COMMISSION DECISION

of 26 March 1991

on aid granted by the French Government to the undertaking Saint-Gobain (Eurofloat) at Salaise-sur-Sanne (glass sector)

(Only the French text is authentic)

(91/390/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 the parties concerned notice, in accordance with the abovementioned Article, to submit their comments, and having regard to such comments,

Whereas:

I

The French group Saint-Gobain comprises several hundred companies in the following industries: insulation, paper and wood, pipe work, packaging, building materials, reinforcement fibres, industrial ceramics, services and miscellaneous, and glazing.

The glazing section, which accounts for some 20 % of the group's sales, manufactures, processes and distributes glazing for motor vehicles, the building industry and special applications. Saint-Gobain's glazing section operates 11 float-glass production plants in the Community and has major shareholdings in two others. One of the five float-glass lines which it directly operates was brought into service in 1989 at Salaise-sur-Sanne (Isère) under the name 'Eurofloat'. It has a production capacity of 120 000 tonnes a year of clear glass for the building industry.

II

In May 1990, the Commission learned from the press that the Salaise-sur-Sanne plant had received a subsidy of FF 32 million.

Since Saint-Gobain had apparently received aid for an investment project in a region not included among those receiving regional aid, the Commission asked the French Government, by letter dated 23 May 1990, to send it information on the aid within 30 working days. In its letter, the Commission stressed that it would be obliged to initiate the Article 93 (2) procedure if it did not receive a reply or if the reply was not satisfactory.

The Commission did not receive any reply within the period specified and accordingly decided, on 18 July 1990, to initiate the Article 93 (2) procedure in respect of the FF 32 million subsidy: it considered that the subsidy constituted unlawful aid and could not be deemed compatible with the common market, since it was liable to distort competition and affect trade within the meaning of Article 92 (1) of the EEC Treaty, without any of the exceptions provided for in that Article being applicable.

The Commission noted that the Salaise-sur-Sanne area was not situated within any of the regions eligible for regional aid pursuant to Article 92 (3) (a) or (c), that the investment aided could not be deemed to be an important project of common European interest within the meaning of Article 92 (3) (b) and that aid for the construction of a new flat-glass production line did not facilitate the development of the sector in question within the meaning of Article 92 (3) (c). In addition, the Commission expressed doubts as to the need for the aid; in view of Saint-Gobain's financial situation, it supposed that market forces would in themselves have been sufficient to ensure that the aided investment was carried out, without State assistance.

By letter dated 3 August 1990, the Commission gave the French Government formal notice to submit its comments.

III

The French Government first, by letter dated 11 July 1990, replied late to the Commission's letter of 23 May 1990, requesting that the deadline be extended to the end of July.

It then submitted its comments, after the initiation of the procedure, by letter dated 12 September 1990. It expressed the view that the amount of FF 32 million was an aggregate total made up of the following: FF 260 000 paid by the 'Agence national pour l'emploi', FF 1 329 000 paid by the 'Conseil général de l'Isère', FF 27 million paid by the 'Syndicat intercommunal' for the development and improvement of land and a further payment of FF 2 499 400 by the 'Syndicat intercommunal' in respect of the additional cost of the land. According to the French Government, the last two payments did not constitute aid within the meaning of Article 92 (1) of the Treaty.

At the Commission's request, the French Government provided further details by letters dated 16 November 1990 and 25 February 1991.

Following the publication of the Commission's letter of 3 August 1990 in the *Official Journal of the European Communities* [1], the Commission received comments from the Dutch Government and from a Belgian flat-glass production group. The French Government was informed of the comments by letter dated 19 December 1990 and requested to submit any comments it might have. No such comments were received by the Commission.

IV

Assistance provided by the public authorities for education, including vocational training, does not in general meet the criteria for being deemed to be aid favouring certain undertakings or the production of certain goods within the meaning of Article 92 (1) of the Treaty, since the financing of vocational training and retraining is traditionally one of the Member States' responsibilities towards the labour force. However, where specific training is involved, falling outside the general system of education and vocational training and corresponding to the particular needs of a given undertaking, sector or region, any contribution by the public authorities to the costs of such training may constitute aid within the meaning of Article 92 (1) of the Treaty.

