II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 December 1984

on the French system of assistance to industry comprising special investment loans, subsidized loans to enterprises, additional refinancing loans and FIM (Industrial Modernization Fund) loans

(Only the French text is authentic)

(85/378/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,

Whereas :

I

After repeated requests to do so, the French Government informed the Commission by telexes sent on 1 April 1982 (ref. SG(82)A/3230), 17 January (SG(83)A/487) and 8 February 1983 (SG(83)A/1412) and letters dated 28 October 1983 (930/IV(83)14555), 15 February 1984 (IV/10833) and 2 April 1984 (IV(84)11764) of the introduction of four special loan schemes for industry, viz. :

— special investment loans (prêts spéciaux pour l'investissement),

— subsidized loans to enterprises (prêts aidés aux entreprises),

— additional refinancing loans (prêts supplémentaires de refinancement), and

— FIM (Fonds Industriel de Modernisation — Industrial Modernization Fund) loans.

Special investment loans are currently granted at 9,25 % interest. Where the loans exceeds FF 2 million, if falls into two parts :

— a long-term loan at the concessionary rate with a grace period for principal repayments of two or three years on loans of up to 12 years and over 12 years respectively ;

— medium-term bank loans at market rates over a maximum of seven years.

The maturities of the loans and the proportions of the two elements in the package are decided by the lending establishment in the light of the nature of the investment, its pay-off period and its profitability. The total package of medium and long-term loans may cover up to 70 % of the cost of the new investment excluding tax.

The loans are available to firms which commit themselves to investment projects which create or maintain jobs and which involve either conservation of energy

or raw materials, an increase in the firm's non-EEC exports, the purchase of equipment for automating production processes or the application of innovatory processes or manufacture of innovatory products. Total lending of FF 14 000 million and FF 14 300 million in 1983 and 1984 respectively was budgeted for under this scheme.

Subsidized loans to enterprises are currently granted at 11,75 % interest. They are vailable to firms whose projects are ranked as of high priority but which do not enter into the commitments required for special investment loans. The eligibility conditions and the terms and conditions of the loans are the same as for special investment loans. Total lending of FF 7 000 million and FF 7 160 million in 1983 and 1984 respectively was budgeted for under this scheme. The scheme is to end on 31 December 1984.

Additional refinancing loans are currently granted at 9,75 % interest. They are long-term loans over 12 years with a two-year grace period. Applications must be submitted before the end of 1984. The minimum loans is one year's average principal repayments on the firm's long-term fixed-interest debt. Eligibility is based on the firm's entire fixed interest borrowing, both medium- and long-term, from or guaranteed by the four lending institutions specializing in long-term lending to industry (Crédit National, Caisse Centrale de Crédit Coopératif, Crédit d'équipement des PME, Sociétés de développement régional).

The eligibility conditions are :

— the debt service charges due in 1984 on all medium- and long-term fixed-interest debts in French francs must be at least 11 % of the debt outstanding as at 31 December 1983,

— the firm must commit itself by the end of 1984 to an investment financed by a special investment loan or a subsidized loan to enterprises, applied for between 1 January and 31 December 1984, or a medium-term loan approved, guaranteed or arranged during the same period by one of the four specialized lending institutions.

Total lending of FF 3 000 million in both 1983 and 1984 was budgeted for under this scheme.

FIM loans are currently granted at 9,25 % interest. The maximum term is 10 years with a grace period of up to two years. The loans may cover up to 40 % of the investment costs.

FIM loans are intended to support investment projects of an innovatory nature in one of the following priority areas for industrial development : installation of high-technology plant and equipment in factories, office automation and development of memory cards, biotechnology, installation of microcomputers in schools and training colleges, and development of highly fuel-efficient vehicles.

