COMMISSION DECISION

of 20 December 1989

concerning aid granted by the French Government for the disposal of the assets of the MFL Group (Machines françaises lourdes), producer of heavy-duty machine tools

(Only the French text is authentic)

(92/328/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 in accordance with the above Article to interested parties to submit their comments and having regard to those comments,

Whereas :

I

As a result of information published in the French press, by letter dated 22 February 1988 the French authorities were requested to notify the Commission of certain steps taken by the public authorities in favour of the companies of the MFL Group.

Despite repeated reminders, the French authorities did not reply to the Commission's requests. For that reason, and having well-founded doubts as to the compatibility with the Treaty of those alleged State measures, the Commission decided to initiate a formal investigation procedure pursuant to Article 93 (2) of the EEC Treaty. In this respect, the Commission took into account the strong competition prevailing among machine-tool producers within the Community, for which any aid measure granted to a specific producer involves a high risk of distortion of competition.

The decision was communicated to the French Government by letter of 22 December 1988, giving it notice to submit its comments. The other Member States were informed by letters dated 12 May 1989.

Finally, notice to other interested parties was given on 20 May 1989 by means of the publication of a notice in the *Official Journal of the European Communities.*

II

The first details on the public measures were furnished by the French authorities by letter dated 14 March 1989. They were completed by letters dated 15 June and 20 July 1989, at the Commission's request.

According to them, in March and May 1988 the French authorities had decided to contribute to the recovery plan of the production facilities of MFL, whose assets had been sold to third producers under receivership proceedings initiated in November 1987.

MFL was a holding company created in 1983 by the merger of several pre-existing machine-tool producers into two production subsidiaries, namely Forest Line and Berthiez Saint-Étienne. The group structure was completed by two trading companies in the USA, MFL Inc. and Goldsworthy.

The formation of MFL responded to the objectives of the Machine-Tool Programme, a government-backed programme implemented in France between 1982 and 1985 with the purpose of reorganizing and supporting the restructuring of the national industry which was in serious difficulties. The underlying basic idea was to regroup several small machine-tool concerns which were in difficulty into large groups better placed to face foreign competition. Under the programme, the French Government invested about FF 2 600 million (ECU 366 million) in the form of profit-sharing loans (61 %) and subsidies and repayable advances (39 %), funding various activities, such as social restructuring and training (40 %), research and development and commercial measures (32 %), and modernization of production equipment (28 %). It should be noted that, as regards the aid involved in the Machine-Tool Programme, in 1986 the Commission decided to close an investigation procedure without raising any objection to the programme's execution in view of its contribution to the development within the Community of this industry of strategic importance.

For the creation of MFL, the French Government intervened through Sopari (State-owned company for participation in companies and industrial restructuring) taking a majority shareholding (35,2 %). At the same time nine other French industrial groups were recruited as partners (Usinor, Sacilor, Renault, Alsthom, Peugeot, Schneider, Snecma, Dassault, Aéroespatiale). They were in general nationalized groups, and presented the common characteristic of being final users of the MFL product range. Thus, MFL was conceived as a specialized supplier of machine tools for strategic sectors. The MFL production break-down by purchasing sector was as follows : aeronautics (30 %), armaments (20 %), energy (10 %), automobile (6 %), mechanical and others (34 %).

At the end of 1986, the production subsidiaries of MFL had the following profile :

— Forest Line (FL) — industrial plants situated in Albert (Somme) and Capdenac (Lot), basically specialized in milling machines — : 602 workers ; a turnover of FF 376 million with FF 71 million losses on ordinary activities ; since 1983 FL had registered FF 191 million losses on ordinary activities,

— Berthiez Saint-Étienne (BSE) — industrial plant situated in Saint-Étienne (Loire), specialized in flexible machining centres, heavy winding machines and rectifiers — : 508 workers ; a turnover of FF 242 million with FF 112 million losses on ordinary actitivies ; since 1983 BSE had registered FF 389 million losses on ordinary activities.

These figures clearly show that, since its creation in 1983 and despite significant State support under the Machine-Tool Programme estimated at about FF 1 000 million aid, MFL always operated under great difficulties. This troublesome situation was also common for some other French companies aided under the same programme, mainly as a result of the overall recession in the sector and the impossibility of competing against foreign producers. As a consequence several of them either went bankrupt or were taken over by Japanese or other European groups.

For MFL the situation became untenable in November 1987, when it went into the legal state of suspension of payments and French commercial courts placed its subsidiaries in the hands of judicial administrators. This temporary state was for the purpose of assessing its financial situation and recovery possibilities. In this context, the French authorities initiated contacts to find new investors to back MFL. These contacts succeeded with two different groups interested in taking control of the MFL subsidiaries after an eventual liquidation. Therefore the recovery of MFL activities was planned in the form of liquidation followed by disposal of assets in favour of the two bids presented by potential purchasers.

