COMMISSION DECISION
of 29 September 1999
on state aid which Italy plans to grant to Fiat Auto SpA for its plant in Termoli, Campobasso

(notified under document number C(1999) 3274)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2000/18/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 in Termoli, in the province of Campobasso in the region of Molise ('Fiat Termoli'); the Commission registered this measure on 28 October 1997 under N 730/97. 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 aspects of 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 9 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 the interested parties were invited by the Commission to submit comments.

(4) The Commission has not received any comments from interested parties.

(5) Representatives of the Commission went to Mirafiori on 24 February 1999 to discuss the Fiat Termoli plan among other matters. Finally, on 6 July 1999 an on-site visit was arranged at Termoli.

II. DETAILED DESCRIPTION OF THE AID MEASURE

(6) The aid proposed by the Italian authorities would be granted to Fiat, which has plants in Italy, Poland, Turkey and 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, 3 300 of them at Termoli, where vehicle engines and gearboxes are produced. A significant share of Fiat's sales, roughly one third, are recorded in other Member States.

(7) The investment notified is at Fiat Termoli, in an area qualifying for assistance under Article 87(3)(c) of the Treaty, where at the date of notification the maximum aid intensity for large firms was 30 % net grant equivalent. The investment started in 1995 and will be completed in 1999. According to a cost-benefit analysis of 20 November 1998, it amounts to ITL 487 billion [4] (current value: ITL 412 billion, or EUR 212 million). It will enable the production of the new Fire 16v [5] 1 242 cc engine, which was developed from the Fire 1 242 cc 8v MPI engine, but which has no common components. The installed capacity is approximately 230 000 Fire 16v engines per year.

(8) According to the Italian authorities, the aid, worth a nominal ITL 55,2 billion (EUR 28 million) would be granted under the scheme provided for by Law No 488 of 19 December 1992 [6] for the refinancing of Law No 64/86 ('Law No 488/92'), approved by Commission

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

[2] Four of these measures related to motor vehicle production: Cassino-Piedimonte San Germano (C 6/99, ex N 729/97), 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); and two to engine production: Termoli (C 7/99, ex N 730/97) and Mirafiori Meccanica (C 9/99, ex N 838/97).

[3] See footnote 1.

[4] The notification referred to ITL 487 billion.

[5] 'Fire' stands for 'Fully integrated robotised engine' and '16 v' means '16 valve'.

[6] GURI No 299, 21.12.1992.

Decision of 24 March 1995. The discounted aid intensity would thus be 13,03 % of the gross grant equivalent, according to the cost-benefit analysis of 20 November 1998. The initial notification referred to 15,27 % gross grant equivalent, or 12,44 % net grant equivalent.

(9) 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, given that according to the cost-benefit analysis provided by the Italian authorities the disadvantage of Termoli compared with Desio, cited as the reference site, would be 21,15 %.

(10) The Commission asked Italy to supply all of the information required to assess the compatibility of the aid measure in question within one month, failing which it would take a decision on the basis of the information already in its possession.

III. **COMMENTS BY ITALY**

(11) 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.

(12) First, the Italian Government reiterated that the purpose of the investment at Termoli was to develop and expand the plant by installing new assembly lines in separate workshops from those producing the 8v engine. New jobs would also be created.

(13) Second, the Italian Government deplored what it saw as the failure of the study carried out by the Commission to reflect the economic reality of the decision on plant location, in particular as regards the interconnected themes of mobility and the design of the cost-benefit analysis. The comments made in this context go beyond the specific case of Fiat Termoli and include all of the six Fiat cases referred to.

(14) As far as Fiat Termoli itself is concerned, Italy noted that the Commission continued to doubt the mobility of investment. Yet Fiat had considered various alternative locations for this project, particularly in Brazil and Turkey, both of which in 1994 offered lower operating costs, comparable levels of technology and productivity, and a well-trained workforce. Another indication of mobility was that by the year 2000 a production line for Fire 16v engines was to have been set up in Brazil. An economy of scale could have been achieved by grouping the production of all these Fire engines in Brazil.

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.

The Italian Government therefore believed that the Fiat Termoli project satisfied the mobility requirement.

(15) Third, Law No 488/92 did not allow aid to be granted to a horizontal aid programme, requiring instead that grant applications be separated. Because six sites were involved 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 in force on the dates of notification [1]. Under the first of these, the reference 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 reference site situated in Europe or the countries of central and eastern Europe. It is alleged that this dual and artificial dichotomy fails to take account of the economic reality of investment.

(16) Nevertheless, to comply with the Community framework, which prohibited reference to an alternative site in an assisted area of the Community, Italy prepared a cost-benefit analysis comparing the plants in Termoli and Desio for production of the Fire 16v engines. The letter of 16 April 1999 stated that Desio would potentially be a suitable production site, particularly given the space available. Various other details were provided to explain the differences in investment, the structure of transport costs, the references to the Mirafiori and Verrone plants, suppliers and other costs.

(17) The cost-benefit analysis carried out by the Italian Government concluded that the comparative disadvantage of Termoli would be 21,15 %, which was sufficient to justify the aid notified.

[1] OJ C 123, 18.5.1989, p. 3, and OJ C 279, 15.9.1997, p. 1, respectively.

IV. ASSESSMENT OF THE AID

(18) The measure notified by the Italian authorities for Fiat Termoli 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, given that it represents a significant proportion of the project funding, it is likely to distort 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.

(19) The state aid in question, 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 project on 28 October 1997, which is also the date on which the notification was registered at the Commission, the relevant framework is that dating from 1989, as amended and extended. This is confirmed by the subsequent framework, which applies from 1 January 1998 (1).

Point 2.6. of the new framework specifies 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.

(20) 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.

(21) However, the Commission deplores the long delay between the signature of the ministerial order awarding the aid in question, on 20 November 1996, and the official notification at the end of October 1997.

(22) Article 87(2) of the Treaty identifies a number of types of aid which it declares to be compatible with the Treaty. Given the nature and purpose of the aid and the geographic location of the investment, the project does not fall within any of the categories listed in points (a), (b) and (c) of this paragraph. 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, exceptions such as those 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, nor 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), only point (c) is relevant, as Termoli is located in an area which qualifies for assistance under this provision.

(23) 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.

(24) 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 into 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 that 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.

(1) OJ C 284, 28.10.1995, p. 3.

4. Finally, it considers the question of a 'top-up', which is an increase in the allowable aid intensity 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.

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.

(25) The procedure is familiar to the Italian Government, and to Fiat, from the many previous instances of aid to the motor vehicle industry. The Commission supplied proper replies to the methodological questions raised at the meetings between it and the Italian authorities, who were accompanied by representatives of Fiat.

(26) The plant in question is located in a region qualifying for assistance under Article 87(3)(c) of the Treaty, for which regional aid could normally be authorised up to a net grant equivalent of 30 % for large firms at the time of notification [1].

(27) In order to prove 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.

(28) The Commission consulted independent experts on this subject (IMO-Leuven), who accompanied it on a visit to Fiat Termoli to complete the examination of the case. On the basis of the on-site visit, the Commission concluded that the production, assembly and test lines for the Fire 16v engines were separate from the other production lines at Termoli and that the new motors did not have components in common with the old Fire 8v motors. It is thus clear that Fiat did consider the alternative of producing the Fire 16v engines in Brazil or Turkey, or in other Italian plants, particularly Pomigliano, rather than Termoli.

After an in-depth study the Commission concludes that the project does satisfy the mobility requirement.

(29) The fact that the investment in Fiat Termoli 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 [2], 30 September 1998 [3] and 7 April 1998 [4], there are very specific aspects of 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 February 1993, Fiat was firmly expecting regional aid to be granted. Obviously it had no way of knowing exactly how much aid might be available.

The Commission therefore concludes that the regional aid was necessary for the implementation of the investment project for Fiat Termoli.

(30) The Commission then checked that the costs were eligible under the relevant aid scheme. It takes the view that the project notified qualifies as an initial investment within the meaning of the guidelines on national regional aid [5], in particular because it entails an increase in the production capacity of the plant. It also notes that under Ministerial 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 the previous 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 January 1995 and Fiat submitted the application for aid to the Italian authorities in May 1996.

The Commission concludes that the investment of ITL 487 billion is eligible for regional aid under Law No 488/92.

(31) However, the Commission can allow only mobile investment, which is accordingly assessed below. Even if the project is mobile, there may be certain specific elements of the investment that are not mobile.

(32) The direct consequences of the project (nominal investment of ITL 487 billion and creation of a large number of jobs at Fiat) as well as the secondary effects represent significant benefits for the local economy. The Commission concludes that the proposed aid will contribute to the long-term development of the Termoli region.

(33) 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, to identify the additional costs arising from the structural shortcomings of the assisted region chosen for the investment. The Italian Government does not

[1] The regional maximum for large firms in the area in question has evolved as follows: prior to July 1995 40 % nge: from then until December 1996 35 % nge; from then until December 1998 30 % nge; and from then until December 1999 25 % nge.

[2] OJ C 70, 6.3.1998, p. 7.

[3] OJ C 409, 30.12.1998, p. 7 and OJ C 384, 12.12.1998, p. 20.

[4] OJ C 240, 31.7.1998, p. 3.

[5] OJ C 74, 10.3.1998, p. 9.

contest this principle, but claims that its application 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 reference sites that the investor actually considered, in this case Brazil and Turkey.

(34) If, in the case of Fiat Termoli, the Commission were to authorise the use of reference 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, that is to say in all the cases examined in the light of the relevant Community framework in force prior to 1998, for which the reference site had to be in a non-assisted area.

(35) Moreover, at the time when Fiat carried out its study of possible sites, which was also when it took into account the possibility of obtaining state aid, between 1993 and 1994, the Commission's practice required the use of a reference site situated in an area not eligible for regional aid. The Italian authorities and Fiat were familiar with this methodology at the time, for example from the case of *Fiat Mezzogiorno* ([1]), 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 outside the Community, or in an assisted region, as called for by Italy, became possible only after the entry into force of the relevant Community framework in January 1998, some five years after the investment decision was taken.

(36) In conclusion, the Commission cannot accept the Italian Government's argument that the analysis should focus on Fiat's integrated investment programme, comparing Italian options with sites outside Europe.

(37) It is clear from the information supplied by the Italian authorities that the plant at Desio, located in a non-assisted region of the Community, where Fiat briefly considered siting the Fire 16v project, can serve as a reference site for the cost-benefit analysis needed in order to assess the aid intensity that can be authorised by the Commission.

(38) The Commission experts have accordingly studied the information supplied by Italy to calculate the additional costs of carrying out the project at Fiat Termoli instead of Desio. Because the project involved an expansion, the operational advantages and handicaps are assessed over three years, beginning with the start of commercial production. Commercial production of the Fire 16v engines 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.

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

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

1. First and foremost, 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 the 1995 reference rate (11,35 %), i.e. the rate at the time of the start of the investment.

2. Secondly, in order to free space in the Termoli plant to install the Fire 16v engine production lines in the best possible way, Fiat had to contract out the production of certain components of the 8v and 16v engines. The purchase price of the components in question is generally higher than the cost of manufacture by Fiat, and so has to be considered a disadvantage of Termoli, in that this situation would not have arisen at Desio, which had space available. The Commission has verified these additional costs, and can accept this argument as it relates to the production of the 16v engines, the direct object of the investment, but must exclude from the cost-benefit analysis the disadvantages resulting from the additional costs for the 8v engine.

3. Thirdly, the Commission has carefully examined the investment that would be made at Termoli and at Desio. The costs arising from the transfer of activities to plants in Northern Italy are not eligible and must therefore be excluded. Similarly, there is investment worth ITL 47,3 billion (discounted amount) which was carried out as part of the notified project but which relates to equipment that would have been installed at Termoli even if the production of the Fire 16v engine had been sited at Desio. This is true especially of couplings between the engine and the gearbox, which is produced at Termoli.

(40) The corrections introduced by the Commission produce different cost-benefit results from those of the Italian authorities. On the basis of the investment of ITL 362,3 billion regarded as eligible by the Commission, the disadvantage of Termoli compared with Desio is 18,7 %.

(41) The nominal aid of ITL 91,7 billion is equivalent to discounted aid of ITL 54 billion (base year 1995). The proposed aid intensity is thus 14,9 % gross grant equivalent, while the regional maximum is 30 % net grant equivalent.

(42) In view of the sensitivity of the motor industry, the Commission usually 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. Under the terms of the relevant Community framework, the allowable intensity can then be increased by an adjustment factor (top-up) of 0 to 3 percentage points.

In this particular case the results of the cost-benefit analysis obviate the need for such an examination.

V. **CONCLUSIONS**

(43) The aid intensity notified by Italy is less than both the disadvantage identified by the cost-benefit analysis and the regional maximum. The regional aid that the Italian Government plans to grant Fiat Termoli is therefore compatible with the common market under Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The state aid that Italy plans to grant to Fiat Auto SpA for its plaint in Termoli, Campobasso, up to a maximum of ITL 54 billion, discounted at the rate of 11,90 % (base year 1995), is compatible with the common market under Article 87(3)(c) of the Treaty.

The aid is accordingly authorised.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 29 September 1999.

For the Commission

Mario MONTI

Member of the Commission