COMMISSION DECISION

of 28 July 1999

on State aid which Italy plans to grant to Fiat Auto SpA for its plant at Pomigliano d'Arco (Naples)

(Notified under document number C(1999) 2916)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/318/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having invited the parties concerned to submit their comments in accordance with the abovementioned provisions [1],

Whereas:

I. PROCEDURE

(1) Between October and December 1997 the Italian Government notified the Commission, pursuant to Article 88(3) of the Treaty, of six planned measures under which it proposed to grant State aid to Fiat Auto SpA (Fiat) [2], one of which concerned the plant at Pomigliano d'Arco, Naples (Campania), (Fiat Pomigliano). The Commission registered this measure on 28 October 1997 under N 727/97. Requests for further information and a number of reminders were sent to the Italian authorities to elicit the data required for a Commission decision. On 23 April 1998 a meeting was held with representatives of the Italian authorities and Fiat to clarify various points connected with the examination of the case. Finally, in a letter of 20 November 1998, the Italian authorities supplied partial replies to the questions raised by the Commission.

(2) By letter of 3 March 1999 the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the proposed aid measures, allowing Italy one month to supply all the documents, information and data required to assess the compatibility of the aid with the common market. In the absence of any reply, the Commission would reach a decision on the basis of the information in its possession.

(3) The decision to initiate the procedure was published in the *Official Journal of the European Communities* [3] and interested parties were invited by the Commission to submit comments.

The Commission has not received any comments from interested parties.

(4) Representatives of the Commission went to Mirafiori on 24 February 1999 to discuss the Fiat Pomigliano plan among other matters. On-site visits were made on 18 May 1999 to Pomigliano and on 22 June 1999 to the Fiat plants at Tichy and Biesko-Biala in Poland.

II. DETAILED DESCRIPTION OF THE AID MEASURE

(5) The aid proposed by the Italian authorities would be granted to Fiat, which has plants among other places, in Italy, Poland, Turkey und South America. In 1998 Fiat produced 2,7 million vehicles of the Alfa Romeo, Ferrari, Fiat, Lancia and Maserati makes. In 1997 it employed around 62 000 people in Italy, 7 500 of them at Pomigliano, where Alfa Romeo cars are produced. A significant share of Fiat's sales, roughly one third, is recorded in other Member States.

(6) The investment notified is at Pomigliano, in an area qualifying for assistance under Article 87(3)(a) of the Treaty, where the maximum regional aid intensity for large firms is 40% net grant equivalent (nge). The investment started in March 1995 and is to be completed

[1] OJ C 113, 24.4.1999, p. 16.

[2] Four of these measures related to motor vehicle production: Cassino-Piedimonte San Germano, Mirafiori Carrozzeria (C 5/99, ex N 728/97), Pomigliano (C 4/99, ex N 727/97) and Rivalta (C 8/99, ex N 834/97), while two concerned engine production: Termoli (C 7/99, ex N 730/97) and Mirafiori Meccanica (C 9/99, ex N 838/97).

[3] See footnote 1.

in May 2000; according to the Italian authorities, the estimated cost is ITL 659 billion (present value: ITL 476 billion, or around EUR 247 million). The investment is in production of the Alfa 156 model, which belongs to segment D, and a new Alfa Romeo segment C car, codenamed 'model 937'.

(7) According to the Italian authorities, the aid, worth ITL 56,4 billion (EUR 30,6 milllion) at present values, would be granted under the scheme provided for by Law No 488 of 19 December 1992 ([4]) on the refinancing of Law No 64/86 (Law No 488/92), approved by Commission decision of 24 March 1995. Its intensity would be 12,3% nge or 10,08% gross grant equivalent (gge).

(8) The Commission decided to initiate the formal investigation procedure in respect of the proposed aid measure and informed the Italian Government accordingly, for the following reasons in particular:

(a) it had doubts about the need for the aid, and in particular the alleged mobility of the investment;

(b) it had doubts about the level of aid that could be authorised, since the Italian authorities had not provided the necessary information for a cost-benefit analysis (CBA).

(9) The Commission enjoined Italy to supply within one month all the information required to assess the compatibility of the aid measure in question and to provide certain specific documents, including;

(a) a location study demonstrating that the project was mobile;

(b) proof that the social and other consequences of a decision to close Fiat Pomigliano would not have prevented production being transferred to other sites;

(c) a cost-benefit analysis based on the identification of a reference (comparator) plant in a non-assisted area of the Community in order to compare the operating costs (labour, components/materials, rent, inventory carrying costs, energy/water, telecommunications, inward and outward transport, training, etc.) over a period of three years running from the start of commercial production, and the investment costs (including land purchase, building/construction, machinery/equipment, tools and dies, supplier tooling, etc.) in both locations;

(d) data on the production capacity of the group before and after the investment.

In the absence of any reply, the Commission would reach a decision on the basis of the information in its possession.

([4]) Italian Official Gazette No 229 of 21 December 1992.

III. **COMMENTS BY ITALY**

(10) On 9 April 1999 the Italian authorities requested an extension of the deadline for their reply, and on 16 April they sent a letter to the Commission containing the information deemed necessary to conclude the examination of the six cases notified between October and December 1997 for which the Commission had decided to initiate the formal investigation procedure on 3 February 1999.

(11) The Italian Government essentially stressed what it saw as the disparity between the study carried out by the Commission and the economic reality of the decision on plant location, in particular as regards the interconnected themes of mobility and performance of the cost-benefit analysis. The comments made in this context go beyond the specific case of Fiat Pomigliano and relate to all of the six Fiat cases mentioned.

(12) As far as the assembly plants are concerned ([5]), Italy noted that Fiat had in particular drawn up a coherent investment programme for the period 1993 to 1998 after considering two scenarios: carrying out the investments concerned by giving preference to production in its Italian plants or, alternatively, to its Polish plants (maximising transfers of production to Tichy and Bielsko-Biala). The diagrams attached to the letter of 16 April 1999 illustrate the capacity allocations for each plant according to the scenario under consideration. A number of studies carried out by Fiat demonstrated that the option of installing production capacities in Poland for segment B, C and D vehicles of the Fiat and Alfa Romeo makes would have been more profitable than the option which Fiat finally decided on and which limited production in Poland, exclusively to segment A. By investing the same or only slightly higher amounts in Poland, it could have obtained a higher return thanks to lower labour costs, cheaper transport to the markets being served ([6]), and also lower component costs since Fiat's network of local suppliers, which was already well organised, would have been further developed.

([5]) Cassino, Mirafiori Carrozzeria, Pomigliano and Rivalta.

([6]) The markets of central Europe (Germany, France, Belgium and the Netherlands) and eastern Europe.

(13) Italy pointed out that Fiat could have achieved the workforce reduction necessary for relocating production to Poland through staff turnover, in particular by deciding not to replace the many workers that were due to retire given the shape of the age pyramid at the various plants belonging to the group. On the other hand, a fall in employment in areas of Italy in industrial decline or in the south of the country would have been seen as a negative consequence by Fiat as well.

(14) The expected regional aid would not be sufficient to offset the additional costs entailed by the decision to carry out this investment in Italy, but it was undoubtedly a factor in the final decision.

(15) The Italian Government therefore believed that the Fiat Pomigliano, Mirafiori Meccanica, Cassino and Rivalta projects satisfied the geographical mobility criterion.

(16) The Pomigliano project was mobile for the general reasons already given. Italy added that the real choice that Fiat had to make for the Alfa 156 model was between (i) locating the entire capacity at Pomigliano and (ii) locating 60 % of the capacity at Pomigliano and 40 % in Poland.

(17) Law No 488/92 did not allow aid to be granted in the cases concerned to a single horizontal aid programme, requiring instead that grant applications be separated. Because six sites were interested in the first two calls for applications used to select projects eligible for aid, Fiat submitted six separate applications. The six cases were therefore notified to the Commission separately. The handling of these cases was further complicated by the fact that the projects were notified at two different times, in October 1997 and December 1997. This led the Commission to apply the two different versions of the Community framework for State aid to the motor vehicle industry (the relevant Community framework), in force at the time of the notification ([7]). Under the first of these, the comparator site in the cost-benefit analysis had to be located in a non-assisted region of the Community, whereas the second allows the use of a comparator site situated in Europe or the countries of central and eastern Europe.

(18) This artificial distinction did not reflect the economic reality of the investments and overlooked the interdependence of the different production plants and the resulting synergies. The Italian authorities therefore considered it impossible to apply the two CBA methods separately, as required by the Commission, since such an approach was not consistent with the integrated nature of the investment programme and of the resulting financial calculations. The cost-benefit analyses should have been examined together by the Commission. The letter of 16 April 1999 provided a set of data on the basis of which cost-benefit analyses could have been carried out for the Mirafiori Carrozzeria, Rivalta, Cassino and Pomigliano plants, in comparison with Bielsko-Biala, in a context of optimum allocation of production between Italy and Poland.

(19) Nevertheless, in response to the Commission's decision to initiate the procedure with regard to the Fiat Pomigliano project, in which it stated that the relevant Community framework prohibited reference to an alternative site in an assisted area of the Community, Italy prepared a cost-benefit analysis comparing the plants at Pomigliano and Arese for production of segment C and D Alfa Romeo models. Before it was rejected in favour of the Polish option on profitability grounds, the Arese alternative was considered by Fiat since the withdrawal from production of the Lancia Y 10 and Alfa 164 models created plenty of available space at that plant. A cost-benefit analysis comparing the Pomigliano and Arese plants was therefore carried out on the assumption that capacity for producing 500 Alfa 156 cars per day would be installed, and the comparative operating disadvantages over the period 1997 to 1999 were calculated. Because production of model 937 was to be launched in the year 2000, only the investments for the Alfa 156 model were taken into consideration in the cost-benefit analysis. Italy pointed out that Arese was not located in an assisted area at the time of the investment decision.

(20) The cost-benefit analysis carried out by the Italian Government concluded that the comparative disadvantage of Pomigliano was 16,58 %, sufficient to authorise the aid under examination, which would have an intensity of 12,39 % gge.

(21) The Italian authorities pointed out that Fiat would not increase its production capacity in Europe during the period covered by the project.

IV. **ASSESSMENT OF THE AID**

(22) The measure notified by the Italian authorities for Fiat Pomigliano constitutes State aid within the meaning of Article 87(1) of the Treaty. It would be financed by the State or through State resources; moreover, since it represents a significant proportion of the project funding, it is likely to distort competition within the Community, by giving Fiat an advantage over other companies not

([7]) OJ C 123, 18.5.1989, p. 3, and. OJ C 279, 15.9.1997, p. 1.

receiving aid. Finally the motor vehicle market is characterised by extensive trade between Member States.

(23) The State aid in question, to be granted under the approved scheme provided for in Law No 488/92, is intended for a firm operating in the motor vehicle production and assembly sector. The proposal should therefore be examined in the light of the relevant Community framework. Given that the Italian Government notified the plan on 28 October 1997, the relevant framework is that of 1989, as amended and extended. This is confirmed by the subsequent framework ([8]), which entered into force on 1 January 1998 and point 2.6 of which expressly states that, the preceding framework, which entered into force on 1 January 1996 for two years, will serve as a basis for the assessment of aid proposals which were notified before 1 November 1997 but which have not yet been declared compatible by the Commission or are the subject of proceedings under Article 93(3) of the Treaty initiated before that date. Italy has not contested that understanding of the matter in the course of the present proceedings.

(24) The Commission also notes that the aid would be granted under an approved scheme and that the cost of the project exceeds EUR 17 million. The Italian authorities have therefore complied with the notification requirement. However, the Commission deplores the long delay between the signing of the ministerial order granting the aid in question, on 20 November 1996, and the official notification at the end of October 1997.

(25) Article 87(2) of the Treaty identifies a number of types of aid which it declares to be compatible with the Treaty but, given the nature and purpose of the aid and the geographical location of the investments, it does not apply to the project in question. Paragraph 3 of the same Article defines types of aid that may be considered to be compatible with the common market. Their compatibility has to be assessed in the overall context of the Community and not in a purely national context. To safeguard the smooth running of the common market and comply with the principle laid down in Article 3g of the Treaty, the exceptions in Article 87(3) must be interpreted strictly. Looking first at Article 87(3)(b) and (d), the aid in question is clearly not intended for a project of common European interest or for a project likely to remedy a serious disturbance in the Italian economy. Nor is it intended to promote culture and heritage conservation. Turning to the exemptions provided for in Article 87(3)(a) and (c), the Commission notes that Pomigliano is located in an area which qualifies for assistance under point (a).

([8]) OJ C 284, 28.10.1995, p. 3.

(26) To determine whether the proposed regional aid measures are compatible with the common market under the exemption provided for in Article 87(3)(a) or (c) of the Treaty, the Commission must therefore check compliance with the conditions specified in the relevant Community framework.

(27) The Commission accepts that new investment in disadvantaged regions can contribute to regional development. It thus takes a generally favourable attitude towards aid to investment granted to redress the structural disadvantages suffered by the depressed regions of the Community. However, when assessing regional aid proposals, the Commission must compare the benefits in terms of regional development (e.g. contribution to the long-term development of the region by creating or safeguarding steady jobs, and linkages with the local and Community economy) with any adverse effects on the sector as a whole (such as the creation or maintenance of substantial excess capacity). The purpose of such an assessment is not to deny the essential contribution made by regional aid to Community cohesion but to ensure that other factors affecting the Community, such as the development of the sector at Community level, are taken into account. It is thus standard Commission practice to proceed as follows when examining regional aid measures for the motor vehicle industry, in the light of the relevant Community framework.

(1) The Commission establishes first and foremost whether regional aid may be granted. To this end, it considers in particular whether the region in question is eligible for aid under Community law and whether the investor could have chosen an alternative site for its project, so as to demonstrate the need for the aid, with particular reference to the mobility of the project.

(2) The Commission checks the eligibility of the costs relating to the mobile aspects of the project.

(3) It then checks that the planned aid is in proportion to the regional problems it is intended to help solve. To this end, it checks that the project promotes the long-term development of the region and usually carries out a cost-benefit analysis.

(4) Finally, it considers the question of a 'top-up', which is an increase in the allowable aid intensity intended as a further incentive to the investor to invest in the region in question. Such top-ups are authorised on condition that the investment does not increase the capacity problems facing the motor vehicle industry.

(5) The sum of the figures established in the last two stages of the calculation represents the total amount of aid that the Commission may authorise within the regional ceiling.

(28) The procedure is familiar to the Italian Government and to Fiat, which have been involved in many previous instances of aid to the motor vehicle industry. The Commission supplied appropriate replies to the methodological questions raised at the meetings with the Italian authorities, who were accompanied by representatives of Fiat.

(29) The plant in question is located in a region qualifying for assistance under Article 87(3)(a) of the Treaty, for which regional aid could normally be authorised up to a net grand equivalent of 40% for large firms.

(30) In order to demonstrate the need for regional aid, the Italian authorities must, among other things, show that the project is mobile, that is to say that there exists an economically viable alternative location for the project or parts of the project. If there were no other new or existing industrial site within the group capable of receiving the proposed investment, the firm would be compelled to carry out its project in the sole plant available, even in the absence of aid.

(31) In its letter of 16 April 1999, the Italian Government states that the choice that Fiat had to make for producing the Alfa 156 model was between (i) locating the entire capacity, namely 500 cars per day, at Fiat Pomigliano and (ii) locating 60% of the capacity (300 cars per day) at Fiat Pomigliano and the remaining 40% in Poland. This capacity allocation, for which there is an economic logic, is partly confirmed by diagrams showing (i) the Pomigliano plant with a capacity of 1 200 cars per day, used entirely for the production of segment C([9]) cars (700 cars per day, according to the Commission) and segment D([10]) cars (500 cars per day according to the Commission) of the Alfa Romeo make, and a Polish plant, with a capacity of 2 000 cars per day, used for producing 700 Fiat segment A cars per day and (ii) Fiat Pomigliano, with a capacity of 1 200 cars per day, used for producing only 1 000 Alfa Romeo cars per day in Segment C (700 cars per day, according to the Commission) and segment D (300 cars per day, according to the Commission), and a Polish plant, with a capacity of 2 000 cars per day, used to full capacity, among other things for producing Alfa Romeo segment D cars. There are no plans for producing Alfa Romeo segment C cars at any other Italian plant.

([9]) Model 937 belongs to segment C.

([10]) The Alfa 156 model belongs to segment D.

(32) The Commission also notes that, although the documentation supplied by the Italian authorities shows that Fiat had studied the overall mobility of the Mirafiori Meccanica, Rivalta, Cassino and Pomigliano projects, the real economic alternative would not have required it to transfer production capacity simultaneously from those four Italian plants. It would have been possible to relocate only part of the capacity (in particular according to the platforms involved) of one or more of those plants. For example, Fiat could have transferred in a technically and financially rational manner the capacity for producing only 200 Alfa 156 cars per day from Pomigliano to Biesko-Biala without installing in Poland additional capacity for producing the Fiat Marea and Bravo/Brava models.

(33) The Commission consulted independent experts on this subject (IMO-Leuven) who accompanied it on a visit to the Fiat Pomigliano, Tichy and Biesko-Biala plants.

(34) The Commission concludes that the project is mobile as regards the production of 200 Alfa 156 cars per day, while the investment for model 937 does not satisfy the mobility requirement.

(35) The fact that the investment at Fiat Pomigliano began more than a year before the request for aid was made would normally mean, as the Commission stated when it gave notice of its decision to initiate the procedure, that the aid was not necessary to the implementation of the project. However, in keeping with the Commission decisions of 18 November 1997([11]), 30 September 1998([12]) and 7. April 1998([13]), there are very specific aspects in the follow-up to Law No 64/86 and in the implementation of Law No 488/92 which may, exceptionally, justify a time lag between the start of a project and the request for aid. It has also been ascertained that, when the investment began in March 1995, Fiat was firmly expecting to be granted aid under Law No 488/92. Obviously, it had no way of knowing exactly how much aid might be available.

(36) The Commission therefore concludes that the regional aid was necessary for the implementation of the investment project at Fiat Pomigliano.

(37) The Commission has checked that the costs were eligible under the relevant aid scheme. Although the investment does not result in increased production capacity, the

([11]) OJ C 70, 6.3.1998, p. 7.

([12]) OJ C 409, 30.12.1998, p. 7 and OJ C 384, 12.12.1998, p. 20.

([13]) OJ C 240, 31.7.1998, p. 3.

Commission takes the view that the notified project constitutes an initial investment within the meaning of the guidelines on national regional aid ([14]). Rather than modernisation, it involves a fundamental change in the structure of production at the plant.

(38) It also notes that under Order No 527/95 investment expenditure may be allowed retroactively, going back as much as two years prior to the initial application for regional aid. This is an exceptional procedure introduced as a transitional measure to fill the legal vacuum caused by the expiry of Law No 64/86 and the delay in enacting Law No 488/92. In the case of the project under consideration, the investment started in March 1995 and Fiat submitted the application for aid to the Italian authorities in May 1996. The Commission concludes that the whole of the investment of ITL 659 billion is eligible for regional aid under Law No 488/92.

(39) However, the Commission can allow only mobile investment, assessed on the basis of the plant and machinery necessary for producing 200 Alfa 156 cars per day.

(40) The direct consequences of the project, among other things the maintenance of jobs at the plant, as well as the secondary effects, for example on local suppliers of goods and services, represent significant benefits for the local economy. The Commission concludes that the proposed aid, which part-finances the project, will contribute to the long-term development of the Pomigliano area.

(41) The relevant Community framework requires the project notified to be compared with an analogous project carried out in a non-assisted region of the Community in order to identify the additional costs arising from the structural shortcomings of the assisted region chosen for the investment. The Italian Government claims that the application of this principle does not reflect the economic choice Fiat faced. In its view, the Commission should carry out an assessment that takes account of the integrated nature of the projects: in other words, the Commission should use the comparator sites that the investor actually considered, in this case Poland and Tichy/Bielsko-Biala.

(42) If, in case of Fiat Pomigliano, the Commission were to authorise the use of comparator sites not situated in non-assisted regions of the Community, it would violate the principle of equal treatment. It would be using a method of assessment completely different from that applied in other cases legally subject to the same procedure, i.e. in all the cases examined in the light of the relevant Community framework in force prior to 1998, for which the comparator site had to be in a non-assisted area, as in Commission Decision 96/666/EC ([15]).

(43) Moreover, at the time when Fiat carried out its study of possible sites, taking into account the possibility of obtaining State aid, in 1993 to 1994 at the latest, the Commission's practice required the use of a comparator site located in an area not eligible for regional aid. The Italian authorities and Fiat were familiar with this methodology at the time, for example in the case of Fiat Mezzogiorno ([16]), a typical example of the application of the cost-benefit analysis. The only aid Fiat could have taken into consideration in the financial analysis relating to the location decision would have been that based on a comparison between the plant which might potentially benefit from regional aid and an alternative site in a non-assisted region of the Community. Reference to an alternative plant in Poland, as called for by Italy, became possible only after the relevant Community framework entered into force in January 1998, some four years after the investment decision was taken.

(44) In conclusion, the Commission cannot accept the Italian Government's argument that the analysis of Fiat's integrated investment programme should be based on a comparison of the Italian options with sites in Poland.

(45) It is clear from the information supplied by the Italian authorities that the plant at Arese, which at the time of the investment decision was located in a non-assisted area of the Community where Fiat considered at one time locating production of the Alfa 156 model, can serve as a comparator site for the cost-benefit analysis needed in order to assess the aid intensity that can be authorised by the Commission.

(46) The Commission experts have accordingly studied the information supplied by Italy in order to calculate the net additional costs of carrying out the project at Fiat Pomigliano instead of Arese.

(47) Since the project involves an expansion, the advantages and drawbacks are assessed over three years, beginning with the start of commercial production. Commercial production of the Alfa 156 began in 1997; the three-year reference period for the cost-benefit analysis thus began in 1997. These principles have not been contested by Italy.

(48) The Commisson has to take its decision on the basis of the information in its possession, in particular that provided by the Italian authorities in response to its letter

([14]) OJ C 74, 10.3.1998, p. 9.

([15]) OJ L 308, 29.11.1996, p. 46.

([16]) OJ C 37, 11.2.1993, p. 15.

of 3 February 1999 enjoining them to supply the necessary data and documentation. The letter of 16 April 1999 contains statements that are not substantiated or sufficiently detailed or the consequences of which are not precisely worked out. The Commission cannot include such elements in its assessment of the comparative disadvantages of Pomigliano with respect to Arese since it has to construe the exemptions provided for in Article 87(3) strictly.

(49) In general, as revealed by the cost-benefit analysis prepared by the Italian authorities, the disadvantages of Fiat Pomigliano arise from the extra costs of labour, transport and investment. However, the Commission takes issue with the cost-benefit analysis supplied by Italy on a number of points.

(1) First, the reference rate used by the Commission, in particular for calculating discounted values, is 11,90%, the reference rate applying in Italy at the time the project studies were carried out (around 1994). Italy, on the other hand, has applied a discount rate of 13,08% without providing sufficient justification.

(2) Second, the relevant Community framework requires the operating and investment costs to be compared with reference to the mobile part of a project only. It has already been established that the mobile part of this project corresponds to the production of only 200 cars per day. However, the Italian authorities based their cost-benefit analysis on production assumptions of 500 cars per day at Pomigliano and Arese.

(3) The Commission considers that the alternative of producing 500 cars per day at Arese is unrealistic. Such a decision would have meant calling into question the profitability of the Fiat Pomigliano plant itself. The Italian authorities have not satisfactorily demonstrated either that Fiat actually did give serious consideration to such an alternative; instead, they constantly stressed that the real choice facing Fiat was between maximising production in Poland and maintaining capacity in Italy.

(4) The Commission therefore has to apply a coefficient of 40% (the ratio between 200 cars per day and 500 cars per day) to the figures arrived at in the study for the operating advantages and disadvantages.

(5) As far as the investments are concerned, the Commission would stress first of all that its examination was further hindered by the delay between the start of the investment (1995) and the point when it had access to usable data (1999). In order to be able to carry out a thorough analysis, the Commission should have been able to visit Fiat Pomigliano and Arese before the project began. The fact that such checks could not be carried out retrospectively accounts for the approximate nature of some of the assessments made by the Commission in the study of the investment disadvantages, something for which it cannot be held responsible.

(6) The Commission recognises that the application of a 40% coefficient to the investment advantages and disadvantages may not precisely reflect the industrial reality of a project based on the transfer of 200 cars per day instead of 500 cars per day. On the other hand, since the Italian authorities have not reacted on this point despite having been enjoined to do so, and following the visit to Fiat Pomigliano and the meeting held in Poland on this specific topic, the Commission takes the view, with the support of its experts, that the application of a 40% coefficient to the investment disadvantages is justified. Accordingly, the amount of the investments considered eligible by the Commission has in turn been limited to 40% of the investments deemed eligible under Law No 488/92, giving an amount of ITL 195,6 billion (present value — base year 1995).

(50) The corrections thus introduced by the Commisson produce results that differ greatly from the initial cost-benefit analysis. The disadvantage of Fiat Pomigliano compared with Arese, as determined by the Commission, works out at 17,3%.

(51) The nominal aid of ITL 104,5 billion notified by the Italian authorities on 18 May 1999 corresponds to a present value of ITL 61,9 billion at the applicable reference rate. The intensity of the planned aid is thus in fact 31,6% gge. which is less than the maximum of 40% nge for regional aid in the Pomigliano area.

(52) In view of the sensitivity of the motor industry, the Commission examines the effects on competition of every investment project, looking in particular at variations in production capacity on the relevant market in the group concerned.

The product market concerned by the project for Fiat Pomigliano is the market in motor cars. In accordance with the relevant Community framework, the relevant geographic market is the European Economic Area.

The letter transmitted by Italy on 20 November 1998 provides data on the car production capacities of plants belonging to the Fiat group, both before and after the project. There is no evidence of any increase in capacity. The Commission therefore concludes that the intensity allowable for the project can be increased by an adjustment factor (top-up) of 3 percentage points.

(53) Lastly, the Commission notes that, although Fiat Pomigliano is located in an area covered by Article 87(3)(a) of the Treaty, no further operating aid may in any event be granted in the motor vehicle industry.

V. **CONCLUSIONS**

(54) In the light of the extremely thorough analysis conducted by the Commission, with the assistance of its experts, the final intensities of the disadvantage and of the aid proposed by Italy work out at 17,3% and 31,6% gge respectively of the investments deemed eligible by the Commission. Given that the allowable intensity may be increased by a top-up of 3 percentage points, the Commission concludes that the regional aid which the Italian Government plans to grant to Fiat Pomigliano is compatible with the common market under Article 87(3)(c) of the Treaty up to a maximum intensity of 20,3% gge.

(55) Since the eligible investments amount, according to the Commission's calculations, to ITL 195,6 billion, the maximum amount of aid allowed is ITL 39,6 billion at present values (base year 1995, at a discount rate of 11,90%).

(56) Any additional State aid for the investment project in question is incompatible with the common market.

(57) In view of the characteristics of the project, the Commission calls on the Italian authorities, pursuant to point 2.3 of the relevant Community framework, to present to the Commission a detailed report on implementation of the project,

HAS ADOPTED THIS DECISION:

Article 1

The State aid that Italy plans to grant to Fiat Auto SpA for the plant at Pomigliano d'Arco (Naples) is compatible with the common market under Article 87(3)(c) of the Treaty, up to a maximum intensity of 20,3% gross grant equivalent of eligible investments amounting to ITL 195,6 billion, discounted at the rate of 11,90% (base year 1995).

The aid, amounting to not more than ITL 39,6 billion at present values, discounted at the rate of 11,90% (base year 1995), is accordingly authorised.

Article 2

Any State aid in addition to the aid referred to in Article 1 that Italy plans to grant to Fiat Pomigliano shall be incompatible with the common market.

Article 3

Italy shall inform the Commission, within two months of the date of notification of this decision, of the measures it has taken to comply with it.

Article 4

Italy shall present, in September each year until the project is completed, a report on the state of progress and financial implementation of the project and general compliance with the conditions set out in the notification of the aid in question.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 July 1999.

For the Commission

Karel VAN MIERT

Member of the Commission