Forest Line (FL) — In January 1988, the Commercial Court of Paris decided to accept the sole purchase bid submitted for this subsidiary. The French group Brisard (FF 700 million turnover with 1 200 workers) offered FF 8 million for the assets related to FL operations, to the exclusion of receivables. In addition Brisard agreed to keep 495 of the workforce of 558. For this purpose, a new undertaking would be created, Brisard Machine-Outil (BMO), to which Brisard formally agreed to put up FF 65 million. The private fixed financing of BMO would be completed by FF 45 million from other investors in the form of medium and long-term credits. Finally, in March 1988 the French Government decided to contribute to the company's recovery with FF 25 million in the form of a repayable advance, to be repaid over 10 years following the sixth accounting period from that in which the assets were disposed of, if the cash flow to turnover ratio exceeded 15 % at that time.

In addition, the French authorities decided to finance an extraordinary social plan for the 63 workers not taken over by BMO. This extraordinary measure with a cost for the State of FF 4 972 million, was made outside the scope of application of the FNE (Fond national de l'emploi), the general aid scheme applicable in France in the event of redundancies. With this additional sum, those workers will receive supplementary severance payments, employment premiums, re-training and where possible extraordinary payments for early-retirement.

Berthiez Saint-Étienne (BSE) — The disposal of the second MFL production subsidiary took place in two steps because of the failure of the first attempt.

In March 1988, the Commercial Court of Saint-Étienne, responsible for the receivership of BSE, decided to accept a joint purchase bid submitted by the French group Smits-Lievre and the Belgian company Pegard. They offered FF 5 million for the acquisition of the assets related to BSE operations, to the exclusion of receivables. At the same time, they agreed to keep 160 of the workforce of 344. The disposal plan provided for the creation of a new company, Berthiez Productics (BP) to which the new owners would contribute FF 12 million. FF 30 million would additionally be provided by private investors in the form of medium and long-term credits. Finally, in May 1988 the French Government decided to contribute to the recovery plan of BP with FF 17 million granted in the form of a repayable advance, bearing the same repayment condition as that awarded to BMO, that is to say it would be repaid over 10 years following the sixth accounting period from that in which the assets were disposed of, if the cash flow to turnover ratio exceeded 15 % at that time.

In addition, and in parallel with the other disposal, the French Government decided to finance a social plan for the benefit of the workers made redundant, whose cost amounts to FF 16,2 million, with the same objectives as the plan for FL.

Nevertheless, despite the efforts made by the new owners, they failed to relaunch the company's actdivities. In October 1988 they were also compelled to place the company in the hands of judicial administrators under new receivership proceedings. Again the Commercial Court of Saint-Étienne re-examined the feasibility prospects of BP, and the possbility of a second disposal to another private investor interested in purchasing the company. On that basis, in November 1988, the Court accepted one of the two initial bids received from new potential purchasers. It should be noted that both bids were practically equivalent as regards acquisition price and social terms, and both opted for a disposal of assets without taking-over liabilities. According to the Court's records, the bid accepted was that ensuring the soundest financial position from the outset in the form of fixed financing. In these circumstances the preferred bid was that submitted by the Brisard group, which had also taken control of the assets of the other former MFL subsidiary.

Brisard offered an acquisition price of FF 7,4 million for the goodwill, stocks and receivables of BP, and committed itself to the creation of a new company keeping 140 of the workforce of 169. For its part, the municipality of Saint-Étienne acquired the land and buildings of the former BSE for FF 4 million, and signed a rental contract with the new company.

In this case, the French Government did not grant any advance to the company resulting from this second disposal, Berthiez SA. Notwithstanding, in view of the additional redundancies, the French Government decided to finance a new extraordinary social plan of FF 3,5 million in favour of these workers, with the same characteristics as those already implemented for FL and BSE.

Finally it should be mentioned that, within the framework of consultation of other interested parties, the governments of two other Member States submitted observations. These observations were communicated to the French authorities by letter of 7 September 1989, giving them notice to submit their comments within a one month period. No answer was received.

III

On its examination of the public measures in support of the companies of MFL, the Commission has verified to what extent those measures contain aid elements in the light of Articles 92 to 94 of the EEC Treaty.

At first sight, the French authorities have intervened in favour of MFL in two different ways : by financing the extraordinary social plans in favour of the workers made redundant, and by granting advances to the recovery plans of the companies resulting from the disposal of MFL assets.

With regard to the former, namely the financing by the State of the extraordinary social plans for redundancies, certain elements — supplementary severance payments, extraordinary early retirement expenses — which were assumed by the State and which represent normal expenditure for a company seeking to cut back staff, should therefore be attributed to the company being restructured. Notwithstanding, in the present case, it is not possible to maintain that the abovementioned State contribution constitutes aid relieving the new companies of expenses the old firms were obliged to bear in order to reduce the workforce. The purchasers of the assets had no legal obligation with regard to workers excluded from their takeover bids ; for this reason, any aid granted to these redundant workers cannot be judged to favour the new companies in the sense of relieving them of expense they should have borne in order to reduce the workforce, since such reduction was in any case the consequence of the disposal made under the receivership system. Therefore, it may be concluded that, in the present case, as stated by the French authorities, the aid for the social plans was *de facto* intended to lessen the adverse consequences of the redundancies. without having any positive effect for the new companies.

With regard to the granting of the advances, two aid elements appear to be involved. On the one hand, the very fact of lending money free of interest relieves the new companies from normal costs linked to the financing of their recovery plans. On the other hand, a second element appears in the conditions established by the State for the repayment of the advances, with a long repayment period for the principle amount, and a conditional formulation linked to future cash flow that could eventually lead to the non-reimbursement of the advances, turning them in the end into pure subsidies. None of these conditions fits with those normally applicable to credit operations under market conditions. On the contrary, they have been deliberately established by the French authorities to facilitate the companies' recovery.

In conclusion, the State aid involved in the granting of FF 42 million in advances at other than market conditions can be judged to have facilitated the recovery of the MFL operations under the new legal entities resulting from the disposal of its assets.

It should be noted that the aid involved in the advances is illegal under Community law from the time it came into operation, because the French authorities did not give prior notification of the aid to the Commission in accordance with the provisions of Article 93 (3).

In this respect it has to be recalled that — in view of the imperative nature of the rules of procedure provided for in Article 93 (3) which are also of importance as regards public policy, the direct effect of which the Court of Justice has recognized in its Judgment of 19 June 1973 in Case 77/72 — the illegality of the aid at issue here cannot be remedied *a posteriori*.

The unlawfulness of all the aid at issue derives from the failure to comply with the rules of procedure as laid down in Article 93 (3). In addition, where aid is incompatible with the common market, the Commission — availing itself of the possibility afforded to it by the Court of Justice in its Judgment of 12 July 1973 in Case 70/72, confirmed in its Judgment of 24 February 1987 in Case 310/85 — can require Member States to recover from recipients the amount of any aid improperly paid to them.

IV

This aid has in turn distorted competition among Community producers. Where financial assistance from the State strengthens the position of certain enterprises competing with them in the Community, it must be deemed to affect those other enterprises. It should be noted in that respect that the machine-tool industry within the Community has suffered since the mid-seventies from a large reduction in size, mainly as a consequence of two factors : on the one hand, the world-wide economic recession that pushed orders down drastically, and, on the other, the increasing competition from third countries. Both facts have enhanced to a large extent the intense competition among Community producers. In consequence, any aid granted to a particular producer, relieving it of costs that normally should be borne by it, reinforces its position *vis-à-vis* other non-aided competitors and, therefore, artificially alters their respective competitive situation. On this score, the subsidiaries of MFL have traditionally operated in foreign markets in competition with other Community producers. In 1986, MFL exported 62 % of its production, directing 17 % of these exports to other Member States. Moreover, machine tools are tradable goods representing substantial intra-Community trade. According to Nimexe statistics intra-Community exports of machine tools amounted to ECU 2,268 million in 1988, of which France accounted for 6,5 %. For their part, imports into the Community from third countries amounted to ECU 4,032 million, for the same year.

V

Article 92 (1) of the EEC Treaty provides that aid meeting the criteria laid down therein is in principle incompatible with the common market. Notwithstanding, the Treaty provides for certain exceptions to that general rule.

The exceptions provided for in Article 92 (2) are not applicable in this case because of the nature of the assistance, which is not directed towards the attainment of the objectives listed therein.

For its part, Article 92 (3) lists aid which may be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community as a whole and not in that of a single Member State. In order to ensure the proper functioning of the common market, and having regard to the principle embodied in Article 3 (f), the exceptions provided for in Article 92 (3) must be construed narrowly when any aid scheme or individual aid award 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 aid recipients towards patterns of behaviour that would serve one of the objectives of the said exceptions.

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid that promotes or facilitates the development of certain areas, none of the areas where the MFL plants are situated — Capdenac, Albert, Saint-Étienne — is a region characterized by an abnormally low standard of living or serious underemployment within the meaning of Article 92 (3) (a) as established by the Commission [1]. Moreover, the advances were not granted under the corresponding regional aid schemes but on the basis of *ad hoc* decisions of the government. The aid involved does not have the requisite features of aid to facilitate the development of certain economic areas within the meaning of Article 92 (3) (c), inasmuch as the assistance granted was not conditional on investment or job creation as explained in the 1979 Commission communication on the principles of coordination of regional aid schemes [2].

As regards the exemptions provided for in Article 92 (3) (b), the aid in question was not intended to give effect to a project of common interest, or to remedy a serious disturbance in the economy of the Member State concerned nor did it have the characteristics of such projects. Moreover, the French authorities have not invoked this derogation.

Article 92 (3) (c) also lays down an exemption for aid to facilitate the development of certain activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In this regard, as mentioned above, the necessity of the aid should also be clearly demonstrated, that is to say, that without the aid the objective stated in the said exemption would not be reached. In the case at issue, the aid involved in the granting of advances at other than market conditions does not appear essential even as regards the basic aims pursued by the French authorities : to ensure both the continued operation of the undertakings disposed of, and the preservation of existing jobs. According to the financial forecasts provided by the French authorities, over the first three years of operation the new companies will record profits before tax amounting to about FF 42 million and FF 2 million, for BMO and BSA, respectively.

[1] OJ No C 212, 12. 8. 1988, p. 2.
[2] OJ No C 31, 3. 2. 1979, p. 9.

In the last year of this three-year period, the profits before tax will account for 4,3 and 6,8 % of their respective global income. In the light of these financial forecasts, the companies concerned appear capable of supporting by themselves the cost of advances granted at normal market credit conditions. In other words, even when regarded from the point of view of the objectives pursued by the French authorities, the aid in question constitutes a completely artificial benefit for which there is no justification. Furthermore, the aid cannot be justified from the Community point of view given the substantial distortion of competition caused by this artificial benefit in the context of the intense competition between producers in the machine-tool sector.

It should be remarked that, as a result of the significant aid received by MFL for modernization of industrial equipment and restructuring under the Machine-Tool Programme, no major future investments will be required by the new companies resulting from the disposals, in order to consolidate their competitive position, but rather rationalization and improvement in their management policies, as stated in the recovery plan submitted to the Commission.

It should also be recalled in this regard that the same companies have benefited from a variety of other circumstantial advantages. On the one hand the substantial capital gains arising from the take-over of assets for a largely symbolic price under the winding up proceedings of MFL. The capital gains resulting from the formation of Brisard Machine-Outil have been estimated by the company itself at FF 90 million; no estimates for Berthiez SA have been provided. On the other hand, these new companies have commenced operations with a better sized labour force. Such reduction was produced without expense to the companies, since the decisions of the Commercial Courts regarding the disposal of the assets under receivership proceedings broke the juridical links between these continuing companies and the workers made redundant as a result.

In view of all the above considerations, the Commission has come to the conclusion that the aid granted by the French Government to the continuing businesses of MFL carried on by the new companies arising from the disposal of its assets, does not qualify for the exemption provided for in Article 92 (3) (c) of the EEC Treaty.

Therefore, in summary, the aid in question has proved to be illegal under Community law because the French Government did not fulfil its obligations under Article 93 (3). As pointed out above, the Commission can in such cases require Member States to recover aid granted illegally from recipients. After examination it appears that the aid is incompatible with the common market in view of the fact that, having altered intra-Community trade within the meaning of Article 92 (1), it does not fall within any of the exemptions provided for in Article 92 (2) and (3). In consequence, the aid in question must be withdrawn,

HAS ADOPTED THIS DECISION:

Article 1

The public assistance to the companies arising from the disposal of the assets of MFL, namely Brisard Machine-Outil and Berthiez Productics, in the form of advances amounting to FF 25 million and FF 17 million respectively, on terms other than normal market terms, was granted illegally in breach of Article 93 (3), and is incompatible with the common market pursuant to Article 92 of the EEC Treaty.

Article 2

Accordingly, the aid elements of the public assistance referred to in Article 1 must be abolished with effect from the date on which it was granted.

Consequently, as regards the FF 25 million advance to Brisard Machine-Outil, the French Government is hereby requested to either convert it into a normal credit on market terms as regards both interest and repayment with effect from the date on which it was granted, or withdraw the advance completely, or take any other appropriate measure to ensure that the aid elements are wholly abolished.

On the contrary, the aid element in the FF 17 million advance to Berthiez Productics does not need to be abolished because the initial beneficiary went bankrupt, and the final beneficiary Berthiez SA did not take over the liabilities of Berthiez Productics.

Article 3

The French authorities shall inform the Commission, within two months from the notification of this Decision, of the measures taken to comply therewith. Should this Decision be implemented later than the said period, the national provisions regarding interest on arrears payable to the State will be applicable from the date of the Decision's notification.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 20 December 1989.

For the Commission

Leon BRITTAN

Vice-President