II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 November 1984

on the proposal of the French Government to grant regional aid to an undertaking engaged in the watch-making and optical and electronic engineering industries at Besançon, Doubs, France

(Only the French text is authentic)

(85/275/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 to the parties concerned to submit their comments in accordance with the above provision [1], and having regard to those comments,

Whereas :

I

French Decree No 82/379 of 6 May 1982 relating to the regional planning premium (Prime d'Aménagement du Territoire) [2] instituted a scheme to promote economic activity in certain designated areas. The scheme enables the French Government to award a premium to industrial, tertiary or research projects subject to a limit of 25 % of the investment net of tax up to a maximum of FF 50 000 per job created or 17 % of the investment net of tax up to a maximum of FF 35 000 per job created, depending on the area.

The Commission first of all scrutinized the above-mentioned scheme in accordance with Article 93 (3) of the Treaty.

The Commission considered that the award of premiums to industrial projects qualified for application of the exception to the incompatibility of State aids provided for in Article 92 (3) (c) in certain designated areas, but that the exception did not cover the award of such premiums in certain other areas where the social and economic situation was satisfactory.

The Commission therefore initiated the procedure provided for in Article 93 (2) of the Treaty in respect of the award of premiums in the latter areas. It informed the French authorities of this by letter dated 11 June 1982.

In this letter initiating the Article 93 (2) procedure, the Commission refused to agree unreservedly to the award of premiums to projects outside the areas designated in the Decree and continued to make the award of such premiums subject to a prior notification procedure where the circumstances warranted it.

The notifications requested by the Commission are intended to enable it to establish the compatibility of the award of such exceptional and discretionary aids with the Treaty and in particular with Article 92 (3) thereof.

[1] OJ No C 168, 28. 6. 1983, p. 2.
[2] Journal Officiel de la République française of 7 May 1982.

II

By telex dated 11 February 1983, the French Government notified the Commission in accordance with this procedure of its intention to award a regional planning premium to an undertaking engaged in the watch-making and optical and electronic engineering industries in respect of a project at Besançon in the department of Doubs. Besançon is outside the areas eligible for the regional planning premium as designated in the French Decree relating to the regional planning premium.

In the present case, a premium of FF 34 475 000 was proposed by the French Government towards a project costing a total of FF 363 million, a ratio of premium to investment costs of 9,5 % gross.

The project was for the reconversion to new employment of 985 workers at the company's factory at Besançon out of a total workforce of 1 960. These workers, who were employed in watch-making, were to be reconverted to employment in optics and electronics.

The Commission assessed the aid proposal in accordance with Article 93 (3) of the Treaty. One of the main issues it took up with the French Government was the economic and social justification for exercising the discretion to award regional planning premiums outside the designated areas in favour of Besançon.

The Commission also asked the French authorities whether other State aid, in particular for training and research, was proposed for the projects. The French Government sent a reply.

On the basis of this assessment and the social and economic arguments presented by the French Government, the Commission did not feel that the proposed regional planning premium in favour of Besançon was eligible for application of the exception provided for in Article 92 (3) (c), and, by letter dated 15 April 1983, therefore informed the French Government that it was initiating the procedure laid down in Article 93 (2) in respect of the proposal.

The French Government's comments, presented in its letter of 27 June 1983 and in further correspondence, the last being dated 17 September 1984, did not contain any new facts causing the Commission to modify its view of the proposal, in particular as regards the social and economic situation in the Besançon area.

One Member State which replied to the invitation to comment supported the Commission's action in initiating the Article 93 (2) procedure.

III

The premium which the French Government proposes to award to the undertaking concerned, the amount of which depends on the number of jobs reconverted to employment in optics and electronics, represents nominally 9,5 % of the total cost of the planned investment and favours that firm and the production of its goods. This financial support would improve the competitive position of the undertaking by enabling it to dispose freely of not inconsiderable resources.

In the sectors and on the markets in question such aid distorts or threatens to distort competition and affects trade between Member States within the meaning of Article 92 (1) of the Treaty. It is necessary to distinguish, however, between the effects of the aid in the light of the competitive conditions peculiar to the two types of activity involved.

One of these activities concerns the electronics sector including sub-unit assembly and sub-contract work for other firms. This activity concerns the manufacture of electronic equipment and components, a field in which there is generally strong competition and a large volume of trade between Member States.

The other new activity concerns the optics sector. This involves the application of new American three-dimensional photography technology, including the manufacture of picture-taking, -developing and -printing equipment. For the time being, this will be the only production unit of its type in Europe. Trade between Member States might, however, be affected in so far as the products and services derived from this new technology may, to some extent, oust those of other firms in the Community using more conventional photographic technology, but this effect may be limited in so far as this new technology will create a new market in the photographic field instead of taking a share of the existing market by way of substitution.

