitted to the Commission, the French Government argued that, as the Commission was slow in adopting a clear position, the Member States had to take steps to safeguard their interests. As had been put forward by several delegations in the Council Group, it was the giving of the undertaking and not the conclusion of the contract which created the obligation in the credit insurance field; no practical solution had been found in the discussions of the Council Group with regard to the question of prior commitments.

The French Government argued further that, in accepting the principle of the existence of prior commitments in respect of Greece, the Commission acknowledged their conformity with the Treaty. In stating at the meeting of the Export Credit Insurance Group on 11 November 1980 that it might be prepared to deem prior commitments valid until 28 February 1981 in order to avoid a number of difficulties pointed out by the Member States, the Commission acknowledged that in the case of Greece transitional arrangements in the form of prior commitments were not incompatible with the Treaty.

The French Government was therefore of the opinion that, if the principle of prior commitments was admitted, the definition of the period of their validity was a question not of principle but of degree. Therefore it could be examined in the light of the practices generally applicable in the Member States in this field.

The French authorities had strictly observed general legal principles in advocating the alignment of the period of validity of their prior commitments on that of their guarantee undertakings, namely six months, which rank as a contractual commitment towards the insured; six months was also generally the period agreed to by all parties when the consensus was previously amended. A two months' period, quite apart from having little commercial significance, could therefore only be regarded as an arbitrary compromise.

The French Government finally argued that the Commission could not criticize the attempt to reach agreement on a reasonable transitional period and at the same time refuse to resolve, in a manner reflecting the wishes of the Member States, the problem of equal conditions of competition between exporters in the EEC and those of third countries.

Some Member States submitted their comments upholding the Commission's position. One Member State in particular pointed out that it was necessary that the Commission ensure that its position is respected and adopted by all Member States as otherwise very considerable distortion of competition between Member States would follow.

III

The Commission initiated the procedure under Article 93 (2) of the Treaty in respect of 121 prior commitments entered into by the French Government for credits at reduced interest rates for French sales to Greece with a stated date of expiry of 30 June 1981. Pursuant to Article 93 (3) of the EEC Treaty, the French Government cannot put the aid into operation until the Commission has given a final decision and, as far as the Commission is aware, it has not done so. The date at which the prior commitments expired has passed. However, the French Government, in its telex of 11 June 1981, maintained that it was entitled to continue offering credits at subsidized interest rates for sales to Greece after accession. Moreover, the grant of credits at reduced interest rates in trade between Member States continues to be an important matter. The Commission is of the opinion, therefore, that it is necessary to state in a negative decision pursuant to Article 93 (2) the incompatibility of these aids with the common market in spite of the fact that the stated date of expiry of the 121 prior commitments in respect of which the procedure was initiated has passed.

(1) Telex No 216134-IV of 16 March 1981 to the permanent representation of the Federal Republic of Germany.
(2) Telex No 217492-IV of 20 March 1981 to all other permanent representations.
(3) SEC(81) 753 of 12 May 1981.
(4) SG(81) D/6623; SG(81) D/6700.
(5) OJ No C 136, 5. 6. 1981, p. 2.

IV

Since Greece became a Member State of the European Communities, the aid provisions of the EEC Treaty apply to that country and in relations between Greece and the other Member States. A State aid which enables an undertaking in one Member State to offer goods at a price which is artificially lower than that offered by competitors from other Member States who do not benefit from an aid distorts competition by favouring certain undertakings or the production of certain goods and affects trade between Member States. It is incompatible, therefore, with the common market, pursuant to Article 92 (1) of the Treaty. An aid to reduce the rate of interest for a credit to finance the sale of goods produced in one Member State to be exported to another constitutes an export aid.