The claims procedure for FIM loans is as follows :

— the firm submits its modernization project either to its bank or direct to the National Research Agency (ANVAR — a body which reports to the Ministry for Industry),

— ANVAR makes a technical evaluation and the bank a financial evaluation of the project,

— if these are favourable, the application is referred to the FIM Board, which can endorse or reject it,

— approved applications are forwarded by the FIM to the Industrial Modernization Bank (Caisse de Moderisation Industrielle — CAMI) for charging against its budget,

— CAMI advises the Caisse de Dépôts et de Consignations (CDC) and upon receiving appropriate instructions from the Minister the CDC transfers the money to the applicant's bank and authorizes payment,

— the loan is paid out to the applicant,

— the loan is backed by a State guarantee (those of up to FF 150 million against a contingency fund in the budget of the Ministry for Industry and Research, those above by a State guarantee given on the usual conditions by the Economics and Finance Ministry).

The total lending budgeted for under the FIM scheme was FF 3 000 million for 1983 (part carried over to 1984) and F 11 000 million for 1984. For 1985 FF 12 000 has been budgeted for.

FIM technological equity loans (prêts participatifs technologiques) to the value of FF 430 million were granted over the period 1 September to 31 December 1983 and of FF 6 380 million over the period 1 January to 31 October 1984. In addition, FIM, leasing loans worth FF 531 million and 1 190 million were granted over the same periods.

II

On 22 February 1984 the Commission opened the procedure laid down in Article 93 (2) of the Treaty with regard to the abovementioned loan schemes on the ground that they involved aid falling within Article 92 (1) of the Treaty which on the known facts as supplied by the French Government did not qualify for any of the exceptions provided for in Article 92 (3). A notice to third parties about the schemes was published in *Official Journal of the European Communities* No C 118 of 2 May 1984.

The schemes were considered to involve and aid within the meaning of Article 92 (1) because all four schemes make loans availabe to industry at interest rates fixed by the Government which are below market rates. The concessionary element is financed :

— in the case of the first three schemes (special investment loans, subsidized loans to enterprises and additional refinancing loans), by interest subsidies, for which the Government sets aside provisions in the budget,

— in the case of the FIM loans, by the special conditions granted for deposits on 'industrial development savings accounts' (CODEVI) from which funds are channelled to the specialized lending institutions.

In the case of the first three schemes, the interests subsidies to make up the difference between the concessionary and market rates are committed to the specialized lending institutions (in most cases Crédit National) as and when the loans are granted. The rates of interest and other conditions of the loans are fixed by the Government and compliance with them monitored by the financial inspectorate, although the responsibility and risk of selection rest with the specialized lending institutions. The French Government admitted in a letter to the Commission dated 12 November 1984 that these schemes involve aid.

The concessionary rate of interest charged on FIM loans is made possible by the fact that the funds are obtained cheaply from savings deposited on CODEVI accounts. Although these very-short-term accounts pay only a low rate of interest (currently 6,5 %), they have attracted savings in significant quantities (FF 61 000 million since September 1983 when the accounts were launched) because the interest earned on them is tax-free. The Government is forgoing considerable tax revenue by this concession. Without it the banks would have to pay a significantly higher rate to attract the funds and the FIM loans would not be able to be paid at the same concessionary rate.

The funds deposited on CODEVI accounts are used for specific purposes mandatorily laid down by law :

— Funds deposited with banks (including Crédit Mutuel and Crédit Agricole) are divided 50-50 between :

(a) the Caisse de Dépôts et de Consignations (a State agency). The CDC converts half into treasury bills and keeps the rest for lending as FIM loans. In return it issues the collecting bank with 5 to 7 year Industrial Development Certificates (TDI) bearing 8 % interest.

(b) the banks themselves which transfer half to the Bank of France and lend the other half to industry as medium- or long-term loans (PBE) at 10,25 % interest.

— Funds deposited with savings banks or in post office savings accounts are transferred to the CDC, which :

(a) keeps 50 % as liquid reserves,

(b) transfers the other 50 % to the specialized lending institutions which relend the funds to industry in the form *inter alia* of special investment loans, subisidzed loans to enterprises and additional refinancing loans.

The fact that FIM loans are subsidized by forgoing tax revenue rather than by reallocating tax revenue to them in the Budget does not make this use of State resources any less an aid for the purposes of Article 92 (1), as was established by the Court of Justice in Case 47/69 France v. Commission [1970] ECR 487.

The State guarantee against the risk of default for which the lending bank would otherwise have to charge is another aid element in FIM loans.

In relation to the possibility of an exception under Article 92 (3) (c), it was noted that the aid schemes are intended to promote the modernization of French industry in selected areas regarded by the French Governement as being of priority.

Here it must be emphasized that a general objective of modernizing industry is not in itself sufficiently in the Community interest to justifiy an exception under Article 92 (3) (c). Nor are the more specific objectives pursued by the French Governement in the priority areas it has selected for modernization necessarily in the Community interest. This is solely a matter for the Commission to decide in the light of an economic assessment.

The aid schemes provide firms with substantial amounts of cheap funds with which to modernize their plant and equipment (and in some cases carry out research). The money they save by having access to these cheap funds instead of having to rely on internally generated funds or borrowing at the more expensive commercial rates can be put to other uses within the business to increase the firms' competitiveness or strengthen their balance sheet. This gives them a significant competitve advantage over other firms in the Community without access to such credit facilities, as the Court of Justice established in Case 730/79 Philip Morris [1980] ECR 2671.

In opening the Article 93 (2) procedure against the loan schemes, the Commission considered the first three schemes to be part of an existing aid scheme in that the loans were provided under similar conditions and for similar purposes as those granted by the Crédit National on behalf of the Economic and Social Development Fund (which comes under the Finance Ministry) and were financed in the same way and had a common origin. The FIM loans scheme was considered to be a new scheme, and the Commission warned potential beneficiaries that the Article 93 (2) procedure had suspensory effect and any assistance granted under the scheme before the Commission had reached a final decision under the procedure would be illegal and subject to recovery.

III

The French Government submitted observations replying to the opening of the Article 93 (2) procedure by letters dated 7 November (IV/84-5062), 12 November (84/15116), 27 November (IV/84-15426) and 4 December 1984 (IV/84-15534).

In these submissions the French Government outlined the conditions, procedures and objectives of the three subsidized loan schemes and stated that the specialized lending institutions that granted the loans were private and decided completely independently and at their own risk what loans they provided, without Government interference in the selection of the risks. Being granted by independent lending institutions, the loans were a general aid to industry, for which the Government laid down certain conditions to be satisfied by the loans in order to qualify for the subsidy.

The Government further submitted that the value of the State aid had to be seen in relation to the whole financing package arranged for the particular aided project and that the lending institution had a wide discretion as to how much of the expenditure was financed by the loans and how their own financing was distributed between the various types of loan. Consequently, no blanket judgement could be made on the aid given by the proposed schemes since it varied substantially with the circumstances and cost of the investment project financed and the lending institutions' evaluation of the risk. Finally, the subsidy was calculated by reference to the current cost of money and was disbursed as and when the borrower made his repayments. The lending institutions raised money whenever their cashflow situation required and the conditions on which they were able to do so varied considerably from one occasion and institution to another. In 1983 the networks of the four specialized lending institutions had extended 34 339 loans averaging FF 910 000 each.

Regarding the FIM loans scheme, the French Government's submissions were as follows :

— After explaining the conditions, procedures and aims of the scheme, it insisted that the scheme was not financed from budget resources but exclusively from CODEVI funds. The scheme enabled it to channel the funds directly where industry needed them. The scheme was not subsidized. The tax exemption granted for CODEVI accounts did not confer any particular advantage on firms. The Government guarantee was the same as that generally available. The FIM loans scheme was simply a universal source of finance that could be tapped by any firm undertaking innovatory investment in selected priority fields determined by the Government. Consequently, it could not, the French Government maintained, be regarded as public aid within the meaning of Article 92 of the EEC Treaty ;

— The Government also submitted that FIM-financed projects exclusively involved modernization investment. The loans provided the resources any firm in an industry needed to renew its productive assets or its product range. The priorities that had been set for the scheme from the outset accorded with a clear European interest. The objectives of the FIM were therefore not contrary to the common market.

IV

On 15 and 17 May and 13 June 1984 the Commission received comments from three other Member States, namely the Federal Republic of Germany, Denmark and Italy. These supported the opening of the Article 93 (2) procedure with respect to the aid schemes, agreed that the schemes conferred competitive advantages on the French firms benefiting from them, especially in the car industry, and that these advantages would affect trade between Member States. They also saw no Community industrial priorities to which the loans could be said to be tied and agreed with the Commission that there was no justification for applying any of the exceptions from Article 92 (1) to the schemes.

V

The French Government's submissions did not reveal any new factors that might make the Commission reconsider the view it had taken of the loan schemes when it opened the Article 93 (2) procedure. Concerning the element of aid within the meaning of Article 92 (1) in the schemes, reference is made to the discussion in section II above. With regard to the possibility of an exception under Article 92 (3) (c), it is pointed out that general schemes of this nature which lack any regional or sectoral specificity cannot be excepted under Article 92 (3) (a) or (c) as a whole but rather proposed awards under the schemes must be examined case by case to determine their effects. The effects will be particularly marked where the loans are for fairly large projects being undertaken by firms that are very active on the market. The Commission understands — although the French Government has given it no information at all on this point — that a large proportion of the loans are in fact granted to such firms and that some of these firms are in industries in which intra-Community competition is especially fierce such as the car, electronics and food industries.

On the other hand, the large number and average size of the loans granted suggests that a high proportion of them will not affect trading conditions to an extent contrary to the common interest.

To distinguish the significant from the insignificant awards and allow the Commission to scrutinize the former, it is therefore necessary to apply to the four loan schemes the notification rules for significant awards under general aid schemes laid down by the Commission in its letter to the Member States of 14 September 1979. Under these rules awards meeting the following criteria are notifiable :

— all awards having an intensity of over 15 % net grant equivalent of the investment,

— awards having an intensity of over 10 % but not more than 15 % net grant equivalent of the investment where the investment exceeds 3 million ECU,

— awards having an intensity of over 5 % but not more than 10 % net grant equivalent of the investment where the investment exceeds 6 million ECU,

— awards having an intensity of not more than 5 % net grant equivalent of the investment where the investment exceeds 9 million ECU.

In addition, Member States are required to send the Commission, before the end of the first quarter of each year, a report on each scheme for the previous year stating the total amount of awards made under the scheme, the total value of the aided investment and the number of awards, subdivided by industry (according to the European Communities Statistical Office's General Industrial Classification of Economic Activities) and by category of region defined in section 2 of the Principles of Coordination of Regional Aid Systems (in the case of category 2 (iv), distinguishing between assisted and non-assisted areas). The reports are required to enable the Commission to take appropriate action under Article 93 (1) in the event of a bunching of awards falling below the notification thresholds in certain industries or regions, which might pose problems for intra-Community competition and trade.

Because of their scale, significant awards as defined above are inherently likely to affect trading conditions to an extent contrary to the common interest. There can be no such general presumption in the case of awards falling below these thresholds, either because the position of the aided manufacturer or of the products or services in question is too minor or the scale and intensity of the aid too low to have a significant effect on intra-Community competition and trade, although such cases must be subject to *ex post* monitoring as described above. Lending under the FIM scheme in particular has been taking place on a huge scale and there can be no doubt that it is having a substantial impact. This lending has continued unabated since the Article 93 (2) procedure was opened despite the suspensory effect of the procedure on new aid schemes such as the FIM and the French Government has not notified any significant cases, even the loans it has extended to two car manufacturers to which the Commission referred in its letter of 1 March 1983.

Consequently, the Commission has been unable in significant cases, where the aid is likely to affect intra-Community trade to an extent contrary to the common interest, to appraise the compatibility of the aid with Article 92.

Article 92 (1) provides that aid having the features there described is in principle incompatible with the common market. The exceptions that are provided for in Article 92 (3) — the only ones potentially applicable in this case — require that the aid should serve the specified Community objectives rather than simply serving the interests of the aid recipient. These exceptions must be construed narrowly when any regional or industry aid scheme or any significant 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 the Community interest.

In applying the principles set out above in its scrutiny of general aid schemes and significant individual awards under such schemes, the Commission must satisfy itself that the aid is justified by the contribution the recipient is making to one of the objectives specified in Article 92 (3) and is necessary to that end. Where this cannot be demonstrated, and particularly where the investment to be aided would be undertaken in any case, it is evident that the aid does not serve the objectives specified in the exception clauses, but does little more than bolster the financial position of the recipient.

