II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 23 November 1988

on aid granted by the French Government to an undertaking manufacturing equipment for the motor vehicle industry — Valéo

(Only the French text is authentic)

(89/348/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, as provided for in the said Article 93, and having regard to such comments,

Whereas :

I

By letter dated 28 June 1985, registered on 3 July 1985, the French Government sent the Commission information concerning the granting of aid to a manufacturer of equipment for the motor vehicle industry.

The aid, granted in the form of an FIM (fonds industriel de modernisation — industrial modernization fund) loan amounting to FF 160 million, was intended to help finance a FF 227 480 000 investment programme which the undertaking planned to carry out in 1984 and 1985 with a view to introducing advanced production processes and technology for the manufacture of new products. The investment projects are as follows :

— heating and cooling systems : development of more efficient radiators to meet the requirements of European motor vehicle manufacturers and simultaneous design of the production process (FF 34 185 000),

— friction materials : design of products meeting the new asbestos-free manufacturing standards imposed by statutory rules or by private agreements and adjustment of the manufacturing processes (FF 19 050 000),

— motors and applications thereof : modification of front and rear windscreen-wiper motors, of cooling systems and motors and automation of production facilities (FF 31 960 000),

— lighting systems : design of a new type of headlight using new technology (replacing metal technology by plastics technology) involving total conversion of production plant (FF 23 835 000),

— clutches : launch of totally new product — pull-type clutches for heavy vehicles — with robotization of manufacture as part of a complete reorganization of production management (FF 39 450 000),

— intangible investment in the various branches : (FF 22 300 000),

— investment in CAD (computer-assisted design) : (FF 45 500 000),

— investment in CAPM (computer-assisted production management) : (FF 11 200 000).

In its Decision 85/378/EEC [1], the Commission made it clear that FIM loans constitute aid within the meaning of Article 92 (1) of the EEC Treaty, and it made the granting of such loans subject to the requirement that all significant cases be notified in advance.

[1] OJ No L 216, 13. 8. 1985, p. 12.

The loans were initially granted at an interest rate of 9,25 % (subsequently reduced to 8,25 %) for a maximum term of 10 years with a grace period of up to two years. They are intended to support investment projects of an innovatory nature, notably those involving the installation of high-technology plant and equipment, office automation and biotechnology.

The Commission took the view that the abovementioned FF 160 million loan comprises elements of aid within the meaning of Article 92 (1) and was not likely to comply with the conditions laid down in Article 92 (3) in order to qualify for one of the exemptions set out therein. It therefore initiated the procedure provided for in Article 93 (2) in respect of the aid.

By letter dated 26 February 1986, the Commission gave the French Government notice to submit its comments to it. The other Member States were informed of the initiation of the procedure and given notice to present their comments by letter dated 13 May 1986. Third parties were similarly informed and given notice to submit their comments by the publication of a notice in the C series of the *Official Journal of the European Communities* (1).

II

By letter dated 24 December 1986, the French authorities submitted their comments.

According to the French authorities, the Valéo group had planned to carry out investment projects amounting to FF 665 million in 1984 and 1985. In financing the programme, the undertaking had relied largely on internally generated funds. It had also received contributions from its shareholders and had made various long and medium-term borrowings from the French banking system or on the financial market at widely differing interest rates depending on the financing arrangements.

The FIM loan had been intended for investment projects of a genuinely innovatory nature involving in particular the introduction of manufacturing processes and technology allowing genuinely new products to be produced. The investment programme had not received any public aid and had had little effect on intra-Community trade.

The information provided by the French authorities by letters dated 28 June 1985 and 24 December 1986 did not allow the Commission either to calculate the aid element of the FIM loan (the terms of the loan not having been made known) or to assess the nature of the investment.

So as to remedy these omissions, the Commission requested the French authorities, by telex dated 13 February 1988, to inform it within two weeks (the deadline was subsequently extended to 10 March 1988) of the terms of the loan (in particular the date when the loan was granted and the interest rate charged) and to provide any useful information that could be taken into consideration by the Commission in assessing the innovatory nature at Community level of the investment aided.