With regard to export aids applied in intra-Community trade, the Commission has always held the view that they are incompatible with the common market, pursuant to Article 92 (1) of the EEC Treaty, and cannot benefit from any of the derogations laid down in the third paragraph of that Article. This position was upheld by the European Court of Justice in the ruling in Joined Cases 6 and 11/69 (French preferential rediscount rate) and was reaffirmed on a number of occasions by the Commission ; when the Council adopted the consensus Decision, the Commission had a statement inserted in the Council minutes to the effect that :

> 'it has always regarded the export aid granted by the Member States in intra-Community trade as incompatible with the common market within the meaning of Article 92 of the EEC Treaty.
>
> The present Decision, which is based on Article 113 and concerns export credits to third countries, will in no way affect this situation. In particular, it cannot sanction aid by which the Member States would endeavour to allow their transactions with other Member States to enjoy the credit terms provided for in this Decision.
>
> The Commission in any case reserves the right to take the necessary steps under the powers conferred on it by Article 92 of the Treaty in order to abolish such aid where it still exists or to prohibit any new aids which the Member State intends to introduce.'

The date of the accession of Greece with all that this implied was known at least from 28 May 1979, the date when the Accession Treaty was signed. With regard to the State-aid rules, it had been officially noted in February 1977 (at the third session at Deputy level of the EC-Greece accession negotiations on 28 February 1977, CONF-GR/10/77) that Greece had not thought it necessary to ask for specific adjustment or transitional measures with regard to the aid rules contained in the EEC Treaty and that these rules would be applied to Greece forthwith after accession. No Member State had made known any reservation as to this. Furthermore, the Commission had made clear its position at the Export Credit Insurance Group's meeting of 13 March 1980. Therefore, the French argument that the Commission was late in defining its position is not pertinent. The French Government had ample time to take the necessary steps to ensure that its competent authorities did not act in a manner contrary to the Commission's position and enter into contractual engagements beyond the date of Greek accession concerning sales to Greece. Other Member States did not have difficulties in doing so.

The Commission's position of principle was not changed by the fact that a transitional period of two months was envisaged in November 1980 which, in fact, was a period of more than three months from the date of the meeting. That period of time, during which the Commission would not necessarily intervene, was to permit the official credit insurers of the Member States to make the necessary adjustments.

It must also be pointed out that the competence of the Council Export Credit Insurance Group is restricted to problems concerned with coordinating the activities of Member States in their dealings with third countries, and that the application of the Treaty's State-aid rules lies solely within the competence of the Commission.

The fact that the Member States of the European Communities have entered into obligations in their mutual relations which impose a stricter discipline on them than on third countries is inherent in the nature of the Community.

To reintroduce export aids within the Community would be to renounce the principle of the unity of the common market, which requires that sales in the markets of other Member States should not be treated differently to domestic transactions. As export aids by definition cannot be applied in the domestic market, this would moreover lead to a situation where domestic competitors would suffer a severe disadvantage in comparison with their competitors from other Member States, an intolerable situation which would lead rapidly to the general use of operating aids, including aids to promote national sales.

The consensus, which harmonizes credit conditions but not the amounts of aid, constitutes a pragmatic solution to competition in credit conditions on the international level but it does not present a satisfactory model for application within the EEC. It does not take into account the fact that within the EEC the

disadvantage which high rates of interest may present for some undertakings is usually compensated for or reflected in other elements which make up their cost structure and which are in their favour. To accept that undertakings in one Member State may receive compensation for one disadvantageous cost factor might lead rapidly to the necessity to compensate in other Member States for other disadvantageous cost factors, such as the level of salaries or the importance of social charges, and therefore to accept general operating aids. This is unacceptable under Article 92 of the Treaty, under which derogations from the general principle of the incompatibility of aids with the common market are reserved to aids contributing to the attainment of one of the objectives specified therein,

HAS ADOPTED THIS DECISION:

Article 1

The interest rate subsidy for credits which the Government of the French Republic offered until June 1981 to finance sales of French goods to Greece after the accession of Greece to the European Economic Community constitutes an aid which is incompatible with the common market pursuant to Article 92 (1) of the Treaty.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 17 May 1982.

For the Commission

Frans ANDRIESSEN

Member of the Commission