In its letter of 12 September 1990, following the initiation of the procedure, the French Government accepted that the FF 1 329 000 payment by the 'Conseil général de l'Isère' in respect of vocational training constituted aid. By letter dated 25 February 1991, it specified that the scheme in question was applied without either discrimination or regional or sectoral selectivity. On the basis of the information available to it, the Commission cannot rule out the possibility that the training measures aided relate to the specific requirements of Saint-Gobain's Salaise-sur-Sanne flat-glass production plant. The FF 1 329 000 payment by the 'Conseil général de l'Isère' must therefore be deemed to constitute aid to Saint-Gobain.

However, the FF 260 000 payment by the 'Agence nationale pour l'emploi' for the re-employment of unemployed persons does not constitute aid. The general social scheme in question applies automatically throughout France.

With regard to the FF 27 million payment by the 'Syndicat intercommunal à vocation multiple' (Sivom) of the canton of Roussillon, it should be noted that, following Sivom's promise to sell 20 hectares of agricultural land to Saint-Gobain in June 1988, Sivom entrusted Saint-Gobain in January 1989 with the task of developing the Salaise-sur-Sanne industrial estate in which other firms have set up. The task involved the collective clearance and improvement of an undeveloped agricultural site, without road access, not marked out, not connected up to the gas and electricity network, public sewers and water supply. Saint-Gobain was then compensated by Sivom for the cost of the work which it had carried out outside its own site. However, Saint-Gobain bore the cost of all the improvements to its own site.

At the Commission's request, the French Government provided a detailed list of the work carried out by Saint-Gobain on behalf of Sivom by letter dated 16 November 1990 and provided further details by letter dated 25 February 1991.

The information enabled the Commission to ascertain that Saint-Gobain merely invoiced Sivom for the general infrastructure costs incurred as part of the collective work carried out to develop land for use by other firms. Consequently, the FF 27 million payment by Sivom does not constitute aid.

Lastly, Sivom's second payment of FF 2 499 400 consists of the difference between the price of FF 2 780 000 paid by Sivom for several parcels of land in the years before Saint-Gobain set up on the site and the FF 280 600 selling price charged to Saint-Gobain. Since Sivom is an association of local authorities and is financed by them, the Commission considers that this payment, made through State resources, constitutes State aid within the meaning of Article 92 (1) of the Treaty.

During the procedure, the French Government argued that Sivom had merely borne the additional cost involved in the price of the land due to its initial division into small holdings. The Commission considers that, through its payment, Sivom relieved Saint-Gobain of part of the cost of its investment which it would normally have had to bear if it had had itself to buy the various parcels of land.

This interpretation is not invalidated by the fact, referred to by the French Government in its letter of 25 February 1991, that the establishment of a large firm such as Saint-Gobain helped to promote the image of the Salaise-sur-Sanne industrial estate and that it allowed economies of scale to be achieved in the land improvement work.

In its abovementioned letter of 25 February 1991, the French Government also pointed out that Saint-Gobain had not invoiced Sivom for the entire cost of the land improvement work carried out, since it had not included the costs involved in the prefinancing of the work and in supervising the progress of the work on the industrial estate.

[1] OJ No C 274, 31. 10. 1990, p. 13.

This information similarly cannot invalidate the fact that the difference between the price for the land paid by Sivom and the price at which it sold it to Saint-Gobain in August 1989 constitutes aid. If Saint-Gobain failed to invoice all the costs which it had incurred, it should have presented a supplementary invoice to Sivom.

In its letter dated 16 January 1991, the Commission stated that this payment by Sivom was liable to constitute aid and asked the French Government to provide evidence that neither the difference in prices nor the price in itself comprised any aid elements. Apart from the information already referred to above, the French Government has not been able to show that the difference in prices does not constitute aid.

Consequently, the Commission considers that the sale of the land involves aid within the meaning of Article 92 (1) amounting to FF 2 499 400 in addition to the aid of FF 1 329 000.

V

Since the French Government did not notify the aid before granting it, as it should have pursuant to Article 93 (3) of the EEC Treaty, the Commission was unable to make known its views on the measures before they were implemented. The aid has thus been illegal under Community law since the decision was taken to grant it. The situation resulting from this breach of the legal requirements is particularly serious, since the aid has already been paid to the recipient. Moreover, one of the aid measures has had effects deemed to be incompatible with the common market.

In the case of aid which is incompatible with the common market, the Commission may — as the Court of Justice has confirmed in its judgments of 12 July 1973 in Case 70/72, 21 March 1990 in Case 142/87 and 20 September 1990 in Case 5/89 — require the Member States to have the recipients repay aid granted illegally.

VI

Float glass is traded between Member States: France exported 263 194 tonnes (NIMEXE code 7006 and CN code 7005) to the other Member States in 1987, 297 536 tonnes in 1988 and 315 559 tonnes in 1989, while its imports in those three years amounted to 237 009 tonnes, 240 482 tonnes and 280 652 tonnes.

Saint-Gobain is involved in such trade. According to its annual report for 1988, the new float-glass line at Salaise-sur-Sanne is intended to serve not only south-eastern France, but also southern Germany, northern Italy, Austria and Switzerland.

There is competition between flat-glass manufacturers. According to the Commission's information, there were at the end of 1988 31 float-glass production lines in the Community, belonging to six groups, one of which was Saint-Gobain.

Where financial aid provided by the State strengthens the position of certain undertakings compared with others that are competing with them in the Community, such aid must be deemed to affect competition with such other undertakings.

In view of the above, the aid granted by the French Government affects trade between Member States and distorts competition within the meaning of Article 92 (1) of the Treaty by favouring the undertaking concerned.

Article 92 (1) lays down the principle that aid having certain characteristics which it specifies is incompatible with the common market.

The derogations from that principle which are set out in Article 92 (2) of the Treaty are inapplicable in this instance, given the nature and objectives of the aid, and were not in any case invoked by the French Government.

VII

Article 92 (3) of the Treaty specifies the aid which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and not of a single Member State. So as to maintain the proper functioning of the common market and take account of the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle laid down in Article 92 (1) which are set out in Article 92 (3) must be interpreted strictly in examining any aid scheme or any individual aid measure.

In particular, the derogations may be applied only if the Commission finds that, if the aid were not granted, market forces alone would not be sufficient to induce the recipients to act in such a way as to achieve one of the objectives pursued.

Applying the derogations to cases which do not contribute to such an objective, or where the aid is not necessary for this purpose, would mean conferring undue advantages on the industries or undertakings of certain Member States, whose financial position would be strengthened, and affecting trading conditions between Member States and distorting competition, without any justification based on the common interest referred to in Article 92 (3).

With regard to the derogations provided for in Article 92 (3) (a) and (c) for aid intended to promote or facilitate the development of certain regions, it should be

noted that the French Government has not put forward any arguments relating to regional aspects to justify the granting of the aid.

As regards the building of the new float-glass production line at Salaise-sur-Sanne, it should be noted that the standard of living in the region, as indeed in all the regions of mainland France, is not abnormally low, that the region does not suffer from serious underemployment within the meaning of the derogation laid down in Article 92 (3) (a), and that the area within which Salaise-sur-Sanne is situated is not currently included amongst those receiving special regional aid within the meaning of the derogation provided for in Article 92 (3) (c).

With regard to the derogations provided for in Article 92 (3) (b), it is to be noted that the aid is not intended either to promote the execution of an important project of common European interest or to remedy a serious disturbance in the French economy; nor, indeed, did the French Government put forward any argument calling for the application of such derogations.

With regard to the derogations provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, a distinction should be made between the aid provided by the 'Conseil Général de l'Isère' for training purposes and the aid provided by Sivom for the purchase of Saint-Gobain's land at Salaise-sur-Sanne.

Although the FF 1 329 000 training aid also benefited Saint-Gobain, it is not specifically linked to the investment at Salaise-sur-Sanne, but to training measures having primarily a social purpose. Such aid may be deemed to facilitate vocational training in the flat-glass sector — and, consequently, the sector itself — without adversely affecting trading conditions to an extent contrary to the common interest.

However, as regards the FF 2 499 400 aid granted by Sivom in the form of the difference between the prices paid for Saint-Gobain's land at Salaise-sur-Sanne, such aid relieves the recipient undertaking of part of the costs of its investment. In its letter to the French Government of 3 August 1990, the Commission pointed out that the construction of a new flat-glass production line did not facilitate the development of the sector within the meaning of Article 92 (3) (c). Furthermore, in view of Saint-Gobain's financial situation, it took the view that market forces alone would have been sufficient to ensure that the investment was carried out, without State assistance.

In presenting its comments during the procedure, the French Government did not refute the view taken by the Commission in its letter of 3 August 1990. On the contrary, it stressed the small percentage of the aid, if aid there were, in relation to the total amount of the investment (FF 570 million). In this respect, it should be borne in mind that, as made clear by the judgment of the Court of 21 March 1990 (Tubemeuse, C-142/87), the fact that aid is relatively small in amount does not necessarily rule out the possibility of trade between Member States being affected.

In this connection, the Commission notes that future demand for flat glass depends in large measure on the needs of the two main markets for it, namely the motor vehicle and building industries. The future supply of flat glass will be influenced by new production capacities being established or planned in the United Kingdom and Germany as well as in non-Community countries. The new float-glass production line at Salaise-sur-Sanne adds $2^1/_2$% to existing capacity in the Community. It has been the Commission's consistent policy to ensure that, given the vulnerability of the flat-glass sector, its structural development is not disrupted by State aid. It is for this reason that, in its Decisions 84/487/EEC [1], 84/507/EEC [2] and 89/373/EEC [3], it decided that the aid measures planned respectively by the Dutch, Luxembourg and Italian Governments to assist the setting-up of additional flat-glass production and processing plants were incompatible with the common market and must not therefore be granted. It also took the view that aid measures to assist the renovation of existing float-glass production lines were not compatible with the common market and consequently decided, in Decisions 86/593/EEC [4] and 87/195/EEC [5], that the Belgian Government should refrain from granting aid for such renovation, even if the investment concerned involved technological innovation. The soundness of this approach was upheld by the Court of Justice in its judgment of 8 March 1988 in Joined Cases 62 and 72/87 [6].

In view of the above, the Commission considers that aid, even if of low intensity, for the construction of additional flat-glass production capacities does not facilitate the development of the sector concerned within the meaning of Article 92 (3) (c) and does not therefore qualify for that exception.

The aid granted must be abolished and must be repaid (see the judgment of the Court of Justice of 14 February 1990 in Case C-301/87 (Boussac), ground 22).

Repayment must be made in accordance with the procedures and provisions laid down in French law, and in particular those concerning interest on arrears on State claims, such interest starting to run on the date on which the illegal aid was granted. This measure is necessary in order to restore the status quo by removing all the financial advantages from which the recipient firms have improperly benefited since the

(1) OJ No L 276, 19. 10. 1984, p. 37 (Maasglas).
(2) OJ No L 283, 27. 10. 1984, p. 39 (Luxguard).
(3) OJ No L 166, 16. 6. 1989, p. 60 (Veneziana Vetro).
(4) OJ No L 342, 5. 12. 1986, p. 32 (St-Roch).
(5) OJ No L 77, 19. 3. 1987, p. 47 (Glaverbel).
(6) [1988] ECR 1573.

date on which the aid was paid (see the judgment of 21 March 1990 in Case C-142/87 (Tubemeuse), ground 66). This approach was moreover adopted by the Commission in its Decision 91/304/EEC [1] (Heinrich Reinhold),

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by France to the company Saint-Gobain (Eurofloat) in the form of a FF 1 329 000 payment for vocational training is unlawful, having been granted in breach of the provisions of Article 93 (3) of the EEC Treaty. However, the aid may be considered to be compatible with the common market pursuant to Article 92 (3) (c) of the EEC Treaty.

Article 2

The FF 2 499 400 aid granted by France to the company Saint-Gobain (Eurofloat) in August 1989, in the form of the difference between the price of FF 2 780 000 which Sivom paid for the purchase of land in the years preceding Saint-Gobain's establishment on it and the price for which the land was sold by Sivom to Saint-Gobain, namely FF 280 600, is unlawful, having been granted in breach of the provisions of Article 93 (3) of the Treaty. In addition, the aid is incompatible with the common market pursuant to Article 92 (1) of the Treaty, since it does not meet the conditions for exception provided for in Article 92 (3).

Article 3

The French Government shall abolish the aid of FF 2 499 400 referred to in Article 2 of this Decision and require its repayment within two months of the notification of this Decision. Such repayment shall be made in accordance with the procedures and provisions of national law, notably those concerning interest on arrears payable on State claims, with interest starting to run on the date on which the illegal aid was granted.

Article 4

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

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 26 March 1991.

For the Commission
Leon BRITTAN
Vice-President

[1] OJ No L 156, 20. 6. 1991, p. 33.