By letter dated 15 April 1988, the French authorities informed the Commission that the FIM loan had been granted at an interest rate of 8,75 % for a term of 10 years and that it had been paid in two instalments of FF 80 million each on 8 August 1985 and 10 April 1986. The FIM loan had contributed to the carrying-out of an exceptional innovatory programme geared to the introduction of new products and changes in the various manufacturing processes.

As part of the procedure, the governments of two other Member States and one association of undertakings submitted comments.

III

Under Commission Decision 85/378/EEC, all FIM loans constitute aid within the meaning of Article 92 (1) of the EEC Treaty, since they affect trade between Member States and distort or threaten to distort competition by favouring certain undertakings or the production of certain goods.

The FF 160 million FIM loan which the French Government granted to Valéo thus constitutes an aid which enabled the recipient to carry out a series of investments without having to bear their full cost.

The aid elements contained in the FIM loans derive from the two-year grace period and the difference between the interest rate on the FIM loan granted to the undertaking and the interest rate charged by the Crédit National for 'equipment loans'.

The FF 160 million FIM loan was granted to the recipient at an interest rate of 8,75 %. At the time when the first FF 80 million instalment was paid (8 August 1985), the abovementioned reference rate was 13 % and, at the time when the second FF 80 million instalment was paid (10 April 1986), the reference rate was 11 %. The interest subsidy thus amounts to 4,25 percentage points a year on the first instalment of the loan and 2,25 percentage points a year on the second instalment.

IV

Under Article 93 (3), aid must be notified at the planning stage and must be granted only when the Commission has taken its decision (suspensory effect). Since the aid in question has already been granted, it follows that it is unlawful, since it infringes the procedural provisions of Article 93 (3).

(1) OJ No C 128, 27. 5. 1986, p. 14.

Given the mandatory nature of the procedural rules laid down in Article 93 (3) (see the judgments of the Court of Justice on 11 December 1973 in Case 120/73 — Lorenz and 22 March 1977 in Case 78/76 — Steinike), the unlawfulness of the aid cannot be rectified *a posteriori*. Furthermore, the Commission can require Member States to recover aid from recipients (see judgment of 12 July 1973 in Case 70/72 — Kohlegesetz).

V

In view of the conditions laid down in Article 92 (1) of the EEC Treaty, the Commission would point out the following:

The motor vehicle components market, on which the recipient of the aid operates, is characterized by a large number of extremely heterogeneous products that may be classified into the following categories: electrical equipment, engine equipment, chassis equipment and bodywork equipment.

In the Community, the components sector comprises more than 4 500 undertakings, most of which are highly specialized small and medium-sized undertakings. However, certain subsectors, including the electrical equipment and friction materials (clutches and brakes) subsectors, are dominated by a number of large undertakings (e.g. Bosch, Valéo, Lucas, GKN and Fiat), which are, moreover, often interlinked; thus, Bosch and Valéo have common links through their holdings in the Société Financière d'Equipements Automobiles (FEA), which controls various manufacturing companies such as Société de Paris et du Rhône and Cibié-projecteurs.

Motor vehicle components have to meet the requirements of two different markets, namely the market in original equipment parts for the motor vehicle industry and the spare parts market. It is estimated that some 40 % of the parts used by the Community motor vehicle industry are supplied by the components industry. Exports of parts, components and motor vehicle accessories from France to the other Member States are reported to have amounted to FF 3 365 million in 1986.

Competition between the various motor vehicle components manufacturers is therefore strong and international trade considerable.

As far as Valéo's position on the relevant markets is concerned, the company's own annual report shows that, with a turnover of FF 11 532 million in 1985, it is one of the five leading European manufacturers of equipment for the motor vehicle industry. Its main branches of activity are electrical accessories for engines (alternators, starter motors and ignition equipment), lighting, clutches and heating and cooling systems (coolant radiators, heating and ventilation equipment, air conditioning). In addition, the undertaking manufactures friction materials (clutch plates and brake linings), windscreen wiper products and electric motors (motors and applications branch), industrial equipment and prefabricated elements for the building industry.

Valéo is the world's leading manufacturer of clutch linings, car clutches and European specification headlights, the world's second largest manufacturer of motor vehicle radiators and Europe's largest manufacturer of alternators and starters.

In 1985, exports by the Valéo group's French plants accounted for 21 % of the group's consolidated total turnover. Products manufactured and sold abroad accounted for 24 % of turnover.

The abovementioned annual report also shows that in 1984 more than 30 % of the turnover of the clutch and motors and applications branches was accounted for by exports, and that more than two-thirds of the turnover of the heating and cooling systems branch was accounted for by international activities (exports and production abroad).

In view of the above considerations, the situation on the market in question and the undertaking's position on that market, the aid in the form of an FF 160 million FIM loan granted to Valéo is liable to affect trade between Member States and distort competition within the meaning of Article 92 (1) of the EEC Treaty.

The aid distorts competition by improving the financial situation of the recipient and by reducing investment costs, which gives the recipient a competitive advantage over other producers that have carried out or are carrying out similar investment at their own expense.

VI

Article 92 (1) lays down the principle that aid having the characteristics set out therein is incompatible with the common market. As far as the derogations from that principle are concerned, those set out in Article 92 (2) of the EEC Treaty are not applicable in this case, given the nature and objectives of the aid.

Under the terms of Article 92 (3) of the EEC Treaty, aid which may be considered compatible with the common market must be assessed in the Community context and not in the context of a single Member State. So as to preserve the proper functioning of the common market and to take account of the principles laid down in Article 3 (f) of the EEC Treaty, the derogations from the principle laid down in Article 92 (1) of the EEC Treaty set out in paragraph 3 of that Article must be interpreted narrowly in examining any aid scheme or any individual aid measure.

In particular, the derogations may be allowed only if the Commission finds that market forces would not in themselves be sufficient without the aid to prompt the possible recipient to take action in order to achieve one of the objectives pursued.

Granting the derogations in cases which do not contribute to such an objective would amount to conferring advantages on the industries or undertakings of certain Member States, by affecting the conditions of trade between Member States to an extent contrary to the common interest.

In Decision 85/378/EEC authorizing the FIM aid scheme, the Commission concluded that neither furtherance of the priority industrial interests of France nor industrial modernization as such could be said to be sufficiently in the Community interest to justify application of one of the exceptions provided for in Article 92 (3), 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. This consideration was the main reason for taking two negative decisions, the first, on 12 November 1986, against a proposed FIM loan in the mineral water and glass-bottle sector (Commission Decision 87/194/EEC) [1] and the second, on 14 January 1987, against a loan granted in the brewing sector (Commission Decision 87/303/EEC) [2]. The Court of Justice confirmed the validity of the Commission's approach in the matter (see judgment of 13 July 1988 in Case 102/87 *France* v. *Commission*).

With regard to the provisions of Article 92 (3) (a) concerning aid to promote the development of certain areas, the areas in which the investment by Valéo has been carried out do not suffer from an abnormally low standard of living or from serious underemployment within the meaning of the derogation provided for in paragraph 3 (a) of that Article. The areas concerned are not among the areas qualifying for this exemption.

With regard to the derogation provided for in Article 92 (3) (b), no aspect of the case makes it possible in any way whatsoever to take the view that the aid is intended to promote a project of common European interest (see judgment of 8 March 1988 in Joined Cases 62/87 and 72/87) or to remedy a serious disturbance in the French economy. Nor has the French Government put forward such grounds to justify the aid.

Similarly, the aid does not fulfil the conditions laid down in Article 92 (3) (c) regarding certain economic areas. FIM loans are not in general granted to undertakings operating in regions determined in advance. They are not therefore intended to facilitate the development of certain areas, and, in the case in point, the French Government has not put forward such grounds to justify the award of the FF 160 million loan to Valéo. Consequently, the aid does not qualify for this particular exemption.

Lastly, as far as the derogation provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities is concerned, it should be borne in mind that, as stated in Decision 85/378/EEC, the only investment projects that may qualify for FIM loans are those of an innovatory character at Community level.

The French Government attached to its letter of 15 April 1988 a document describing the investment projects which the FIM loan is helping to finance.

The Commission has subjected this information to a thorough technical examination in order to determine the extent to which the investment projects receiving aid involve genuine innovation at Community level.

The Commission has concluded that the investment in the heating and cooling systems branch (FF 34 185 000), aimed at developing more efficient radiators and at the same time establishing the manufacturing process, is necessary in order to enable the undertaking to meet the requirements of modernization and maintain its competitive position on the market.

The investment in the friction materials branch (FF 19 050 000) relates to the design of products complying with the new asbestos-free manufacturing standards imposed by statutory rules or by private agreements and is aimed at making the necessary adjustments in manufacturing processes.

The investment carried out in the motors and applications branch (FF 31 960 000) relates essentially to changes in front and rear wiper motors and in cooling systems and motors and the automation of production facilities. The changes in these products have been made necessary by the reduction in available space caused by the more aerodynamic design of vehicles. At the same time, the invest-

[1] OJ No L 77, 19. 3. 1987, p. 43.
[2] OJ No L 152, 12. 6. 1987, p. 27.

ment is intended to develop a range of standard windscreen wipers that can be fitted to all vehicles and the manufacture of wiper blades.

The investment projects carried out in the three abovementioned branches are not therefore innovatory in nature, since they are intended to update existing products and to modernize manufacturing processes. Competitors of the recipient undertaking have had to meet the same requirements and have carried out their investment without State aid. It is quite normal and in the interests of the manufacturer that the manufacturer should use the most efficient techniques and materials allowing a reduction in manufacturing and management costs while at the same time modernizing the range of products available.

The investment projects funded by the FIM loan also included intangible investment amounting to FF 22 300 000 for all branches and investment in CAD (computer-assisted design) and CAPM (computer-assisted production management) amounting to FF 45 500 000 and FF 11 200 000. The French authorities have not provided the necessary information to allow the Commission to assess the innovatory nature of such investment. The Commission thus finds itself in a situation similar to that underlying the Decision referred to in the judgment of the Court of Justice in Case 234/84 *Belgium* v. *Commission.*

Consequently, the aid deriving from the part of the FIM loan intended for investment projects in the heating and cooling systems, friction materials and motors and applications branches and for the intangible investment and the investment in CAD/CAPM, amounting to FF 115 488 000 (72,18 % of the total FF 160 million loan — the abovementioned investment amounting to FF 164 195 000 is equivalent to 72,18 % of the total investment of FF 227 480 000) is not compatible with the common market, because it does not fulfil the conditions laid down in Article 92 (3) and those laid down by the Commission in its Decision 85/378/EEC. At the time of adoption of the present Decision, the incompatible aid amounted to FF 10 680 000 (see VIII below).

VII

By contrast, the information provided by the French authorities by letter dated 15 April 1988 has allowed the Commission to establish that the investment carried out in the lighting branch (FF 23 835 000) and the clutches branch (FF 39 450 000) are not simply investment aimed at modernization, whose costs would have to be borne by the undertaking without any State aid, but investment aimed at developing genuinely innovatory products [1].

The innovation in these two branches has been reflected in the launching of totally new products linked to a change in manufacturing technology. In the case of the lighting branch, the innovation involved the design of a new type of headlight using new technology (replacement of metal technology by plastics technology) entailing total conversion of the production facilities. In the clutches branch, the innovation involves the launching of a totally new product (heavy-lorry pull-type clutches) with robotization of production forming part of a complete reorganization of production management.