The four aid schemes in question do not have any industry or regional specificity. They are therefore general aid schemes, the awards under which may vary considerably in size and also in their effects on

competition and intra-Community trade depending on the industry and firm concerned, the scale of the aided investment and the intensity of the aid.

In significant cases the aid the French Government gives under these schemes is likely to strengthen the recipients' position *vis-à-vis* firms competing with them in intra-Community trade. The French Government has, however, been unable to give, or the Commission to discover, any justification for a finding that in such cases the schemes satisfy the conditions for application of one of the exceptions provided for in Article 92 (3). Furtherance of the priority industrial interests of France, for example, or industrial modernization as such cannot be said to be sufficiently in the Community interest to justify application of one of the exceptions, for in significant cases the schemes are likely to affect trading conditions to an extent contrary to the common interest by strengthening the position of the aided firms *vis-à-vis* their competitors in the Community.

Therefore, significant awards of aid in the form of special investment loans, subsidized loans to enterprises, additional refinancing loans or FIM loans cannot be considered to satisfy the conditions for application of one of the exceptions provided for in Article 92 (3).

The Commission also has a duty to enforce the Community codes on aid to particular sensitive industries such as steel, shipbuilding, man-made fibres and textiles and clothing.

The French Government granted aid in the form of FIM loans before the Commission had taken a final decision under Article 93 (2). This aid must consequently be considered to be illegal and in significant cases where it is found to be incompatible with Article 92 the Commission is entitled to order its recovery. To enable the Commission to determine the compatibility of such individual awards, the French Government must be required to notify it of such cases before 20 February 1985.

The French Government should also be reminded of its obligation under Article 93 (3) to inform the Commission of any alteration of the aid schemes involving loans covered by this Decision,

HAS ADOPTED THIS DECISION :

Article 1

The Commission has no objection to the implementation of the aid schemes entitled special investment loans (prêts spéciaux pour l'investissement), subsidized loans to enterprises (prêts aidés aux entreprises), additional refinancing loans (prêts supplémentaires de refinancement) and Industrial Modernization Fund loans (prêts du Fonds Industriel de Modernisation — FIM), on condition that the French Government notifies significant cases to it in advance in accordance with Article 93 (3) of the Treaty to enable it to determine whether or not the aid in such cases is compatible with Article 92 (1) of the Treaty.

Article 2

For the purposes of the notifications required by Article 1, significant cases are, in relation to both the existing and the new schemes, those in which the following thresholds are exceeded :

— any case in which the intensity of the aid exceeds 15 % net grant equivalent of the investment,

— in cases in which the intensity of the aid is over 10 % but not more than 15 % net grant equivalent of the investment, those in which the investment exceeds 3 million ECU,

— in cases in which the intensity of the aid is over 5 % but not more than 10 % net grant equivalent of the investment, those in which the investment exceeds 6 million ECU.

— in cases in which the intensity of the aid is not more than 5 % net grant equivalent of the investment, those in which the investment exceeds 9 million ECU.

In addition, the French Republic shall submit, by the end of the first quarter of each year, a report on each of the schemes for the previous year stating the total amount of the awards made under the scheme, the total value of the aided investment and the number of awards, subdivided by industry according to the European Communities Statistical Office's General Industrial Classification of Economic Activities.

Article 3

The Community codes on aid to the steel, man-made fibres, shipbuilding and textile and clothing industries must be observed.

Article 4

The French Republic shall notify to the Commission before 20 February 1985, in accordance with Article 93 (3) of the Treaty, all significant cases as defined in Article 2 in which FIM loans have already been granted.

Article 5

The French Republic shall inform the Commission before 20 February 1985 of the measures it has taken to comply with this Decision.

Article 6

The French Republic shall inform the Commission in accordance with Article 93 (3) of the Treaty of any alteration of the aid schemes involving loans covered by this Decision.

Article 7

This Decision is addressed to the French Republic.

Done at Brussels, 19 December 1984.

For the Commission

Frans ANDRIESSEN

Member of the Commission