There could be a distortion in both sectors and trade between Member States could be affected in so far as an aid may artificially induce an undertaking to invest in one Member State rather than in another. It has not been possible to establish whether the aid proposed in this case would constitute such an inducement.

Article 92 (1) of the Treaty provides that aid having the features set out therein is in principle incompatible with the common market. The exceptions that are provided for in Article 92 (3) (a) and (c) — the only ones potentially applicable in the present case — require that the aid should serve specified Community objectives rather than simply serving the interests of the aid recipient. These exceptions must be interpreted narrowly when any regional or industry aid scheme or any individual award under a general scheme is scrutinized. In particular, they may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the said objectives.

To invoke the exceptions in the case of aid that did not serve such an objective would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

In applying the principles set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems that are sufficiently serious, on a Community-wide comparison, to require the grant of aid at the level proposed if the objectives specified in Article 92 (3) (a) or (c) of the Treaty are to be attained. Where this cannot be demonstrated, it is evident that the aid does not serve the objecitives specified in the exception clauses, but does little more than further the private interests of the recipient.

The first resolution on general regional aid schemes adopted by the representatives of the Governments of the Member States meeting within the Council on 20 October 1971 [1] following a communication from the Commission recognized that regional aid, when it is adequate and judiciously applied, forms one of the essential instruments of regional development and enables the Member States to follow regional policies aimed at a more balanced growth of the various regions of the same country and of the Community. This consideration, together with the need to reduce the danger of an escalation of aids, which is the major purpose of the current principles of coordination of regional aid schemes, means that when it assesses the compatibility of regional aid with Article 92 (3) (a) and (c) of the Treaty, the Commission must take account both of the social and economic situation in the regions concerned in comparison with other parts of the Community and of any serious disparities existing between regions of the same country.

The detailed social and economic analysis which the Commission has made of the Besançon area shows that the exception provided for in Article 92 (3) (a) cannot be invoked in its regard because it does not display an abnormally low standard of living or serious underemployment. This was not disputed by the French Government either in its original notification or in its submissions following the opening of the Article 93 (2) procedure. The only exception that can be considered in the present case is therefore that provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities or of certain economic areas which does not affect trading conditions to an extent contrary to the common interest.

To determine whether application of this exception to the aid which the French Government was proposing to grant to the undertaking concerned was justified, the Commission applied the principles outlined above. That is, after seeing how the designated areas stood in a Community context by comparing income *per capita* and unemployment in the area with the Community averages, the Commission then examined whether there were any disparities between the area and other areas in the country that might warrant the grant of regional aid. For this purpose, the Commission took a number of indicators of economic development and the employment situation, in particular taxable income, employment and unemployment figures, the distribution of industry, net migration and demographic trends.

The results of the analysis of the distribution of industry and of the other indicators of causality established the nature of the economic problems of the area concerned and their possible structural character, but not the existence of regional difficulties justifying the aid envisaged.

[1] OJ No C 111, 4. 11. 1971, p. 1.

The comments made by third parties did not contain any new facts giving ground to revise the assessment of the situation of the Besançon area resulting from the Commission's social and economic analysis described above.

In the absence of regional considerations, an aid may nevertheless be justified under Article 92 (3) (c) of the Treaty if the project has positive features from the point of view of the industry which are sufficient to offset the distortion effects of the aid in the interests of the Community. The activities planned in the electronics sector, which have no particular innovative value, do not seem likely to promote development in that sector. Thus the aid towards the cost of investment in this field does not satisfy the conditions for the application of the exception provided for in Article 92 (3) (c).

On the other hand, the activities planned in the optics sector hold out prospects of growth in that sector. This is due, in particular, to the novelty and originality of this technology in the Community, and to the fact that this investment might lead to research activities at some future date. From a conservative appraisal of these aspects of the matter, it can be concluded that the proposed aid qualifies for application of the exception provided for in Article 92 (3) (c) provided it does not exceed 55 % of the investment planned in the optics sector,

HAS ADOPTED THIS DECISION :

Article 1

The French Republic may not proceed with the proposed award of a regional planning premium for all the investments being undertaken at Besançon involving the reconversion of watch-making activities by the undertaking concerned, notified to the Commission on 11 February 1983 and enlarged upon in other communications the last of which was dated 17 September 1984.

Article 2

A Regional planning premium not exceeding 9,5 % gross of 55 % of the fixed capital investment in activities in the optics sector may be awarded. No regional planning premium may be awarded for investment in activities in the electronics sector.

Article 3

The French Government shall inform the Commission within four weeks of the date of notification of this Decision of the measures taken to comply therewith.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 7 November 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission