II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 July 1986

on aid proposed by the Rheinland-Pfalz Land Government for a metalworking firm in Betzdorf

(Only the German text is authentic)

(87/98/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 Article, and having regard to those comments,

Whereas :

I

By memorandum dated 11 April 1985 the Government of the Federal Republic of Germany asked the Commission to authorize the award of a capital grant of DM 1 176 750 to a metalworking firm in Betzdorf for an extension investment costing DM 15,69 million, of which the grant would cover 7,5 %. On 14 May 1985 the Commission asked the Federal Government for further information, which it supplied by memorandum dated 21 August 1985. The investment involved plant and machinery for the manufacture of beer kegs, metal filing cabinets and radiators, improvements in the distribution system and an extension of computerization. Altogether, DM 5,72 million of the investment cost was related to building work and DM 9,97 million to plant and machinery. The project would create over 50 permanent jobs.

Although the investment was not being undertaken in an assisted area, either under the Federal/*Land* Government Joint Programme (*'Gemeinschaftsaufgabe'*) or under the regional aid scheme, the Rheinland-Pfalz *Land* Government wished to award a capital grant for it because of the above-average unemployment both in Betzdorf (in 1984 unemployment in Betzdorf employment office sub-district had been 8 % above the national average) and in the neighbouring areas of the State (where, in 1983 to 1984, unemployment had averaged 25 % above the national average), and because of the threat to steel industry jobs in the northern part of Altenkirchen district and the Siegerland. The Federal Government considered that the aid was unlikely to have any effect on the common market as only 10 % of the enterprise's output on average was exported.

After a preliminary scrutiny, the Commission was of the opinion that the planned award fell within Article 92 (1) of the Treaty and could not be deemed compatible with the common market under the exception clause of Article 92 (3) (c) because the economic and social situation in Betzdorf employment office sub-district was not so bad that aid could be said to be necessary to attract development, as the exception clause required. This was inferred from an analysis of the figures the Commission had for average unemployment in the Betzdorf employment office sub-district over the five-year period 1980 to 1984, and the changes in the rate of unemployment over the period, the number of people travelling to work at the plant, and travel-to-work patterns in the sub-district generally, and average *per capita* gross value added at factor cost over the years 1980 and 1982 in the labour market region Siegen in which Betzdorf is situated and whose situation was therefore relevant to that in Betzdorf.

Being of the opinion that the planned award did not qualify for application of the exception clause of Article 92 (3) (c), the Commission decided to open the procedure laid down in Article 93 (2). By letter dated 4 October 1985 it asked the Federal Government to submit its observations, and by letters dated 13 December 1985 invited comments from the other Member States.

Comments were also invited from other interested parties by a notice published in the *Official Journal of the European Communities* (1).

II

In its observations, sent by letter dated 5 November 1985 and expanded on, at the Commission's request, by letter dated 7 January 1986, the Federal Government stated that the unemployment rate in Betzdorf was still very high, but that the main reason for the need to provide new jobs in the area was the threat to over 400 steel industry jobs in the Betzdorf employment office sub-district, at Mudersbach, only seven kilometres away from Betzdorf. It was feared that, with the steel industry job losses, the unemployment rate in the Betzdorf employment office sub-district would rise to over 20 % above the national average in the next few years.

Moreover, Betzdorf was only a few kilometres outside a Joint Programme assisted area and a large proportion of the firm's workforce came from it, especially from the local authority Altenkirchen.

III

The two other Member States, three trade associations and two individual firms that also made representations under the procedure agreed with the Commission's view of the case.

IV

(1) The aid proposed by the Rheinland-Pfalz *Land* Government for a metalworking firm in Betzdorf favours the firm by reducing the cost of its investment.

This conclusion is not refuted by the argument that regional aid merely compensates for the disadvantages of the area concerned from the point of view of firms choosing a location for their investment. In the first place, it should be pointed out that even compensation for the disadvantages of an area strictly speaking favours the recipient, since it reduces his costs in that area. Whether a measure involves aid is to be judged not by the reasons behind it or its objectives but by its effects compared with the situation that originally existed in the common market without the measure. Secondly, in most cases it is doubtful whether the disadvantages of an area can be quantified with sufficient accuracy to fix aid at a level which exactly compensates for them. Above all, however, regional aid is usually set by Member States at so high a level that it provides firms with a positive financial inducment to locate and invest in certain areas. The contention that regional aid favours the recipients is confirmed by the wording of Article 92 itself. Article 92 (3) provides that aid to promote or facilitate the economic development of certain areas may, under certain circumstances, be held compatible with the common market. This shows that such aid falls within Article 92 (1) and that it therefore cannot be argued that regional aid does not favour the recipients as it merely compensates for the disadvantages of the particular location.

The aid in issue in the present case would distort competition because it would calculably improve the recipient's return on its investment, thereby strengthening its financial position compared with competitors who do not receive such assistance. The distortion of competition by aid with a net (i.e. after tax) grant equivalent of 5,09 % would be appreciable. A reduction in the cost of investment by such a margin would give the assisted firm a considerable advantage over its unaided competitors.

Insofar as the aid induces the firm to remain at its present location, this also constitutes a distortion of competition falling within Article 92 (1), for the institution of a system ensuring that competition in the common market is not distorted (Article 3 (f) of the EEC Treaty) implies that firms should be allowed to make up their own mind where to locate and that their choice should therefore not be swayed or guided by financial inducements.

The aid concerned in the present case is also likely to affect trade between Member States because the products for which the firm is investing in manufacturing facilities are traded between Member States and moreover the firm takes part in that trade.

In 1984 intra-Community trade in beer kegs and similar containers made of steel sheet with a capacity of 50 litres or over (NIMEXE code 73.23-10) amounted to 116 720 tonnes, worth 88,436 million ECU. The Federal Republic's share of that trade was 39 %.

(1) OJ No C 338, 31. 12. 1985, p. 5.

In 1984 also, 5 145 tonnes of door or roll-up front filing cabinets and 4 949 tonnes of metal drawer cabinets of 80 cm or more in height (NIMEXE codes 94.03-33 and 94.03-35), worth a total of 28,484 million ECU, were traded between Member States. The Federal Republic's share of the trade was 34 % for door and roll-up front cabinets and 21 % for drawer cabinets.

Trade in cast-iron and steel radiators (NIMEXE code 73.37-59) in 1984 amounted to 139 485 tonnes worth 188,956 million ECU, or 31 % of the value of EEC production.

The Federal Government has also stated that, in 1984, the firm concerned exported 5 % of its output to other Member States and 5 % to countries outside the EEC. A proportion of 5 % of output exported to other Member States cannot be regarded as insignificant. The Commission therefore must repudiate the Federal Government's view that the aid would be unlikely to affect the common market.

In addition, part of the investment is on extending the firm's distribution network in European and other markets and adapting the network to future requirements on European markets through increased computerization. The firm already has sales showrooms in five Member States outside the Federal Republic.

Finally, the effect of aid on trade between Member States is to be judged not only by its effect on the proportion of a firm's output that is exported, but also by its effect on the firm's sales on the domestic market. If the Member State concerned is involved in intra-Community trade in the products, the firm is also in competition on its domestic market with imports from other Member States, which are likewise affected by the distortion of competition.

The aid proposed by the Rheinland-Pfalz *Land* Government in this case therefore falls within the scope of Article 92 (1).

(2) As the present case concerns regional aid, it is necessary to consider whether either of the exceptions from the prohibition of State aid provided for in Article 92 (3) (a) and (c) is applicable.

These exceptions may be applied, in particular, only when the Commission is satisfied that market forces alone would be insufficient to guide the recipients towards behaviour that would serve one of the objectives specified in the exception clauses.

To invoke the exceptions in cases where there is no such causal link would be to allow trading conditions between Member States to be affected and competition to be distorted without any compensating benefit to the Community.

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 which are serious enough, in comparison with the situation in the rest of the Community, to justify the grant of aid at the level proposed. The scrutiny must show that the aid is necessary to achieve objectives specified in Article 92 (3) (a) or (c). Where this cannot be demonstrated, it must be assumed that the aid does not serve the objectives specified in the exception clauses, but does little more than further the private interests of the recipient.

(3) The exception provided for in Article 92 (3) (a) is applicable to aid which promotes the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

When the Commission opened the Article 93 (2) procedure against the Tenth General Plan of the Joint Programme, it took the view that the economic and social situation in the Federal Republic, whether nationally or locally, did not justify application of Article 92 (3) (a). The Commission stated this position in the annex to its letter to the Federal Government of 6 November 1981. This view was confirmed by the further study which the Commission carried out before opening the Article 93 (2) procedure against the regional aid schemes of the *Länder* of Baden-Württemberg, Bavaria, Hessen, Lower Saxony, Rheinland-Pfalz and Schleswig-Holstein, and was restated in the annex to the Commission's letter to the Federal Government of 10 August 1984. The Commission would refer to both these statements.

The Commission's latest review of the situation confirms its impression that neither in the Federal Republic as a whole nor in the particular area concerned by this Decision is the standard of living abnormally low or is there serious underemployment. In Rheinland-Pfalz, where the proposed aid award is to be made, *per capita* GDP in 1983 was 7 % above the Community average and unemployment in 1985 39 % below the Community average.

(4) The exception provided for in Article 92 (3) (c) is applicable to aid which facilitates the development of certain economic areas, but which does not adversely affect trading conditions to an extent contrary to the common interest.

The only circumstances in which the effect on trading conditions caused by regional aid can be regarded as not against the common interest for the purposes of Article 92 (3) (c) are where it can be shown that the aided region suffers from difficulties that, as well as being above average nationally, are also relatively severe by Community standards, that without the aid market forces would not eliminate these difficulties, that the level of the aid is in proportion to the difficulties, and that the grant of aid does not unduly distort competition within the common market in particular sectors.

To ensure that its Community-related assessment is systematic and objective, the Commission has developed a method of determining, for a given Member State, general threshold levels of structural unemployment and *per capita* gross domestic product from which regional aid can be deemed acceptable.

These thresholds are regularly reviewed in the light of the latest figures. The current thresholds from which regions in the Federal Republic are considered in principle to be eligible for aid are a level of *per capita* gross domestic product or gross value added at factor cost of less than 76 % of the national average or an average unemployment rate over five years of more than 145 % of the national average. The Federal Government was informed of these thresholds in a letter sent to the Federal Economics Minister dated 31 July 1985. The Federal Government noted the current thresholds in a memorandum to the Commission dated 22 January 1986. When the Commission opened the Article 93 (2) procedure in the present case, it took the figure of *per capita* gross value added at factor cost for the labour market region Siegen, to which Betzdorf sub-district belongs, nemaly 95 % of the national average, as indicative of the situation in Betzdorf. The German Government did not challenge this. The average unemployment rate in Betzdorf sub-district over the period 1981 to 1985 was only 108 % of the national average.

On the basis of the thresholds, then, regional aid in Betzdorf employment office sub-district would not be compatible with the common market. The result obtained from applying the thresholds is taken only as a *prima facie* presumption, however, which may be revised in a second stage of the assessment procedure if other indicators of the present situation or future trends point to the opposite conclusion.

(5) In stage two of its scrutiny, the Commission went on to check the results of the economic and social analysis that it had carried out before opening the Article 93 (2) procedure (and to which it would refer here) against the latest unemployment figures and in the light of the arguments put forward in the Federal Government's reply to the opening of the procedure. The outcome was as follows :

— The unemployment rate in Betzdorf sub-district is not very high, but over the five years 1981 to 1985 its reading on the national unemployment index (Germany = 100) averaged, as already stated, only 108. Moreover, after 1983, the reading fell by 16 percentage points, more than compensating for an eight-point rise between 1981 and 1983. By May 1986 it had further improved to stand at only 89.

— The Federal Government has stated that over 400 jobs are threatened in the Niederschelden steel works at Mudersbach. Should these job losses occur, the regional labour market should be able to absorb them — just as it did the 364 earlier redundancies at the same works between 1981 and 1985 — without major problems. Even on the worst-case assumption of 400 workers being made redundant at once, all registering as unemployed and no alternative jobs at all being available, the unemployment rate in Betzdorf sub-district would only rise to 117 on the national index. Hence, no serious regional problems are likely.

— Finally, the argument that a large proportion of the workforce of the firm comes from neighbouring assisted areas can be discounted. The Federal Government has now stated that in fact only two employees come from Altenkirchen and only 6 % of the workforce from Joint Programme assisted areas at all.

Even on closer scrutiny, therefore, the social and economic difficulties of Betzdorf employment office sub-district cannot be said to be severe by Community standards. The effect on trading conditions caused by the proposed aid would therefore be against the common interest,

HAS ADOPTED THIS DECISION:

Article 1

The aid of DM 1 176 750 proposed by the Rheinland-Pfalz *Land* Government for a metalworking firm at Betzdorf, of which the Government of the Federal Republic of Germany informed the Commission on 11 April 1985, is incompatible with the common market under Article 92 (1) of the EEC Treaty. It may not therefore be granted.

Article 2

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

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 29 July 1986.

For the Commission

Peter SUTHERLAND

Member of the Commission