Consequently, the aid deriving from the part of the FIM loan intended for the investment in the lighting and clutches branches, amounting to FF 44 512 000 (27,82 % of the total FF 160 million loan — the abovementioned investment amounting to FF 63 285 000 represents 27,82 % of the total investment of FF 227 480 000) is compatible with the common market, because it complies with the conditions laid down by the Commission in its Decision 85/378/EEC.

VIII

In the light of all the above considerations, the FF 160 million FIM loan comprising elements of aid within the meaning of Article 92 (1) of the EEC Treaty in the form of an interest subsidy and a two-year grace period must be deemed to have been granted unlawfully in breach of the provisions of Article 93 (3) of the EEC Treaty.

Part of the loan, namely the FF 44 510 000 intended for investment of an innovatory nature carried out in the lighting and clutches branches must be deemed to be aid liable to facilitate the development of certain economic activities within the meaning of Article 92 (3) (c) of the EEC Treaty without adversely affecting trading conditions to an extent contrary to the common interest and is therefore compatible with the common market.

However, the part of the loan intended for investment in the heating and cooling systems, friction materials and motors and applications branches and for intangile investment and investment in CAD/CAPM (FF 115 488 000)

[1] In determining whether the investments in question involved genuine innovation at Community level, the Commission based itself on the same criteria that allowed it to adopt a favourable attitude on the following FIM loans : Jaeger (letter to the French Government SG(88)D/3990 of 30 March 1988), Merlin-Gerin (SG(88)D/3763 of 28 March 1988), Thomson Télécommunications (SG(87)D/16201 of 28 December 1987), Bull (SG(86)D/15202 of 15 December 1986), Matra-Harris (SG(86)D/15198 of 15 December 1986) and La Radiotechnique (SG(86)D/15531 of 18 December 1986).

constitutes aid which is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must be recovered.

For this purpose, the incompatible aid element contained in the FIM loan must be abolished by requesting repayment of the incompatible part of the loan or by applying normal market conditions to it, and, at all events, by requiring the repayment of the incompatible interest subsidies which Valéo has improperly received up to the time of the abovementioned change in the terms and conditions attaching to this part of the loan. In quantifying the aid element, the Commission first calculated, in respect of the two instalments of the loan, the difference between the reference market rate at the time when the loan was granted (13 % when the first instalment was granted and 11 % when the second instalment was granted) and the interest rate attaching to the loan (8,75 % on each of the two instalments); the interest subsidy thus amounts to 4,25 percentage points in the case of the first instalment of the loan granted on 8 August 1985 and to 2,25 percentage points in the case of the second instalment granted on 10 April 1986. At the time of adoption of this Decision, the interest subsidy on the incompatible part of the loan resulted in a gain of FF 11 255 600 (FF 7 899 200 in respect of the first instalment and FF 3 356 400 in respect of the second instalment).

This amount should if necessary be increased by any interest subsidy that Valéo might improperly receive beyond the two-month period provided for in Article 3 of this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The FF 115 488 000 portion of the FIM loan granted to Valéo and notified to the Commission on 28 June 1985, comprising elements of aid within the meaning of Article 92 (1) of the EEC Treaty, is unlawful since it infringes the procedural provisions laid down in Article 93 (3) of the EEC Treaty. In addition, it is incompatible with the common market within the meaning of Article 92 (1).

Article 2

The French Government shall abolish the aid elements contained in the incompatible part of the FIM loan referred to in Article 1 by requiring that part to be repaid or by applying to it a market-related interest rate, such rate corresponding to that of the equipment loans granted by the Crédit National at the time when the FIM loan was granted. The French Government shall at all events require, without delay, the repayment of the interest subsidy attaching to the incompatible part of the loan and amounting to FF 11 255 600, which Valéo received up to the date of adoption of this Decision.

Article 3

The French Government shall inform the Commission, within two months of being notified of this Decision, of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 23 November 1988.

For the Commission

Peter SUTHERLAND

Member of the Commission