II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 March 1987

concerning aid granted by the French Government to two steel groups

(Only the French text is authentic)

(87/506/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first paragraph of Article 93 (2) thereof;

Having given the parties concerned an opportunity to submit their comments, in accordance with Article 93 (2), and having regard to those comments:

Whereas:

I

By letter dated 30 September 1982 from its Permanent Representation, the French Government notified the Commission, under Article 8 (1) of Commission Decision No 2320/81/ECSC [1], of certain government funding of investment by two large steel groups.

Noting that almost 20 % of the funding was for businesses not coming within the ECSC Treaty, although no details were given, the Commission informed the French Government by letter of 26 November 1982 that the part of the funds to be provided for investment in these businesses would have to be considered under the EEC Treaty.

However, the French Government proceeded to provide the funds without notifying them under Article 93 (3) of the EEC Treaty, so that the Commission was unable to assess beforehand whether the transfers were compatible with the EEC Treaty provisions on state aid.

Not having any details of the purposes of the funding which potentially distorted competition, the Commission decided to open the Article 93 (2) procedure against the transfers, which totalled FF 5 481 million. It gave the French Government notice by letter dated 20 December 1984 to submit its observations. The other Member States were invited to comment on 3 May 1985 and interested parties on 8 May 1985 [2].

By letter of 31 October 1985, supplemented by letter of 14 November 1985, the French Government let the Commission have 'further information' about the amount of additional funding intended for non-ECSC businesses of the two steel groups in the 1985 financial year. This additional funding, on top of the FF 5 481 million already covered by the Article 93 (2) procedure, came to FF 2 176 million.

As too little information had been supplied about the new funding to judge whether Article 92 (3) of the EEC Treaty was applicable, and the new transfers, which the French Government later confirmed by letter of 27 March 1986 had already taken place, were also likely to cause distortions of competition, the Commission decided to extend the Article 93 (2) procedure to them. By letter dated 28 January 1986 it therefore gave the French Government notice to submit its observations. The other Member States were invited to comment on 4 March 1986 and other interested parties on 1 March 1986 [3].

[1] OJ No L 228, 13. 8. 1981, p. 14.

[2] OJ No C 114, 8. 5. 1985, p. 5.

[3] OJ No C 47, 1. 3. 1986, p. 3.

After a preliminary scrutiny of the funding against which the Article 93 (2) procedure had been opened, the Commission found that FF 1 649 million had in fact been used for businesses coming under the ECSC Treaty, so that these sums fell to be considered under Decisions No 2320/81/ECSC and No 1018/85/ECSC [1].

After deduction of the abovementioned FF 1 649 million, the funding of Community subsidiaries of the steel groups remaining to be considered under the EEC procedure opened on 20 December 1984 and 28 January 1986 totals FF 6 008 million. This total comprises the following individual cases or groups of cases :

— Case No 1 : Funding of a company in the steel construction sector of the engineering industry engaged in the design and manufacture of drilling platforms for the oil industry, and steel and aluminium façades, walls and curtain walls (FF 942 million),

— Case No 2 : Funding of two wire-drawing businesses (FF 1 333 million),

— Case No 3 : Funding of the acquisition of pipe- and tubemaking facilities by one of the steel groups (Case No 3.1 — FF 85 million), and funding of the operations of a tubemaking company (Case No 3.2 — FF 40 million) and a pipe and cold-rolled sections producer (Case No 3.3 — FF 126 million),

— Case No 4 : Funding of the acquisition of a special steel stockholding and international trading company by one of the steel groups (FF 150 million) and of the losses of two steel stockholders and trading companies (FF 89 million and FF 54 million, respectively),

— Case No 5 : Funding of a sheet-metalworking firm (FF 87 million),

— Case No 6 : Funding of various operations involving sums of less than FF 50 million by the steel groups either to acquire or increase their stakes in non-steel businesses or to cover the losses of such businesses, *viz* : special steels stockholding (FF 14 million) ; industrial fasteners (FF 3 million), railway wagons (FF 10 million) ; mechanical handling equipment (FF 15 million) ; pipes and tubes (FF 10 million) ; scrap-metal dealing (FF 30 million) ; machine tools (FF 18 million) ; primary processing (FF 36 million) ; sheet-metalworking and assembly (FF 20 million) ; engineering (FF 50 million) ; cold rolling (FF 35 million),

