II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 15 February 2000
on the State aid which Italy plans to grant to Fiat Auto SpA for its plant in Rivalta (Turin)

(notified under document number C(2000) 487)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/337/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 interested parties to submit their comments in accordance with the abovementioned provisions [1],

Whereas:

I. PROCEDURE

(1) Between October and December 1997 Italy 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'), one of which (registered under N 834/97) concerned the automobile assembly plant at Rivalta, Turin, in the province of Piedmont ('Fiat Rivalta'). 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 the various aspects of the examination of the case. Partial replies to the questions raised by the Commission were supplied by the Italian authorities in a letter of 20 November 1998.

(2) By letter of 9 March 1999, the Commission informed Italy of its decision of 3 February 1999 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* [2], and interested parties were invited by the Commission to submit comments. No comments were received.

(4) Representatives of the Commission went to Mirafiori on 24 February 1999 to discuss the Fiat Rivalta plan, among other matters.

(5) On 9 April 1999 the Italian authorities requested an extension of the deadline for replying and on 16 April 1999 they sent a letter to the Commission containing the information they considered necessary for it to complete its examination of the case.

[1] OJ C 120, 1.5.1999 and OJ C 288, 9.10.1999, p. 37.

[2] OJ C 120, 1.5.1999, p. 6.

(6) Further examination of the Rivalta case served to strengthen the Commission's initial doubts, particularly as regards the need for the planned aid. By letter of 14 June 1999, the Commission therefore informed Italy of its decision of 26 May 1999 to widen the procedure initiated on 3 February 1999, allowing the Italian authorities one month in which to supply the 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.

(7) The decision to widen the procedure was published in the *Official Journal of the European Communities* [1], and interested parties were invited by the Commission to submit comments. No comments were received.

II. **DETAILED DESCRIPTION OF THE AID**

(8) The aid notified would be granted to Fiat, controlled by Fiat SpA. The Fiat group operates in the automobile sector through three companies: Fiat Auto for cars, IVECO for industrial vehicles and Magneti Marelli for parts.

(9) Fiat has plants in Italy, Poland, Turkey and South America. In 1998 it produced 2,4 million vehicles [2] of the Alfa Romeo, Ferrari, Fiat, Lancia and Maserati makes; 38 % of these were produced in Italy, 29 % in the rest of Europe and 33 % in the rest of the world.

(10) The investment planned by Fiat is at Rivalta, in an area qualifying for assistance under Article 87(3)(c) of the Treaty over the period March 1995 to 1999; the maximum regional aid intensity for the aid was 10 % net grant equivalent (nge) for large firms.

(11) In 1997 the Rivalta plant, which employed 4 580 workers, produced around 85 000 cars.

(12) The general aims of the project would be as follows:

— to increase the flexibility of the plant in order to produce the Fiat Bravo/Brava, Marea, Lancia Nuova Dedra and Alfa Romeo 166 models,

— to improve the ergonomics of the workplace,

— to achieve a more efficient balance between automation and manual work in the production process,

— to reduce the environmental impact,

— for the Bravo/Brava and Marea models, to enable the Rivalta plant to produce the quantities that at times of peak demand other factories of the group cannot deliver.

(13) The investment must be seen in the context of the very close links between Fiat Rivalta and Fiat Mirafiori. The manufacturing processes and agreements on work organisation enable the two plants to coordinate production according to technical and commercial requirements. Together, they therefore constitute a highly integrated complex which Fiat itself calls the *'comprensorio di Rivalta-Mirafiori'*.

(14) The investment programme dates back to 1994. Spending began in September 1994. The 'pre-production series' were to be launched at Fiat Rivalta during the first half of 1997.

(15) Regional aid is planned totalling a nominal ITL 46 billion (EUR 24 million) under the scheme, which has already been approved by the Commission and is provided for by Law No 488/92. The discounted aid intensity was initially assessed at 4,2 %.

(16) When the procedure was initiated on 3 February 1999, the Commission expressed doubts as to the compatibility of the planned aid, in particular as regards the mobility of the project and the extent to which the notified aid corresponded to regional problems (its 'proportionality') and asked the Italian authorities to provide the following information:

(i) a locational study (or equivalent) by Fiat clearly showing that the investment is mobile, i.e. that the project could have been carried out in an economically viable manner at an alternative site in the Community or in a central or eastern European country;

(ii) a cost-benefit analysis carried out on the basis of the above study, indicating the operating and investment costs of the project;

(iii) the development of the production capacity of the Fiat Rivalta plant.

(17) It subsequently emerged that until March 1995 Fiat Rivalta was not located in an assisted area. The project was begun in 1994 and was preceded by feasibility studies, locational studies, etc. which had presumably been carried out in 1993 or before. Thus the decision to invest in Rivalta must have been taken in 1993/1994, at a time when the plant was not located in an assisted area. In its decision to widen the procedure, the Commission therefore expressed serious doubts as to whether the investor, when it was considering the financing of the project, could have worked on the assumption that it would obtain regional aid. If these doubts were correct, then the aid was not necessary to the completion of the investment in Rivalta.

[1] OJ C 288, 9.10.1999, p. 37.
[2] *Source*: 'Fiat, facts and figures 1999'.

(18) Furthermore, both in the decision to initiate the procedure and in the decision to widen it the Commission asked Italy to supply within one month all the information required to assess the compatibility of the aid. In the absence of any reply, the Commission would reach a decision on the basis of the information in its possession.

III. **COMMENTS BY ITALY**

(19) On 9 April 1999 the Italian authorities requested an extension of the deadline in order to prepare their reply to the decision of 3 February 1999, and on 16 April 1999 they sent a letter to the Commission containing the information they considered necessary to complete its examination of the case.

(20) Firstly, the Italian Government explained that the mobile part of the project concerned the production of 200 Marea and 200 Bravo/Brava cars per day. Alternatively, the cars could have been manufactured in Poland at the existing Tichy or Bielsko-Biala factories. This alternative solution would have had certain advantages, including offering lower labour costs while guaranteeing high levels of quality, limiting investment and bringing the production of segment C and D cars of the Fiat group closer to certain markets in central and eastern Europe and, finally, developing a network of local suppliers, one of Fiat's major objectives.

(21) Secondly, the Italian authorities carried out a cost-benefit analysis comparing the costs of the projects at Fiat Rivalta and those in Poland on the basis of the mobility referred to in recital 20. The investment, worth a total of ITL 689 billion (around EUR 356 million), is carried out according to the following timetable:

(in billion ITL)

	1994	1995	1996	1997	1998	1999	2000	Total
Mobile investment	11	43	115	76	49			294
Non-mobile investment	10	55	190	52	34	33	21	395
Total	21	98	305	128	83	33	21	689

(22) The net disadvantage for the Italian plant, which is due mostly to high labour and investment costs, would therefore be 65 %, while the aid intensity would be 4,7 %.

(23) The planned regional aid does not offset the extra costs of locating the investment at Fiat Rivalta, but certainly had an incentive effect on the final decision.

(24) Thirdly, the Italian Government states that the production capacity, initially of 1 400 vehicles per day, has fallen since 1997. However, no exact figures are given.

(25) Fourthly, Italy generally points out the specific terms for implementing Law No 488/92, particularly as regards the retroactive conditions for eligibility of the investment.

(26) In reply to the Commission's decision to widen the procedure of 26 May 1999, Italy sent on 20 July 1999 a letter setting out in detail two main considerations: first, the process whereby the aid scheme was approved and how this tied in with the implementation of the aid in question, and, second, compliance with the formal criteria in the aid application.

IV. **ASSESSMENT OF THE AID**

(27) The measure notified by the Italian authorities for Fiat Auto constitutes State aid within the meaning of Article 87(1) of the Treaty. It would be financed by the State or through State resources. Furthermore, as it constitutes a significant proportion of the funding of the project, the aid is liable to distort competition in the Community by giving Fiat Auto an edge over competitors not receiving aid. Lastly, there is extensive trade between Member States in the automobile market.

(28) The aid in question is intended for a firm which manufactures and assembles cars. The firm is therefore part of the motor vehicle industry within the meaning of the Community framework on State aid to the motor vehicle industry (hereinafter 'the relevant Community guidelines') [1].

(29) The aid in question, notified on 3 December 1997, is to be granted under the scheme approved by Law No 488/92. The relevant Community guidelines specify that aid which the public authorities plan to grant to an individual project under an authorised aid scheme for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the Treaty, be notified before being granted if either of the following thresholds is reached:

[1] OJ C 279, 15.9.1997, p. 1.

(i) total cost of the project equalling EUR 50 million,

(ii) total gross aid for the project, whether State aid or aid from Community instruments equalling EUR 5 million.

(30) Both the total cost of the project and the amount of aid exceed their notification threshold. Thus, in notifying the proposed aid for Fiat Rivalta, the Italian authorities have complied with the requirements of Article 88(3) of the Treaty.

(31) Article 87(2) of the Treaty specifies certain types of aid that are compatible with the Treaty. In view of the character and purpose of the aid, and the geographic location of the investment, Article 87(2)(a), (b) and (c) are not applicable. Article 87(3) specifies other forms of aid which may be regarded as compatible with the common market. Compatibility must be assessed from the standpoint of the Community as a whole and not in a purely domestic context. In order to maintain the proper functioning of the common market and having regard to the principle in Article 3(g) of the Treaty, the exceptions in Article 87(3) must be construed narrowly. With regard to the exceptions in Article 87(3)(b) and (d), it is clear that the aid in question is not intended for a project of common European interest or to remedy a serious disturbance in the Italian economy or to promote culture and heritage conservation. As regards the exceptions in Article 87(3)(a) and (c), only subparagraph (c) could be relevant as Rivalta has been assisted by virtue of that provision and has never been assisted under subparagraph (a).

(32) In order to decide whether the planned regional aid under the exception in Article 87(3)(c) of the Treaty is compatible with the common market, the Commission must therefore check whether the conditions laid down in the relevant Community guidelines have been met.

(33) In these guidelines the Commission stipulates that in all cases the aid must be in proportion to the gravity of the problems to be resolved and necessary for the realisation of the project. Compliance with these two criteria of proportionality and necessity is essential if the Commission is to authorise State aid in the automobile sector [1].

(34) Although, as a rule, the question of proportionality is assessed by means of a cost-benefit analysis, the Commission may, in the case in question, limit its assessment to compliance with the necessity criterion only.

(35) In initiating the procedure, the Commission took note of the special circumstances which led to the authorisation of the scheme under Law No 488/92. As in its decisions of 18 November 1997 [2], 7 April 1998 [3] and 30 September 1998 [4], it acknowledged that particular circumstances surrounding the adoption of Law No 488/92 could explain the long delays between the launch of the project, the start of series production of the vehicles under the project, the application for aid in 1996 and the notification in December 1997. However, in assessing the necessity of the aid for locating the project in Rivalta, the Commission cannot confine itself to this consideration alone; it must examine other questions, namely:

(i) whether the regional aid was actually taken into consideration in the financial analysis of the project and the locational study which led to the selection of the Rivalta site, and

(ii) the effective mobility of the project.

(36) Furthermore, for each of these points, the Commission must check whether the evidence submitted by Italy in support of its claims are sufficient in the context of a narrow interpretation of the exceptions in Article 87(3) of the Treaty and in view of the Commission's requests of 3 February and 26 May 1999.

(37) The letter from the Italian authorities of 16 April 1999 recalls that the investment started on 31 May 1994. Moreover, according to information at the Commission's disposal, spending began in September 1994 and production of the Bravo/Brava and Marea models (the only vehicles affected by alleged mobility and therefore the only ones for which regional aid could be authorised) began in 1995 and 1996 respectively.

(38) The letter from the Italian authorities of 20 July 1999 states that the machinery/equipment was ordered in March/April 1994, with deliveries beginning in the second half of 1994. Moreover, it confirmed that the locational study which led Fiat to choose Rivalta was carried out in 1993 and 1994.

(39) The Commission notes that Fiat Rivalta was not located in an assisted area until March 1995, when the area was defined as such under Article 87(3)(c) of the Treaty. Furthermore, as reiterated in the letter of 20 July 1999, Italy submitted the first proposal for regions to be defined as assisted areas on the basis of this provision only in September 1994.

(40) The decision on the investment in question therefore dates from a time when Fiat Rivalta was not located in an assisted area.

[1] See point 17 of the judgment of the Court of Justice in Case 730/79 Philip Morris [1980] ECR 2671.

[2] OJ C 70, 6.3.1998, p. 7.
[3] OJ C 240, 31.7.1998, p. 3.
[4] OJ C 409, 30.12.1998, p. 7, and OJ C 384, 12.12.1998, p. 20.

(41) This assessment is not affected either by the fact that Fiat Rivalta is located in an Objective 2 area or by the alleged possibility of moving machinery/equipment from one site to another during the first phase of the project.

(42) The start of series production of the Bravo/Brava models at Rivalta, which, according to information supplied by the Italian authorities, took place in 1995, confirms moreover that most of the necessary investment was carried out in the period up to 1995, before the decision on assisted-area status was taken.

(43) It is therefore highly unlikely that, when considering the financing of the Rivalta project, Fiat was actually working on the assumption that it would obtain regional aid. The Italian authorities have not provided any evidence to remove the Commission's doubts in this respect.

(44) Even if it had included the possibility of receiving regional aid in its calculations, the firm was implicitly accepting the risk of not obtaining it since the relevant Community guidelines stipulate the need for prior authorisation by decision of the Commission.

(45) Furthermore, when Fiat decided to carry out the investment and therefore took into account possible State aid to finance the Fiat Rivalta project, Commission practice required a cost-benefit analysis based on a comparison between the regional plant and an alternative site located in a non-assisted region of the Community where Fiat would in all probability have carried out the investment. Both Italy and Fiat were familiar at the time with this practice, which had already been applied, for example, in the Fiat Mezzogiorno case [1]. The Commission has no information on the selection of the comparator site, but the most probable one would have been a plant in the centre/north of Italy. The Commission's experience shows that a cost-benefit analysis carried out using such a comparator site would have made it difficult, not to say impossible, to identify disadvantages for Fiat Rivalta and therefore to authorise regional aid. Again, the Italian authorities have not demonstrated that Fiat, when deciding to carry out the investment at Fiat Rivalta, was in fact including regional aid in its calculations.

(46) The Commission would make it quite clear that reference to an alternative plant in Poland (Bielsko-Biala or Tichy), as Italy suggests, became possible only when the relevant Community guidelines came into force in January 1998, i.e. four years after Fiat's investment decision.

(47) Lastly, in the Commission's view, a Member State and, all the more so, a firm cannot legitimately work on the assumption that a given region will be defined as an assisted area under Article 87(3)(c) of the Treaty until the Commission has adopted a decision to that effect.

(48) For this reason, the Commission finds that the Italian Government has not demonstrated that Fiat actually took the granting of regional aid into its calculations as a necessary criterion for selecting the Rivalta site. The notified regional aid is not therefore necessary to achieve the objectives referred to in Article 87(3) of the Treaty.

(49) Furthermore, on the basis of the relevant Community guidelines, in order to demonstrate the necessity of regional aid, the aid recipient must clearly prove that it has an economically viable alternative location for its project or for subpart(s) of the project. If there were no other industrial site, whether new or in existence, capable of receiving the investment in question within the group, the firm would be compelled to carry out its project in the sole plant available, even in the absence of aid. Now, with the guidelines in force, the mobility study is more important than in the past. In the Commission's view, it is no longer a question of recognising theoretical mobility but of making sure that the investor is both able and intends to locate the project at the alternative site if it is not possible to receive regional aid.

(50) Despite the Commission's requests, the information supplied by Italy in this regard is still inadequate. The Commission was given only a very brief explanation stating that Fiat's choice had been between the Polish plants and the Rivalta/Mirafiori complex and claiming that the Polish alternative would have had significant advantages over Italy, especially in terms of labour costs.

(51) The Commission takes the view that, at the time the investment decision was made in 1993/1994, the real possibility of locating the project in Poland was not so evident as the Italian authorities now claim. For example, the industrial risk was not insignificant at a time when Fiat Auto Poland was undergoing reorganisation. The networks of local parts suppliers were not as developed as they are today and it was not certain that suppliers would become established. Also, in their assessment of the mobility of the project, the Italian authorities pass over the important advantages in terms of flexibility (one of Fiat's strategic objectives) to be gained from establishing and maintaining the Rivalta/Mirafiori complex.

[1] OJ C 37, 11.2.1993, p. 15.

(52) The Italian Government has given the Commission only sketchy information on the possibility of producing 200 Bravo/Brava and 200 Marea at Bielsko-Biala or Tichy in optimum conditions and practically no information on Fiat's actual intention to relocate the investment to Poland.

(53) The Commission therefore considers that Italy has not demonstrated the mobility of the project. In the absence of a credible alternative site, the notified regional aid is therefore unnecessary to achieve the objectives referred to in Article 87(3) of the Treaty.

(54) Other objectives of the aid, referred to in passing by the Italian Government and including environmental protection and innovation, have never been explained in detail, despite requests from the Commission for information. The Commission has therefore been unable to assess the existence of aid concerning possible innovative or environmental protection measures.

V. **CONCLUSION**

(55) The regional aid which the Italian authorities plan to grant Fiat Rivalta is not necessary in order to achieve the objectives referred to in Article 87(3)(c), namely to facilitate the development of certain economic activities or of certain economic areas. The aid in question is therefore incompatible with the common market.

(56) For similar reasons, the Commission adopted on 22 December 1999 a negative final decision in respect of aid C 9/99 for Fiat Mirafiori Meccanica,

HAS ADOPTED THIS DECISION:

Article 1

The State aid that Italy plans to grant Fiat Auto SpA in connection with its Rivalta plant (Turin) is incompatible with the common market.

The aid shall consequently not be put into effect.

Article 2

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 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 February 2000.

For the Commission

Mario MONTI

Member of the Commission