

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 26 July 2000

on the aid scheme implemented by Spain for the purchase of commercial vehicles via the Cooperation Agreement of 26 February 1997 between the Ministry of Industry and Energy and the Official Credit Institute

(notified under document number C(2000) 2465)

(Only the Spanish text is authentic)

(Text with EEA relevance)

(2001/605/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 given notice to the parties concerned to submit their comments pursuant to the abovementioned Articles ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) By letter dated 26 February 1997, registered at the Secretariat-General on 12 March 1997, Spain notified the Commission of the Cooperation Agreement (hereinafter the Agreement) dated 26 February 1997 between the Ministry of Industry and Energy and the Official Credit Institute (Instituto de Crédito Oficial, hereinafter the ICO). The notification concerned a special credit line for the purchase of commercial vehicles and was registered under N 171/97.
- (2) However, the notification was submitted to the Commission on the day the Agreement entered into force. Moreover, the Agreement applied retroactively as from 1 January 1997. Consequently, the Commission was only able to examine a measure already in force. Accordingly, the aid scheme in question was deemed unnotified and thus re-registered under NN 115/98.
- (3) A request for further information was addressed to Spain on 3 April 1997. By letters of 30 April, 3 June, 3 July, 10 September and 9 October 1997, the Spanish authorities asked the Commission for additional time to forward the information requested. After the final deadline expired on 10 November 1997, no other communication was received from Spain. Consequently, the Commission began a preliminary investigation on the compatibility of the Agreement with the common market on the basis of the information available to it.

⁽¹⁾ OJ C 29, 4.2.1999, p. 14.

- (4) By letter dated 20 November 1997, the Commission informed Spain of its decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.
- (5) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission invited interested parties to submit their comments on the scheme.
- (6) The Spanish Government provided the Commission with its comments and observations on the opening of the formal investigation procedure by letter dated 22 February 1999. The Commission has, however, not received any comments from interested third parties.

II. DETAILED DESCRIPTION OF THE AID SCHEME

- (7) The Agreement concluded on 26 February 1997 between the Spanish Ministry of Industry and Energy and the ICO establishes an aid scheme for the purchase of commercial vehicles. The scheme is intended to encourage self-employed individuals and SMEs to replace their older commercial vehicles with new ones. Accordingly, and in line with the earlier Spanish 'Plan Renove Industrial' aid scheme, the main purpose of the current scheme is to support the renewal of the commercial vehicle fleet in Spain.
- (8) For this purpose, the ICO will open a credit line of ESP 35 billion (EUR 210 million) for the funding of loans for the purchase of new vehicles. The Ministry of Industry and Energy will in turn compensate the ICO, up to a maximum of 4,5 percentage points, for the difference between the interest rate applied to these loans and the rate normally applied for financial transactions. The overall amount of State intervention involved is estimated at ESP 3 billion (EUR 18 million). Under the Agreement, the aid scheme will be implemented by way of mediation contracts between the ICO and public and private financial bodies. The latter will then grant loans to the beneficiaries of the scheme with resources supplied by ICO. In addition, the Agreement allows ICO to enter into agreements with other financial bodies for granting loans on the same conditions as described above, but without providing any resources to the lenders other than compensation for the difference in interest rates. In their letter of 22 January 1999, the Spanish authorities clarified that 'other financial bodies' refers to financing arrangements with vehicle makers.
- (9) Reimbursement of the principal, payment of interest and guarantees will be negotiated for each loan between the borrowers and the financial body concerned. However, the Agreement itself sets a standard duration for the loans of four years without any grace period and a maximum coverage of 70 % of the eligible costs. In this light, the Agreement estimated the State subsidy for each loan at ESP 85 000 (EUR 511) per ESP million lent (EUR 6 010).
- (10) Beneficiaries of the aid scheme are natural persons registered for Spanish tax on economic activities and companies meeting the Community definition of SMEs which purchase a new commercial vehicle or lease it with the intention to purchase. Potential beneficiaries must in addition present a document issued by the Directorate-General for Traffic certifying that another commercial vehicle, registered at least ten years (seven years for tractor units) before the application for subsidy under the scheme, has been irrevocably withdrawn for scrapping. In addition, the vehicle to be purchased has to replace a vehicle of equal or higher loading capacity.
- (11) To this end, the Agreement distinguishes between six categories of vehicles: (A) tractor units and lorries with a maximum authorised weight of over 30 tonnes; (B) lorries with a maximum authorised weight between 12 and 30 tonnes; (C) lorries with a maximum authorised weight between 3,5 and 12 tonnes; (D) car-based vehicles, vans and lorries with a maximum authorised weight of up to 3,5 tonnes; (E) buses and coaches; (F) trailers and semi-trailers. The following table shows the link between vehicles purchased and withdrawn:

⁽²⁾ See footnote 1.

Type of vehicle purchased	Type of vehicle to be withdrawn from the market
A: Tractor units and lorries with a maximum authorised weight of over 30 tonnes	A
B: Lorries with a maximum authorised weight between 12 and 30 tonnes	A or B
C: Lorries with a maximum authorised weight between 3,5 and 12 tonnes	A, B or C
D: Car-based vehicles, vans and lorries with a maximum authorised weight of up to 3,5 tonnes	A, B, C or D
E: Buses and coaches	E
F: Trailers and semi-trailers	F

Related cases

- (12) In Commission Decision 98/693/EC of 1 July 1998 concerning the Spanish 'Plan Renove Industrial' system of aid for the purchase of commercial vehicles (August 1994 to December 1996) ⁽³⁾, the Commission examined an aid scheme substantially identical to the scheme now under examination. In that Decision, the Commission concluded, *inter alia*, that aid granted to natural persons or SMEs engaged in a business other than transport on a solely local or regional level for the purchase of Category D commercial vehicles did not constitute State aid within the meaning of Article 87(1) of the Treaty whereas all other aid under the scheme was deemed illegal and incompatible with the common market.

III. COMMENTS FROM SPAIN

- (13) Following the Commission's decision to initiate the procedure laid down in Article 88(2) of the Treaty, the Spanish Government, by letter dated 22 January 1999, provided the Commission with its comments and observations. These can be summarised as follows.
- (14) The Agreement was notified before it entered into force. Although the Agreement states that it may cover credits granted from 1 January 1997, this possibility was included solely for the formal purpose of the Ministry of Industry and Energy's budget, which must cover the full financial year. No credits were or could have been granted before the Agreement was signed, since the financial mechanism of the scheme is based on the Agreement itself.
- (15) The sole purpose of the Agreement is to support the renewal of the commercial vehicle fleet, irrespective of the owner or the use of the vehicle purchased. A fundamental restriction imposed by the Agreement is that the vehicle to be scrapped must have a loading capacity equal to or greater than that of the vehicle purchased. Accordingly, the Agreement can be considered a financial support scheme to renew the commercial vehicle fleet without increasing capacity.
- (16) Moreover, it cannot be assumed, as the Commission does, that the beneficiaries will be undertakings providing professional transport services and that the Agreement would therefore only favour certain undertakings. The benefits conferred by the Agreement are open to all European Union citizens who deregister a vehicle. Although the Agreement requires the scrapping of a vehicle registered in Spain,

⁽³⁾ OJ L 329, 5.12.1998, p. 23.

there is no requirement that the vehicle submitted for scrapping be owned by the person purchasing the new vehicle. The scheme is not discriminatory, therefore, as it applies equally to all potential recipients. The Spanish Government thus asserts that the scheme introduced by the Agreement is not aimed at certain undertakings, but is a general measure open to natural persons and SMEs from all sectors.

- (17) The Spanish Government further contends that the aid scheme neither distorts competition nor affects trade between Member States to a substantial degree. Around 40 % of the vehicles renewed under the scheme are in the low tonnage range (up to 3,5 tonnes). This category includes vehicles that have no significant economic impact from a transport point of view.
- (18) The Spanish Government contests the view that it is only the purchase of Category D vehicles by persons or entities engaged in a business other than transport on a local or regional level that will have little economic significance while all other purchases will have an appreciable effect on competition. If a distinction has to be drawn, it should be between light vehicles and all other vehicles. Under Spanish licensing regulations, all haulage licenses for light vehicles (maximum authorised weight under 6 tonnes, or over 6 tons but with a payload of not more than 3,5 tonnes) are national. Consequently, the Commission's recognition that local own-account services with Category D vehicles are insignificant should be extended, at least, to all light vehicles granted only national licenses. These include all Category D vehicles and some Category C vehicles. In addition, vehicles replaced under the Agreement account for less than 2 % of the Spanish licensed fleet and approximately 0,03 % of the commercial fleet in the 12 Member States. Consequently, subsidised purchases under the scheme have a negligible impact on competition.
- (19) The Spanish Government claims that the Community's *de minimis* rule⁽⁴⁾ clearly applies to the Agreement, which means Article 87(1) does not apply. The measures under the Agreement are aimed not at undertakings providing professional transport services on their own account or for hire-or-reward, but at natural persons and SMEs from any sector. Moreover, and as the Commission has recognised, the maximum amount is ESP 85 000 per million loaned.
- (20) Finally, the Spanish Government claims that the aid in question may qualify for exemption under Article 87(3)(c) of the Treaty, since the measures under the Agreement facilitate commercial vehicle traffic without adversely affecting trading conditions to an extent contrary to the common interest. They encourage investment in new commercial vehicles with the objective of restructuring and modernising the fleet without increasing capacity. Assuming, therefore, that new vehicles are technologically superior to older vehicles in terms of both emission levels and safety, the measures will improve road safety and protect the environment.

IV. ASSESSMENT OF THE AID

Article 87(1)

- (21) Article 87(1) of the Treaty stipulates that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods will, in so far as it affects trade between Member States, be incompatible with the common market.
- (22) The Commission considers, in the case under examination, that the aid for the purchase of commercial vehicles in accordance with the provisions laid down in the Agreement is granted from State resources since the subsidies come from the budget of the Spanish Ministry of Industry and Energy.

⁽⁴⁾ Commission notice on the *de minimis* rule for State aid (OJ C 68, 6.3.1996, p. 9). See also the Community Guidelines on State aid for small and medium-sized enterprises (OJ C 213, 19.8.1992, p. 2 and OJ C 213, 23.7.1996, p. 4).

- (23) The Spanish Government claims the aid scheme is not covered by Article 87(1) of the Treaty as it is a general measure and not aimed at certain undertakings. This position, however, cannot be accepted. It may be admitted that the aid scheme under examination formally applies regardless of the sector in which the potential recipients operate and that it applies equally to all undertakings or natural persons that can benefit from it. However, it is clear that the scheme applies only to the purchase of certain commercial vehicles identified by the Agreement, i.e. tractor units, lorries with a maximum authorised weight above 3,5 tonnes, car-based vehicles, vans and lorries with an authorised weight below 3,5 tonnes, buses, coaches, trailers and semi-trailers. Taking into account the character of the vehicles that may be subsidised under the Agreement, the Commission finds it reasonable to assume that the potential beneficiaries will *de facto* be natural persons and undertakings engaged in transport operations, either on own-account or for hire or reward. In any case, the aid scheme will only benefit undertakings or individuals that have one of the abovementioned vehicles.
- (24) Moreover, the aid in question takes the form of purchasing aid, which means it will benefit the purchasers of commercial vehicles by lowering the cost of such vehicles. It is intended to benefit natural persons and SMEs, reducing their normal business expenses and thus giving them an advantage over their competitors. The aid therefore strengthens the financial position of recipient undertakings, giving them greater scope for action and a competitive advantage in relation to large companies, which are not eligible for the aid scheme in question. Consequently, the Commission finds that the aid scheme under examination will, in practice, indeed favour certain undertakings.
- (25) The liberalisation of road transport ⁽⁵⁾ has led to intra-Community competition both in international transport and in the cabotage sector. Accordingly, recipients of the aid, whether transport is their main or auxiliary business, are liable to compete with transport companies from other Member States. It is thus reasonable to conclude that granting subsidies for purchasing commercial vehicles under the Agreement affects trade between Member States and distorts or threatens to distort competition between carriers established in Spain and those who operate in Spain but are established in another Member State ⁽⁶⁾. In any event, the aid scheme distorts or threatens to distort competition because it puts recipients of the subsidy in a privileged position compared with those not eligible for the aid.
- (26) The Spanish Government has argued also that the Community's *de minimis* rule applies to the scheme in question and that, consequently, the scheme falls outside the scope of Article 87(1). This assertion derives from the Spanish argument that the scheme is aimed not at undertakings providing transport services but at natural persons and SMEs from any sector.
- (27) Under the *de minimis* rule, certain amounts provided by Member States are, due to their low thresholds, considered not to threaten to distort competition and trade between Member States to a perceptible degree and, therefore, not to fall within the scope of Article 87(1). However, the transport sector is explicitly excluded from the scope of the *de minimis* rule, being a sector with a large number of small companies ⁽⁷⁾ in which even relatively small amounts can have an impact on competition and trade between Member States.

⁽⁵⁾ *Freight transport*; Council Regulation (EEC) No 881/92 of 26 March 1992 on access to the market in the carriage of goods by road within the Community to or from the territory of a Member State or passing across the territory of one or more Member States (OJ L 95, 9.4.1992, p. 1) and Council Regulation (EEC) No 3118/93 of 25 October 1993 laying down the conditions under which non-resident carriers may operate national road haulage services within a Member State (OJ L 279, 12.11.1993, p. 1).

Passenger transport; Council Regulation (EEC) No 684/92 of 16 March 1992 on common rules for the international carriage of passengers by coach and bus (OJ L 74, 20.3.1992, p. 1) and Council Regulation (EEC) No 12/98 of 11 December 1997 laying down conditions under which non-resident carriers may operate national road passenger transport within a Member State (OJ L 4, 8.1.1998, p. 10). It should be noted that the latter Regulation replaced Council Regulation (EEC) No 2454/92, which was annulled by the Court of Justice of the European Communities in its judgment of 1 June 1994 in Case C-388/92 Parliament v. Council (ECR 1994, I-2067). However, the provisions of Regulation No 2454/92 remained effective until the entry into force of Regulation No 12/98.

⁽⁶⁾ Available statistical data show that between 1990 and 1995 approximately 3% of all Community cabotage was performed in Spain. It can thus be concluded that carriers established in Spain do in fact compete with non-resident transport operators. See the Report on the implementation of Regulation (EC) No 3118/93 (COM(98) 47 final of 4 February 1998).

⁽⁷⁾ The fragmented transport market structure in Spain is confirmed by statistical data (EU Transport in figures, Statistical Pocketbook, European Commission/Eurostat 1998).

- (28) As pointed out in recital 23, the Commission considers that the scheme is de facto aimed at undertakings providing transport services either on own-account or for hire or reward. Accordingly, the Spanish Government's argument that the de minimis rule is applicable to the scheme cannot be accepted.
- (29) However, as the Commission found in its Decision 98/693/EC ⁽⁸⁾, it can be assumed that where the recipient of the aid is engaged in business other than transport services at a solely local or regional level and is subsidised only for purchasing a small commercial vehicle (Category D), typically used for very short journeys in such an environment, such aid does not affect trade between Member States. Such business activities are considered only to affect the undertaking's respective local market. In addition, the effect of such own-account services on the transport service market is negligible because entrusting a transport company with the provision of the service in question is not a viable option in economic terms.
- (30) In this respect, Spain claims that, in addition, Category C vehicles (those with a maximum authorised weight under 6 tonnes, or over 6 tonnes but with a payload of not more than 3,5 tonnes), should also fall outside the scope of Article 87 since such vehicles are only granted national licenses under the Spanish licensing system.
- (31) The fact that some commercial vehicles are only authorised to operate at national level does not exclude the risk of competition being distorted. Furthermore, due to the liberalisation of access to cabotage, Spanish operators providing only national services are liable to compete with non-resident carriers performing cabotage in Spain, hence affecting trade between Member States. Under these circumstances, the Commission finds it reasonable to exclude such distorting effects only in own-account transport operations on a local or regional level, typically performed by Category D vehicles. The Commission therefore finds no reason, in this respect, to deviate from the conclusions it reached in Decision 98/693/EC.
- (32) Accordingly, the Commission considers that aid granted for the purchase of commercial vehicles by self-employed individuals or SMEs in accordance with the Agreement (except for purchases of Category D commercial vehicles by own-account operators providing services only on a local or regional level) constitutes aid within the meaning of Article 87(1) of the Treaty. Consequently, the aid is, in principle, incompatible with the common market unless it is considered to qualify for any of the exemptions provided for by the Treaty or by secondary legislation.

Article 87(3)(c)

- (33) Article 87(3)(c) of the Treaty stipulates that aid to facilitate the development of certain economic activities or of certain economic areas may be deemed compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. Case-law requires, *inter alia*, that aid be restricted to those cases where it is necessary to achieve objectives which market forces alone cannot achieve (judgment of the Court of Justice of 17 September 1980 in Case 730/79, Philip Morris Holland BV v Commission ⁽⁹⁾). Moreover, Article 6 of the Treaty, read in conjunction with Article 3(g), requires that environmental protection requirements be integrated into the Commission's policy on competition, including State aid, in particular with a view to promoting sustainable development. Accordingly, competition policy and environment policy are not mutually antagonistic, but ought to complement each other so as to provide a high level of environmental protection.

⁽⁸⁾ See footnote 3.

⁽⁹⁾ ECR 1980, p. 2671.

- (34) The Spanish Government contends that the scheme in question encourages investment in new commercial vehicles with the objective of restructuring and modernising the fleet without increasing capacity. Assuming, therefore, that new vehicles are technologically superior to older vehicles in terms of both emission levels and safety, the measures will improve road safety and protect the environment. Consequently, the aid scheme in question will qualify for exemption under Article 87(3)(c).
- (35) The Commission acknowledges that financial incentives may help to withdraw from the market commercial vehicles with low technical standards in terms of safety or the environment. However, although the replacement of old vehicles with new ones may to some extent produce environmental and safety benefits, it should be recalled that, to qualify for exemption under Article 87(3)(c) on environmental or safety grounds, aid to purchase vehicles must be strictly confined to the extra investment costs necessary to meet standards higher than those already required by law or to comply with new mandatory environmental standards⁽¹⁰⁾.
- (36) In the present case, however, the Agreement contains no provisions to ensure that a higher environmental and safety performance will be attained. On the contrary, the aid system introduced by the Agreement provides a subsidy that is proportional only to the price of the new vehicle and is therefore intended simply to encourage the replacement of older commercial vehicles, without taking into account any environmental or safety objectives.
- (37) The fact that the subsidy is available only if a new vehicle of equal or smaller loading capacity is purchased implies that the scheme will not lead to an increase in overall capacity. However, it should be recalled that in a market with overcapacity, as in the road transport sector, aid for the purchase of tonnage is, in principle, contrary to the common interest even if its purpose is only to replace existing tonnage.
- (38) In addition, aid intended to relieve an undertaking of expenses it would normally have to bear under normal business conditions for its usual activities is not considered to serve the common interest and does not therefore fall within the scope of Article 87(3)(c)⁽¹¹⁾. As noted in recital 24, the Commission considers that the aid provided under the current scheme benefits natural persons and SMEs by reducing their normal business expenses.
- (39) In view of the above, the Commission finds that the exemption provided for in Article 87(3)(c) cannot be applied in this case. Furthermore, the Spanish authorities have neither argued nor shown that the aid in question qualifies for any of the cited exemptions provided for in the Treaty or in secondary legislation.
- (40) The Commission therefore finds that the aid to natural persons and SMEs for the purchase of commercial vehicles, except for the financing of purchases of Category D commercial vehicles by own-account operators providing services only on a local or regional level (which is not an aid within the meaning of Article 87), is incompatible with the common market in accordance with Article 87(1) of the Treaty.

Article 88(3)

- (41) Article 88(3) of the Treaty requires that the Commission be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. It further stipulates that the Member State concerned must not put its proposed measures into effect until the procedure laid down in Article 88(2) has resulted in a final decision.

⁽¹⁰⁾ See Community Guidelines on State aid for environmental protection (OJ C 72, 10.3.1994, p. 3).

⁽¹¹⁾ Commission Decision 98/128/EC (OJ L 66, 6.3.1998, p. 18) and judgment of the Court of Justice of 8 June 1995 in Case T-459/93, *Siemens SA v Commission*, ECR 1995, p. II-1675.

- (42) The Commission was informed of the current aid scheme on the day it entered into force, namely 26 February 1997. Consequently, the Commission was not given sufficient time to examine the measure in question. It should also be noted that the Spanish authorities have, in breach of Article 88(3) of the Treaty, implemented the scheme without awaiting the relevant Commission decision.

V. CONCLUSION

- (43) The Commission finds that Spain has implemented the aid scheme unlawfully, in breach of Article 88(3), and that all aid which is deemed incompatible with the common market and which has been granted under the scheme must, in accordance with Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹²⁾, be recovered,

HAS ADOPTED THIS DECISION:

Article 1

Financial aid granted under the Cooperation Agreement of 26 February 1997 to natural persons registered for Spanish tax on economic activities or SMEs engaged in a business other than transport and operating on a solely local or regional level for the purchase of a commercial vehicle covered by Category D in the Agreement does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

All other financial aid granted under the Cooperation Agreement of 26 February 1997 to natural persons registered for Spanish tax on economic activities or to SMEs is incompatible with the common market.

Article 3

Spain shall confirm to the Commission that no aid has been granted under the scheme in question since its expiry on 31 December 1997 and that the aid measure has ceased to apply.

Article 4

1. Spain shall take all necessary measures to recover from the recipients the aid referred to in Article 2 made available to them unlawfully.
2. Recovery shall be effected without delay and in accordance with the procedures of national law, provided that these allow immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated at the reference rate used for calculating the grant-equivalent of regional aid.

Article 5

Spain shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

Article 6

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 26 July 2000.

For the Commission
Loyola DE PALACIO
Vice-President

⁽¹²⁾ OJ L 83, 27.3.1999, p. 1.