

**COMMISSION DECISION**

of 31 October 1995

**enjoining the German Government to provide all documentation, information and data on the new investment projects of the Volkswagen Group in the new German Länder and on the aid that is to be granted to them**

(C 62/91 ex NN 75, 77, 78 and 79/91)

(Only the German text is authentic)

(Text with EEA relevance)

(96/179/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Articles 5, 92 and 93 thereof,

Having regard to the Agreement establishing the European Economic Area, and in particular Articles 61 and 62 thereof,

Whereas:

- (1) On 18 December 1991 the Commission took the decision to open a procedure provided for in Article 93 (2) of the EC Treaty with respect to various State aid projects for the benefit of the VW Group in Thüringen and Sachsen<sup>(1)</sup>. By letter dated 29 January 1992, Germany agreed to suspend further payments of aid until the closure of the Article 93 (2) procedure.

According to the Commission's information the total aid paid illegally to VW in the form of grants allegedly for the projects Mosel II and Chemnitz II in October and December 1991 amounts to DM 360.8 million (ECU 191,2 million). Furthermore, VW Sachsen has obtained corporation tax refunds to the amount of DM 11,4 million (ECU 6,1 million) and special depreciation on its investments in 1991, where the amount still remains to be determined.

- (2) On 27 July 1994 the Commission took a final decision within that procedure on the restructuring aid to Sächsische Automobilbau GmbH for its car end engine plants in Mosel (Mosel I) and Chemnitz (Chemnitz I) and the cylinder head plant in Eisenach.

At the time of this final decision Germany informed the Commission that the VW Group

would finalize its plans on its new investment projects in Mosel and Chemnitz (Mosel II and Chemnitz II) at the end of 1994, so that at that time the relevant information on these projects would be transmitted to the Commission in order for it to assess the proposed regional aid. Before the final decision on the restructuring aid in 1994, the revised plans of VW were presented to the Commission in a preliminary form. The plant layout was to be changed and the investment would only start at the end of 1994. Furthermore, the aid contracts had been revised, so that the grants were reduced to DM 646,8 million for Mosel II and to DM 167,3 million for Chemnitz II. The corporation tax refunds would also fall to DM 106,8 million for Mosel II and to DM 31,9 million for Chemnitz II. This is due to the fact that eligible investment in Mosel II has been reduced to DM 2 812,9 million and to DM 758,8 million in Chemnitz, while projected employment fell to 2 843 in Mosel II and 786 in Chemnitz.

- (3) At the end of 1994, as well as in the following months, Germany informed the Commission that the investment plans by VW had not been finalized.
- (4) By letter dated 12 April 1995 the Commission requested Germany to provide VW's plans for the new plants. No reply was received to that letter.
- (5) By letter dated 4 August 1995, the Commission urgently requested the necessary information, threatening an injunction and eventually a final decision on the basis of the available information in case of non-compliance. In reaction to this letter the German Government informed the Commission by letter dated 22 August 1995 that VW's investment plans were still not finalized. It also stated that under German law a reimbursement of aid would be necessary if VW did not fully execute its investment or employment plans.

<sup>(1)</sup> OJ No C 68, 17. 3. 1992, p. 14.

(6) Under these conditions the Commission concludes that Germany has not submitted the necessary information for the Commission to assess the compatibility of the State aid to the VW Group for its projects Mosel II and Chemnitz II with Article 92 of the EC Treaty. Of this aid, grants to the amount of DM 360,8 million (ECU 191,2 million), corporation tax refunds to the amount of DM 11,4 million (ECU 6,1 million) and special depreciation on its investments in 1991, where the amount still remains to be determined, have already been paid. The fact that the aid or part of it might have to be reimbursed under German law, if the company did not fully execute its investment or employment plans, is not relevant for the assessment of the compatibility of the aid.

(7) In view of the above, and as the Court of Justice has acknowledged in its judgment of 14 February 1990 in Case C-301/87 (*France v. Commission*) and later confirmed in its judgment of 13 April 1994 in Joined Cases C-324/90 and C-342/90<sup>(1)</sup>, where an infringement of Article 93 (3) of the EC Treaty has been committed, the Commission is entitled to take an interim decision requiring the Member State in question, in this case Germany, to suspend payment of the aid and to provide the Commission with all the documents, information and particulars necessary for examining the compatibility of the aid measures with the common market. The Commission takes note that in reaction to the opening of procedure Germany has confirmed by letter dated 29 January 1992 that it would suspend payment of the aid.

Furthermore, pursuant to existing case law, should Germany fail to comply with this Decision by not providing all relevant information for the assessment of the compatibility of the abovementioned aid within the deadline of six weeks of the notification of this Decision, the Commission could take a final decision on the basis of the currently available information. Such final decision could include a demand for reimbursement of the aid including interest charged on the amount of aid paid to the company concerned from the date of payment at the percentage value on that date of the reference

rate used for the calculation of the net grant equivalent of the various types of aid in that Member State. Such a measure would be necessary in order to restore the *status quo* (?) by removing all of the financial benefit that has been improperly enjoyed by the recipient of illegal aid since the date that it received the aid,

HAS ADOPTED THIS DECISION:

*Article 1*

Germany shall, within six weeks of the notification of this Decision, provide all appropriate information, documentation and data allowing the Commission to assess the compatibility with Article 92 of the EC Treaty of the aid to the Volkswagen Group for its investment in the Mosel II and Chemnitz II plants in the new Länder of Germany. This information shall include in particular a detailed breakdown of the investment already realized at Mosel II and Chemnitz II, the detailed revised investment, capacity and production plans for both plants as well as all necessary information on the handicaps faced by VW in the new Länder through these projects.

Furthermore, it must include the current aid plans and a detailed quantification of all aid paid so far in connection with the projects. It may also include any further information that Germany considers useful for the assessment of the case.

*Article 2*

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 31 October 1995.

*For the Commission*

Karel VAN MIERT

*Member of the Commission*

<sup>(1)</sup> *Germany and Pleuger v. Commission*, [1994] ECR p. I-1205.

<sup>(2)</sup> Judgment of the Court of Justice of 21 March 1990 in Case C-142/87, *Belgium v. Commission*, [1990] ECR p. I-959.