

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 22 December 1999

on State aid which Italy plans to grant to Fiat Auto SpA for its Mirafiori Meccanica plant (Turin)

(notified under document number C(1999) 5211)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2000/514/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

partial replies to the questions raised by the Commission.

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 EC Treaty, of six planned measures under which it proposed to grant State aid to Fiat Auto SpA ('Fiat'), one of which (registered under N 838/97) concerned the Mirafiori Meccanica plant in Turin, Piedmont ('Fiat Mirafiori'), for investments at the Mirafiori engine works. 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 to discuss the methods by which the cases would be examined. Finally, in a letter of 20 November 1998, the Italian authorities supplied

(2) By letter of 2 March 1999 the Commission informed Italy that it had decided on 3 February 1999 to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the proposed aid measures, and formally required the Italian Government to supply, within one month, all the documents, information and data required to assess the compatibility of the aid with the common market. If Italy failed to supply those items, 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. 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 case among other matters.

(5) After having requested, on 9 April 1999, an extension of the deadline for reply, the Italian authorities sent the Commission, by letter dated 16 April 1999, the information they considered necessary for it to complete its examination of the case.

(1) OJ C 120, 1.5.1999, p. 6 and OJ C 288, 9.10.1999, p. 37.

(2) See footnote 1.

(6) Further examination strengthened the Commission's initial doubts, particularly as regards the need for the planned aid. By letter of 14 June 1999 it therefore informed Italy that it had decided on 26 May 1999 to extend the procedure initiated on 3 February 1999 and formally required the Italian Government to supply, within one month, all the documents, information and data required to assess the compatibility of the aid with the common market. If Italy failed to supply those items, the Commission would reach a decision on the basis of the information in its possession.

(7) The decision to extend 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.

II. Detailed description of the aid

(8) The planned aid would be granted to Fiat, which is controlled by Fiat SpA. The Fiat group operates in the motor vehicle industry, through Fiat Auto for motor vehicles, Iveco for commercial vehicles and Magneti Marelli for components.

(9) Fiat has plants in Italy, Poland, Turkey and South America. In 1998 it produced 2,9 million vehicles (⁴) of the Alfa Romeo, Ferrari, Fiat, Lancia and Maserati makes, 1,6 million of which in Europe. Roughly one half of sales were recorded on the domestic market, one third in other Member States and the remainder outside the Community.

(10) The investment proposed by Fiat is located at Mirafiori, which is currently in an assisted area under Article 87(3)(c) of the EC Treaty qualifying for a maximum regional aid intensity for large firms of 10 % net grant equivalent (ngc).

(11) The project relates to the production of 'Torque' engines used to power segment 'B' and 'C' Fiat vehicles produced in Italy and outside the Community. The investments, totalling ITL 468,4 billion (approximately EUR 242 million), were carried out according to the following schedule:

(ITL billion)

1994	1995	1996	1997	1998
84,7	65,9	43,3	97,2	177,3

(12) The Torque engines have been the focus of a number of innovations, as regards both the product and the manufacturing processes. Fiat Mirafiori appears to have been

chosen because of the opportunity to use part of the existing production lines following appropriate modifications, something which helped to limit the investments needed for the project.

(13) Regional aid worth a nominal ITL 30,3 billion (EUR 16 million) is planned under the approved scheme provided for by Law No 488/92. The discounted aid intensity appears to be 4,6 %.

(14) No other aid is planned for the project.

(15) When the Commission decided on 3 February 1999 to initiate the procedure, it expressed many doubts as to the compatibility of the planned aid, with special reference to the mobility of the project and the need for the aid. Nor could it find, at that stage, any justification for the granting of aid for innovative investment or aid for environmental protection. The Commission consequently concluded that, on the basis of the information in its possession, there were no reasons why the aid in question would qualify for any of the exemptions under Article 87(3) of the EC Treaty.

(16) After 3 February 1999, when the procedure was initiated, it emerged that Fiat Mirafiori had not been located in an assisted area until March 1995. The project began in 1994 and was preceded by feasibility, location, etc. studies, which were presumably carried out around 1993. Thus the investment decision must certainly have been taken by 1993 or 1994 at the latest, before the area in which Fiat Mirafiori is located was considered to be an assisted area. In its decision extending the investigation, the Commission therefore expressed serious doubts as to whether the investor, when considering the financing of the project, could have assumed that it would obtain regional aid. Consequently, the aid was not in its view necessary to the implementation of the investment concerned at Fiat Mirafiori.

(17) Both in the decision initiating the procedure and in the decision extending the investigation, the Commission formally required Italy to supply within one month all the information required to assess the compatibility of the aid measure in question. If Italy failed to do so, it would reach a decision on the basis of the information in its possession.

III. Comments by Italy

(18) On 9 April 1999 the Italian authorities requested an extension of the deadline for their reply to the decision of 3 February 1999 initiating the procedure, and on 16 April they sent a letter to the Commission containing the information deemed necessary to conclude the examination of the case.

(³) See footnote 1.

(⁴) Source: Automotive News Europe.

(19) The Italian Government first supplied all the necessary clarifications concerning the location studies carried out by Fiat in 1993 and 1994 prior to the choice of Fiat Mirafiori. It stated that the competing sites were Bielsko-Biala in Poland, a plant operated by the company Tofas in Turkey and a site belonging to the Cormec group in Argentina. The competing sites offered the advantage of lower labour costs than in Italy while meeting satisfactory standards of productivity and quality. As Tofas and Cormec were not wholly owned by Fiat, a fact which carried a significant risk for a strategic project such as the Torque engine, the location decision was narrowed down to a choice between Fiat Mirafiori and Bielsko-Biala.

(20) The expected regional aid would not be sufficient to offset the additional costs deriving from the decision to locate the investment at Fiat Mirafiori, but it was undoubtedly a factor in the final decision.

(21) Secondly, Italy pointed out the specific conditions governing the application of Law No 488/92, with special reference to its retroactive application to eligible investments.

(22) Thirdly, the Italian Government stated that the investments began in May/June 1994. The earlier activities, including the dismantling of the old plant in January 1993 and the investment expenditure incurred in May 1993, consisted in clearing the area occupied by the old production line, which was subsequently replaced by the Torque engine production line. According to the Italian authorities, these costs are not linked to the project under examination since the old plant would have been removed in any case, wherever it was decided to locate the investments for producing the Torque engine.

(23) Fourthly, Italy supplied further data for the cost-benefit analysis (CBA) and the market survey.

(24) In reply to the Commission's decision of 26 May 1999 to extend the investigation, on 20 July 1999 Italy transmitted a letter giving detailed information on two main aspects: the events leading up to adoption of the new aid scheme and the link with implementation of the aid in question, and compliance with the formal criteria in the applications for aid.

competition within the Community, giving an advantage to Fiat over other companies not receiving aid. Finally, the market for motor vehicle engines, like the motor vehicle market itself, is characterised by extensive trade between Member States.

(26) The aid in question is intended for a firm which manufactures and assembles motor vehicles and their engines. 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 ⁽⁵⁾ (the 'relevant Community framework').

(27) The aid in question, notified on 1 December 1997, is to be granted under the approved scheme provided for by Law No 488/92. The relevant Community framework specifies that aid which the public authorities plan to grant to an individual project under authorised aid schemes for a firm operating in the motor vehicle industry must, in accordance with Article 88(3) of the EC Treaty, be notified before being granted if either of the following thresholds is reached:

- total cost of the project: EUR 50 million, or
- total gross aid for the project, whether State aid or aid from Community instruments: EUR 5 million.

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

(29) Article 87(2) of the EC Treaty specifies certain types of aid that are compatible with the Treaty. In view of the nature and purpose of the aid and the geographic location of the investment, Article 87(2)(a), 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 laid down in Article 3(g) of the EC 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 Mirafiori is now located in an assisted area under Article 87(3)(c) and no longer in an assisted area under Article 87(3)(a).

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

⁽⁵⁾ OJ C 279, 15.9.1997.

(25) The measure notified by Fiat constitutes State aid within the meaning of Article 87(1) of the EC Treaty. It would be financed by the State or through State resources; moreover, given that it represents a significant proportion of the project funding, it is likely to distort

IV. Assessment of the aid

(31) In accordance with the framework, the Commission checks in every instance that the aid granted is proportional to the seriousness of the problems that it is intended to solve and is necessary for the implementation of the project. Both tests, proportionality and necessity, must be satisfied if the Commission is to authorise State aid in the motor vehicle industry ⁽⁶⁾.

(32) While the proportionality of aid is usually assessed by means of a cost-benefit analysis, in the case in point the Commission can limit its assessment to the necessity test alone.

(33) When initiating the procedure, the Commission took note of the particular events which led to the authorisation of the Italian scheme under Law No 488/92. In keeping with the decisions it had already taken on 18 November 1997 ⁽⁷⁾, 30 September 1998 ⁽⁸⁾ and 7 April 1998 ⁽⁹⁾, the Commission 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 mass production of Torque engines in 1995, the application for aid in May 1996 and the notification in December 1997. However, examination of the need for the aid in order to locate the project at Fiat Mirafiori cannot be restricted to consideration of such factors; the Commission must also check the following:

- whether the regional aid was indeed taken into account in the financial analysis of the project, the location study and the choice of the Mirafiori site, and
- whether the project was genuinely mobile.

(34) The Community also has to check, for each aspect, whether the evidence supplied by Italy in support of its claims is sufficient in the context of a narrow interpretation of the exemptions provided for by Article 87(3) of the Treaty and having due regard to the formal requirements to supply information issued by the Commission on 3 February and 26 May 1999.

(35) The Italian authorities' letter of 16 April 1999 states that the project was launched in May/June 1994, that orders for tooling were placed in March/April 1994 and that the first deliveries of tooling took place during the second half of 1994. The Commission logically concludes that any location study that prompted Fiat to choose the Mirafiori site must have been carried out between January 1993 and April 1994. That assessment was confirmed by the Italian authorities in their letter of 20 July 1999.

⁽⁶⁾ See the judgement of the Court of Justice of 17 September 1980 in Case 730/79 Philip Morris [1980] ECR 2671, paragraph 17.

⁽⁷⁾ OJ C 70, 6.3.1998, p. 7.

⁽⁸⁾ OJ C 409, 30.12.1998, p. 7 and OJ C 384, 12.12.1998, p. 20.

⁽⁹⁾ OJ C 240, 31.7.1998, p. 3.

(36) Fiat Mirafiori was not located in an assisted area until March 1995, when certain areas of Turin, including Mirafiori, were classed as assisted areas for the purposes of Article 87(3)(c) of the Treaty; as confirmed in the letter of 20 July 1999, Italy submitted an initial proposal for the areas to be classed as assisted areas under that provision only in September 1994.

(37) The decision on the investment in question was therefore taken at a time when Fiat Mirafiori was not located in an assisted area.

(38) This assessment is not affected by Fiat Mirafiori's location in an Objective 2 area, or by the alleged possibility of transferring the machinery from one site to another during the initial phases of the project. Pre-production units were furthermore manufactured in January/February 1995, before the decision classing the area as an assisted area was taken. It is also stated in Annex 3(b) to the Italian authorities' letter of 20 November 1998 that work on the Torque engine was carried out at the Mirafiori site from 1993 onwards, for example to modify the production lines for the engine block, the crankshaft, the connecting rods, the flywheel and the oil pump spindle.

(39) The Commission therefore takes the view that Fiat did not in fact consider the financing of its project at Mirafiori on the assumption that it would obtain regional aid; neither have the Italian authorities ever produced evidence refuting that view.

(40) Even if the company did include the possibility of receiving regional aid in its reasoning, it implicitly accepted the risk of the aid being withheld, since the Commission's prior authorisation was required in accordance with the relevant Community framework.

(41) Moreover, at the time Fiat decided to carry out the investment, which was also when it took into account the possibility of obtaining State aid to help finance the Fiat Mirafiori project, the Commission's practice required a cost-benefit analysis (CBA) based on a comparison between the plant in question and an alternative site in a non-assisted region of the Community where Fiat could very probably have located the investment. The Italian authorities and Fiat were familiar with this methodology at the time since they had, for example, already handled the Fiat Mezzogiorno case ⁽¹⁰⁾. The Commission does not have any information on the choice of comparator plant, but the most likely alternative would have been a plant located in central or northern Italy. The Commission's experience shows that a CBA drawn up on the basis of such an assumption would have made it difficult, if not impossible, to identify handicaps for Fiat Mirafiori justifying the authorisation of regional aid. Again, the Italian authorities have not supplied proof that Fiat indeed took regional aid into account in its decision to carry out the investment at Fiat Mirafiori.

⁽¹⁰⁾ OJ C 37, 11.2.1993, p. 15.

(42) The Commission points out, incidentally, that reference to an alternative plant in Poland (Bielsko-Biala), as called for by Italy in the case in point, became possible only after the entry into force of the relevant Community framework in January 1998, some four years after the investment decision was taken.

(43) Lastly, the Commission considers that a Member State and, all the more so, an undertaking cannot legitimately rely on a given region being classed as eligible for assistance under Article 87(3) until the Commission has taken a decision to that end.

(44) For these reasons the Commission concludes that the Italian Government has not sufficiently demonstrated that Fiat actually considered the grant of regional aid to be a necessary condition for selecting Fiat Mirafiori. The notified regional aid is therefore not necessary for achieving the objectives referred to in Article 87(3) of the EC Treaty.

(45) Secondly, pursuant to the abovementioned Community framework, in order to prove the need for regional aid the recipient company must clearly demonstrate that it has an economically viable alternative location for part or parts of its 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. This mobility study is now, under the framework currently in force, even more important than in the past. It is no longer sufficient for the Commission to recognise theoretical mobility; it has to establish that the investor had both the possibility and the intention of locating the project at the alternative site if the regional aid could not be granted.

(46) The information supplied by Italy in this connection continues to be scarce. The Commission has received only a brief statement explaining that, of the three possible choices (Cormec in Argentina, Tofas in Turkey and Fiat Auto Poland), two (Cormec and Tofas) were rejected as being too risky⁽¹¹⁾, while the Polish option offered considerable advantages in comparison with Fiat Mirafiori, particularly in terms of labour costs.

(47) The Commission takes the view that at the time the investment decision was taken, in 1993/1994, the real advantages of locating the project in Poland were not as obvious as the Italian authorities currently maintain. For example, the industrial risk was not negligible, at a time when Fiat Auto Poland was undergoing intensive reorganisation. This factor, which Italy mentions briefly but dismisses as unimportant, should not be underestimated in the context of a strategic project such as the Torque engine. Production would have been difficult to organise, involving the transport of sensitive components between Italy and Poland⁽¹²⁾; and networks of local component suppliers were not as highly developed as they are today. Production of Fiat engines in Poland is

furthermore currently limited to two relatively old models: the 652 cc and the 900 cc engines.

(48) The Italian Government has provided the Commission with only patchy indications concerning the technical feasibility of producing the Torque engine at Bielsko-Biala under optimum conditions and hardly any information regarding Fiat's real intention to relocate the investment concerned to Poland.

(49) The Commission accordingly concludes that Italy has not demonstrated the mobility of the project. In the absence of a credible alternative site, the notified regional aid is therefore not necessary in order to achieve the objectives referred to in Article 87(3) of the EC Treaty.

(50) Other aid objectives mentioned at one point by the Italian Government, such as environmental protection and innovation, have never been explained in detail, despite the formal requirements to provide information issued by the Commission. The Commission has consequently not been able to examine the presence of aid for any innovative or environmental protection measures.

V. Conclusion

(51) The regional aid which the Italian authorities plan to grant to Fiat Mirafiori is not necessary in order to achieve the objectives referred to in Article 87(3)(c) of the EC Treaty, 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,

HAS ADOPTED THIS DECISION:

Article 1

The State aid that Italy plans to grant to Fiat Auto SpA for its Mirafiori Meccanica 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, 22 December 1999.

For the Commission

Mario MONTI

Member of the Commission

⁽¹¹⁾ Since Fiat was not the sole shareholder in those companies.

⁽¹²⁾ Owing to the existence of components common to the Torque and the 138 engine, which remained in production at Mirafiori.