— Case No 7 : Funding of a construction company involved in construction projects in non-Community countries (Case No 7.1 — FF 1 499 million) and of an engineering company (Case No 7.2 — FF 106 million),

— Case No 8 : Funding of various forging and foundry businesses (FF 472 million),

— Case No 9 : Funding of operations in connection with the acquisition of a company producing stainless steel and nickel and cobalt alloy rolled products, wire and forgings (FF 210 million),

— Case No 10 : Funding of local industrial investment subsidiaries set up to attract new industry to steel areas (FF 574 million). This case will be dealt with in a separate decision.

All the above funding was provided without prior authorization by the Commission, in disregard of the French Government's obligations under Article 93 (3) of the EEC Treaty. The Commission therefore considered it to be illegal.

II

The French Government submitted its observations under the Article 93 (2) procedure by letters dated 24 April 1985 and 27 March 1986. It argued that, in providing funding in the form of new capital to the two state-owned steel groups to finance, directly or through subsidiaries, busi-

[1] OJ No L 110, 23. 4. 1985, p. 5.

nesses falling outside the ECSC steel sector, the state was merely fulfilling its responsibilities as shareholder. None of the funding had involved aid under Article 92 or was likely to affect the normal rules of competition within the Community. Indeed :

— part of it was to pay for financial investment by the state-owned steel groups in existing businesses and thus involved an investment of risk capital,

— another part was to enable the steel groups to discharge their responsibilities as parent companies to lossmaking subsidiaries. With this financing the subsidiaries had been able to undertake rationalization measures (especially in the wire-drawing sector) ; they had not used the funds to engage in unfair competition.

Moreover, some of the subsidiaries (engineering, construction) carried on business mainly outside the Community.

Three other Member States, two trade associations and one individual company also made representations to the Commission under the procedure.

III

The financial transfers under consideration here fall into two categories :

— those intended to fund acquisitions by the steel groups of various businesses not in particular difficulty outside their mainstream ECSC steel business, so extending the range of their activities.

In its notice to the Member States on government provisions of capital to companies ([5]), the Commission reiterated the principle that the investment of public dividend capital in companies in circumstances where such investment would not be forthcoming from private investors operating under normal market conditions was state aid. It added that this was the case where the financial position of the company, and particularly the structure and volume of its debt, was such as to preclude a normal return on the investment within a reasonable period of time or where, because of inadequate cash-flow, the company would be unable to raise the funds required for an investment programme on the capital market.

In the present case, the steel groups which received government funding to acquire financially-sound Community businesses or to increase their stakes in such businesses were, at the time the funding was provided, in a financial position such that on the above criteria the funding must be considered aid,

— those (the majority) intended to keep lossmaking Community subsidiaries of the steel groups in business by writing off their losses or increasing their capital or, in one case, to rescue an independent company in distress by taking it into one of the steel groups ; in these cases the Community companies were the ultimate beneficiaries of the funds.

The funding of such businesses with a long record of losses (see section IV) must also be considered aid for the same reasons, even where the funding took the form of recapitalization of the companies.

IV

With regard to Case 7.1 in section I (FF 1 499 million for a construction company), the funding was provided in connection with the winding-up of the company. The company had run up extremely heavy losses on major construction projects as a result of poor costing and inadequate risk assessment. The parent company therefore decided to wind it up. However, before this was done, the Government furnished it with the necessary funds to complete its current contracts. Being provided after the contracts had been entered into, the funding did not help the company to win the contracts in competition with other Community construction firms nor can it harm other Community construction firms in the future as the company is no longer trading.

Consequently, the funding in this case is not aid falling within Article 92 of the EEC Treaty. This is especially the case as the business of the company was carried on only in non-Community countries in an industry not in serious recession.

All the other companies in respect of which the government funding covered by this Decision was provided carry on business in the Community in industries in which there is significant intra-Community trade and hence competition. Moreover, all the industries are, in the Community, in varying degrees of difficulty.

([5]) Bulletin of the European Communities, 9/1984, point 3.5.1.

Their difficulties are due to falling Community consumption and a slowing in the growth of world demand for their products, and in some cases also to increasing import penetration of the Community market by third countries. As a result, overcapacity has grown up in the industries, depressing prices and squeezing margins, and preventing modernization.

The situation is especially marked in the wire-drawing sector. Between 1974 and 1984 production of simple drawn wire in the Community's main producing countries (Germany, France, the United Kingdom and Belgium) declined by almost 25 % (from 5,3 million to 4 million tonnes). Notwithstanding some stabilization of output levels in 1984/85 and the increasing specialization of producers in higher value-added products, the industry is still dogged with problems and has recently lost competitiveness, causing a rise in imports much greater than the increase in exports (28 % and 7,7 %, respectively, over the period 1980 to 1985).

Similarly, the steel construction sector of the engineering industry, over half of whose output used to be exported outside the Community until 1970 to 1973, has since been affected in turn by a fall in Community demand, the collapse of Middle Eastern markets, and competition from third countries (especially Japan and Korea) on other markets.

As a result, the exports from this sector in the Community fell by 27 % between 1981 and 1984 (from 1,6 million to 1,1 million tonnes). This was reflected in a drop in production by the three main producing countries (Germany, the United Kingdom and France), from almost 4,8 million tonnes in 1979/80 to 3,8 million tonnes in 1985, putting most firms in an extremely precarious position.

Furthermore, there is substantial intra-Community trade both in wire products and in the products of the forging, foundry and steel construction sectors. In 1984, for example, nearly 700 000 tonnes, or 17,5 % of the 4 million tonnes of wire products made in the Community in that year was traded between Member States. Homogeneous statistics are more difficult to obtain for the steel construction sector because of the diversity of the products involved. Nevertheless, here too there is considerable intra-Community trade, though the level varies with the type of product.

As a result, there is also fierce competition among Community firms operating in the sectors. This means that any support given to one firm in a given sector is bound to affect the competitive position of the other firms. Considering the state of the market for the various products, it is even possible that the support of the firm will cause other Community firms to go out of business or to close part of their business.

In the present case, the government support of the various companies, with the sole purpose of reconstituting their working capital after absorbing losses, was running in most cases at 10 to 20 % of turnover over the relevant period (1982 to 1985).

By reducing the costs normally faced by the firms, the support accordingly conferred a specific financial benefit on them which distorted or threatened to distort competition between Member States, contrary to Article 92 (1) of the EEC Treaty.

V

Article 92 (1) of the EEC Treaty provides that aid having the above features is in principle incompatible with the common market.

The exceptions provided for in Article 92 (2) are inapplicable in the present case, in view of the nature and purpose of the aid.

The exceptions provided for in Article 92 (3) are available only after consideration of the case in a Community context, and not just in that of a single Member State. In order to maintain a properly operating common market and uphold the principles enshrined in Article 3 (f) of the EEC Treaty, it is also essential to interpret the Article 92 (3) exceptions restrictively in relation to any particular aid scheme or individual aid award.

In particular, the exceptions may only be invoked when the Commission is satisfied that the activity for which it is proposed to grant the aid serves one of the objectives specified in the exception clauses and that the aid is necessary to cause the aid recipient to undertake that activity.

To invoke the exceptions in cases where the aided activity does not serve one of the objectives, or where the aid is at any rate not necessary for it to be undertaken, would be to allow Member States to give their industries or firms undue pecuniary advantages which would artificially strengthen their financial position, affect trade between Member States and distort competition, without any justification on the grounds of the wider Community interest as is required by Article 92 (3).

In the light of the foregoing, the aid here in question does not qualify for any of the exceptions provided for in Article 92 (3). With regard to the exception provided for in subparagraph (a) of Article 92 (3), which is available for 'aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment', it is true that the businesses which received the aid are direct users of the products of the steel industry and some are located near steel plants in areas that have suffered large-scale redundancies in the steel industry.

Nevertheless, the areas do not have an abnormally low standard of living or serious underemployment, within the meaning of subparagraph (a) of Article 92 (3).

As to the exception provided for in subparagraph (b) of Article 92 (3), it is clear that the aid was not to promote the execution of a project of common European interest or to remedy a serious disturbance in the economy of a Member State.

The exception provided for in subparagraph (c) of Article 92 (3) is available for 'aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. As none of the aid concerned by this Decision was granted under regional aid schemes, and the French Government has not attempted to justify it on regional policy grounds, only the possible exception for 'aid to develop certain economic activities' needs to be considered. Taking first the FF 942 million of funding provided to the company in the steel construction sector of the engineering industry (Case No 1 in the list in section I), this support allowed the company to continue a heavily lossmaking business which wiout this funding would have had to be closed down. The company specialized in metal goods for industrial investment and in drilling platforms and other metal modules for the offshore oil industry. The sharp fall in demand from this sector and later than industrial investment caused the company's turnover to collapse from close on FF 2 500 million in 1982 to under FF 900 million in 1985, leaving its plant vastly underutilized, as is clear from the information furnished by the French Government.

The deterioration in the company's profitability was equally dramatic, with losses (nót including redundancy costs) rising to 30 % of turnover. In 1986, however, even after shedding a large number of employees, with the market further deteriorating the company had no alternative but to close down its offshore division.

The other divisions, which now employ 430 (excluding management), compared with the company's total workforce of 1 350 in 1985, have been restructured and are expected to have made a profit in 1986.

It emerges that the aid received by the company was used to cover the losses of the offshore business and so put off its closure until 1986. Such an artificial preservation of capacity in a depressed industry clearly affects trading conditions to an extent contrary to the common interest.

Consequently, the aid in this case is ineligible for application of the exception provided for in Article 92 (3) (c).

The FF 1 333 million of aid granted to two wire-drawing groups (Case No 2 in the list in section I) also kept going two heavily lossmaking businesses.

Despite some reduction in capacity and substantial cuts in their workforce, the groups do not seem, from the information supplied to the Commission, to have undertaken restructuring programmes that give them a chance of becoming profitable again in the foreseeable future and which might thus justify the vast amounts of aid provided. In fact, a major effect of the aid was probably to delay the more drastic rationalization required if the businesses were to survive. Without such rationalization to help turn the businesses round and contribute towards the rationalization of the Community industry as a whole, there can be no justification from the Community's point of view for the adverse effect on trading caused by the aid.

The aid in this case, too, is therefore ineligible for application of the exception provided for in Article 92 (3) (c).

The aid in Case No 3 in the list in section I, totalling FF 251 million, was provided partly to support a tube producer and a producer of welded pipe and cold-rolled sections (FF 40 million and FF 126 million, respectively), and partly to finance the acquisition of two pipe businesses by the steel group (FF 85 million).

The effect of the operations was thus in part to prop up lossmaking businesses and in part to increase the vertical integration of the French pipe and tube industry.

Although some efforts have apparently been made to reduce the operating losses of the companies, the aid was not provided as part of a thorough rationalization programme capable of turning the businesses round and helping to shake out some of the excess capacity hanging over the European pipes and tubes market. The French Government has said such additional measures were planned, but has not been able to give any details of actual decisions.

Consequently, on the facts known to the Commission, the aid in this case also is ineligible for the exception provided for in Article 92 (3) (c).

The aid in Case No 4 in the list in section I, totalling FF 293 million, was provided partly to cover the losses and reconstitute the working capital of two steel stockholding and trading businesses (FF 89 million and 54 million, respectively), and partly to pay for the acquisition of a special-steels stockholding and trading company (FF 150 million). The operations thus enabled the parent groups to maintain and extend, respectively, their presence in the steel stockholding sector.

However, they do not appear from the information the French Government has supplied to have been accompanied by any rationalization such as might have allowed the public funding for them to be regarded as in the Community interest and hence eligible for application of the exception provided for in Article 92 (3) (c).

Consequently, the aid is ineligible for application of this exception.

The aid of FF 87 million to a sheet metalworking firm (Case No 5 in the list in section I), equivalent to 11 to 12 % of its annual turnover, was not accompanied by commensurate rationalization measures. The French Government has failed to submit any rationalization programme that might justify the aid under Article 92 (3) (c).

The aid in this case, too, is therefore ineligible for the exception.

The same is true, finally, of the various amounts of public funding ranging from FF 3 million to FF 50 million, and totalling FF 241 million, provided to 11 primary processing and engineering firms (Case No 6 in the list in section I), as, from the information the Commission has received on these operations, it does not appear that any rationalization is being undertaken, apart from workforce reductions, which seem unlikely by themselves to turn the businesses round.

Hence, this aid, too, is ineligible for the exception provided for in Article 92 (3) (c).

It is concluded that all the aid referred to in this section, totalling FF 3 147 million, is ineligible for application of Article 92 (2) or (3) of the EEC Treaty. The aid was moreover granted unlawfully by the French Government in breach of its obligations under Article 93 (3) of the EEC Treaty.

The aid should therefore be withdrawn and recovered.

VI

The aid (Case No 7.2 in the list in section I) to an engineering company which has a turnover of FF 150 million a year and was formerly in the same group as the construction company referred to in Case No 7.1 accompanied a rationalization of the business which had for many years been losing money. As a result of the rationalization, during which the workforce was cut from 612 in 1982 to 340 in 1986 and part of the production of a factory closed down in 1986 was transferred to the remaining facilities, significantly improving their capacity utilization, the company was able to report a profit in 1986.

Consequently, the aid, although on a large scale, has contributed, chiefly by removing excess capacity, to a rationalization and hence development of the industry, and is therefore eligible for application of the exception provided for in Articles 92 (3) (c).

The aid of FF 472 million provided for forging and foundry businesses (Case No 8 in the list in section I) was mainly intended to cover losses and reconstitute working capital. The firms have a turnover of about FF 1 500 million. In the face of a depressed market, the French foundry industry has embarked on a rationalization programme which has already reduced the capacity of the industry (from 270 000 tonnes in 1983 to about 200 000 tonnes in 1985) and has made the remaining facilities more specialized.

As a result, operating rates in the industry have risen (from 57 % in 1983 to 70 % in 1985) and the losses of the businesses concerned here have been cut from FF 250 million in 1984 to an estimated FF 25 million, or 0,7 % of their turnover, in 1986.

The aid in this case has thus facilitated the restructuring and hence development of the industry, which is now on the way to recovery.

It is therefore eligible for application of the exception provided for in Article 92 (3) (c).

Finally, the aid in Case No 9 in the list in section I (FF 210 million) was granted to restore the finances of a company making stainless steel and nickel and cobalt alloy rolled products, wire and forgings, after the company had been taken over by one of the steel groups.

The operation was accompanied by major restructuring of the company involving specialization in profitable segments of the market in which supply did not exceed demand (supplying materials for the aerospace and electronics industries) and a reduction of the workforce by 600 in two years (from 3 543 initially).

This restructuring undertaken with the help of the aid is of sufficient benefit to the Community to justify application of the exception provided for in Article 92 (3) (c).

Hence, the aid totalling FF 788 million granted in the cases dealt with in this section is eligible for the exception of Article 92 (3) (c) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid totalling FF 3 147 million listed under Cases 1, 2, 3, 4, 5 and 6 in section I, which was provided in breach of Article 93 (3) of the EEC Treaty to two French steel groups for certain non-steel subsidiaries, was granted unlawfully. The aid is also incompatible with the common market under Article 92 of the EEC Treaty.

The French Republic shall withdraw and recover this aid.

Article 2

The French Republic shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 25 March 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission