

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 October 1984

on the French regional planning grant scheme ('Prime d'aménagement du territoire')

(Only the French text is authentic)

(85/18/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having given the parties concerned notice to submit their comments pursuant to the above provision, and having regard to those comments,

I

Whereas :

By telex sent on 15 January 1982 and letters dated 18 and 29 January, 25 February, 30 March and 8 April 1982, the French Government notified the Commission, in accordance with Article 93 (3) of the Treaty, of its plans for the introduction of a new regional aid scheme called the regional planning grant ('Prime d'aménagement du territoire' — 'PAT') scheme.

The scheme was enacted by Decree No 82-379 of 6 May 1982 published in the French official gazette ⁽¹⁾.

It provides for government grants to promote activity in certain designated areas.

The map of designated areas under the PAT scheme is different for industrial investment and for investment in tertiary or research activities.

For industrial projects, the map of eligible areas supersedes that of the old Regional development grant ('Prime de développement régional' — 'PDR') scheme and represents a redrawing by the French Government of its regional development areas.

For projects in tertiary or research activities, however, the area coverage of the PAT scheme is not determined primarily by regional considerations, since the objective is the dispersal of such activities from the Paris basin. This part of the PAT scheme is therefore not covered by this Decision.

The designated PAT areas for industrial projects cover all or part of 68 of the 96 French metropolitan departments and hold about 21,4 million people, or about 39 % of the total population.

The selection of the areas was made principally by the central government, although in some cases its initial selection was amended following consultation with the regions.

⁽¹⁾ Journal officiel de la République française, 7. 5. 1982, p. 1294 *et seq.*

In the case of the 'peripheral' regions within the meaning of the principles of coordination of regional aid schemes, namely the West, South-West and the Massif Central, the Government felt that the persistence of structural handicaps in these areas justified the reselection of all the designated areas under the PDR scheme except for the five conurbations of Bordeaux, Montpellier, Nantes, Rennes and Toulouse.

In the other regions, the Government began by provisionally selecting the departments in which the unemployment rate had been over 8 % in March and October 1981 when the national average had been 8,3 %. Seven of these departments, namely Alpes-Maritimes, Eure, Indre-et-Loire, Marne, Oise, Seine-St-Denis and Yonne, were later removed from the provisional list despite having an unemployment rate above 8 % because of their relatively favoured geographical position, and all or part of four other departments with unemployment rates below 8 %, namely Vosges, Moselle, Indre and Nièvre, were included because of problems in certain of their industries. The resulting map was subsequently amended again to take account of particular situations within departments and to remove some large conurbations where unemployment often reflects the national situation rather than specific local problems.

Following consultation of the regions, further amendments of varying importance were made to the proposed assisted area map on the basis of intra-departmental considerations in the following 14 departments: Aisne, Cher, Doubs, Eure, Indre, Indre-et-Loire, Meuse, Meurthe-et-Moselle, Moselle, Nièvre, Haute-Saône, Seine-Maritime, Somme and Territoire de Belfort.

The final map of designated areas for industrial projects, as published in the Annex to Decree No 82-379, covers about two million less people in the peripheral regions than the previous regional aid scheme because of the removal of the five large conurbations. The population of the other areas, however, is about two million more than before because of the extension of the spatial coverage of the scheme particularly in the central departments of France.

The PAT scheme also makes provision for the possibility of awards outside the designated areas in excep-

tional cases where the industrial project will alleviate a severe local employment problem.

The maximum rates of grant under the new scheme are 17 or 25 % of the gross eligible investments costs. The 25 % rate is payable in the same areas as under the old PDR scheme. In the other areas the maximum rate is 17 %, where under the previous scheme it was 12 or 17 % if the area was designated.

In the latter areas the maximum may exceptionally be raised to 25 % if this is justified by the cost or value of the project. According to the French Government, the exception would be invoked chiefly for highly labour-intensive projects where the investment-related aid limit is over-restrictive.

The regional planning grants can be cumulated with tax concessions for regional aid purposes.

II

To assess the compatibility of the regional planning grant scheme with the common market under Article 92 of the Treaty, the Commission first compared the situation in the French designated areas with that in other parts of the Community and then considered whether there were serious regional disparities at national level that might justify regional aid.

On the basis of this preliminary assessment, the Commission decided not to object to implementation of the PAT scheme in some of the areas designated, or to the exceptional award of grants outside designated areas provided any such case involving investment of more than three million ECU or aid of over 10 % net grant equivalent was notified in advance under Article 93 (3) of the Treaty. However, the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty against the inclusion in the scheme of the arrondissement of Angers (department of Maine-et-Loire), the departments of Doubs, Eure, Haute-Marne, Sarthe, Nièvre and Territoire de Belfort and parts of the departments of Meurthe-et-Moselle (arrondissements of Lunéville, Nancy and Toul), Haute-Saône (arrondissement of Vésoul) and Seine-Maritime (all except arrondissement of Dieppe), and against the availability of the maximum 25 % rate of grant in the department of Loire.

On 11 June 1982 the Commission wrote to the French Government informing it of these decisions and giving it notice to submit its comments. In its letter the Commission also explained the method it had used to scrutinize the scheme and enclosed the results of its analysis.

III

The French Government submitted its comments by letter dated 2 July 1982 and promised to supply comprehensive data on the disputed areas at a later date to attempt to narrow the difference of opinion.

In its comments the French Government criticized the Commission's analysis both on grounds of method and on the ground that insufficient account had been taken of such factors as the demographic situation, problems in particular industries, changes in the numbers in employment in 1980-81 and the level of, and rise in, unemployment in the medium term and over the period October 1976 to October 1980. For each department concerned detailed submissions were made to justify the designation.

The French Government's submissions were discussed and enlarged upon at bilateral meetings between its officials and Commission staff.

One of the Member States which replied to the Commission's invitation to comment agreed with its social and economic analysis and noted the growth in the geographical extent of the French regional aid scheme over the past 10 years although regional disparities had decreased over this period.

Another Member State agreed in principle with the Commission's analysis but felt the Member States ought to be allowed a fairly large measure of freedom in their evaluation of regional disparities according to a wide range of social and economic indicators.

A third Member State requested that the Commission ensure that all Member States be treated alike and also had doubts about the Commission's use of Community averages in assessing assisted areas.

A fourth Member State was opposed to the award of regional aid outside designated areas.

IV

The aid that the French Government proposes to grant to certain regions under the regional planning grant (PAT) scheme is likely to affect trade between Member States and to distort competition within the meaning

of Article 92 (1) of the Treaty by favouring certain undertakings or production of certain goods.

Article 92 (1) provides that aid having such features is in principle incompatible with the common market. The exceptions that are provided for in Article 92 (3) (a) and (c) — the only ones potentially applicable to regional aid — require that the aid should serve specified Community objectives rather than simply serving the interests of the aid recipient. These exceptions must be construed narrowly when any regional or industry aid scheme or any individual award under a general scheme is scrutinized. In particular, they may be invoked only when the Commission is satisfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the said objectives.

To invoke the exceptions in the case of aid that did not serve such an objective would be to give unfair advantages to certain Member States and allow trading conditions between Member States to be affected and competition to be distorted without any justification on grounds of Community interest.

In applying the principles set out above in its scrutiny of regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems that are sufficiently serious, on a Community-wide comparison, to require the grant of aid at the level proposed if the objectives specified in Article 92 (3) (a) or (c) are to be attained. Where this cannot be demonstrated, it is evident that the aid does not serve the objectives specified in the exception clauses, but does little more than further the private interests of the recipient.

The first resolution on general regional aid schemes, adopted by the representatives of the Governments of the Member States meeting within the Council on 20 October 1971 ⁽¹⁾ following a communication from the Commission, recognized that regional aid, when it is adequate and judiciously applied, forms one of the essential instruments of regional development and enables the Member States to follow regional policies aimed at a more balanced growth of the various regions of the same country and of the Community. This consideration, together with the need to reduce the danger of competition on aid between Member States, which is a major purpose of the current principles of coordination of regional aid schemes, means that when it assesses the compatibility of regional aid

⁽¹⁾ OJ No C 111, 4. 11. 1971, p. 1.

with Article 92 (3) (a) and (c), the Commission must take account both of the social and economic situation in the regions concerned in comparison with other parts of the Community and of any serious disparities existing between regions of the same country.

The detailed social and economic analysis the Commission has made of the regions of metropolitan France shows that the exception provided for in Article 92 (3) (a) cannot be invoked in their regard because they do not have an abnormally low standard of living or serious underemployment. This was not disputed by the French Government either in its original notification or in its submissions following the opening of the Article 93 (2) procedure. The only exception that can be considered in the present case is therefore that provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic areas which does not affect trading conditions to an extent contrary to the common interest.

To determine whether application of this exception to the regional planning grant scheme was justified, the Commission applied the principles outlined above: that is, after seeing how the designated areas stood in a Community context by comparing income *per capita* and unemployment in the areas with the Community averages, the Commission then examined whether there were any disparities between the areas and other areas in the country that might warrant the grant of regional aid. For this purpose, as well as the two indicators already mentioned, the Commission used other indicators such as employment and unemployment figures, the distribution of industry, net migration and demographic trends.

V

The French Government's arguments in support of its method have not always proved the case for its designation of the contested areas.

The demographic situation in the contested areas varies from net inward to net outward migration, from low to high population density and from a predominantly young to a predominantly old population. Rural areas suffering from depopulation have for some time had special investment incentives such as the special rural aid scheme, now replaced by a special rate of

regional employment grant. In the central regions of France most of the areas within such special rural schemes were excluded from the old regional development grant scheme and are now excluded from the new regional planning grant scheme.

Therefore, the demographic situation is not a major criterion for the selection of assisted areas in the French regional development schemes.

The specific industrial problems to which the French Government also refers in defence of the inclusion of some of the contested departments in the PAT scheme are in fact in such a wide range of industries that it is not possible to identify areas where the weakness of a key local industry is so threatening the social fabric as to justify regional aid.

The changes in the numbers employed in the areas in 1980 and 1981 reflect cyclical trends rather than structural change. Some departments entirely or almost entirely excluded from the PAT scheme also saw a drop in employment over this period. Conversely, some departments wholly included within the scheme saw the numbers in employment increase over the period.

Therefore, the number in employment in 1980-81 is not a major criterion for the selection of assisted areas in the French regional development schemes and in any case would have to be observed over a longer period.

The rise in unemployment in the departments concerned between 1976 and 1980 can be an important pointer to eligibility for assisted area status under the regional development scheme, as the French Government suggests. However, in considering the rise in unemployment, particular account should be taken of the level of unemployment reached by the end of the period.

The French Government itself rightly decided that a high unemployment rate should be neither a necessary nor a sufficient condition for designation as a PAT assisted area, and this decision is reflected in the exclusion of some departments with an unemployment rate significantly higher than the national

average and the inclusion of some with a rate significantly below average. Hence, it cannot assert that the unemployment rate alone justifies designation of any area under the PAT scheme.

The further information the French Government supplied on the contested areas has, however, established that:

The departments of Loire and Meurthe-et-Moselle are suffering from problems associated with industrial decline. In Loire the employment situation is bad and there is substantial outward migration owing to the decline of traditional industries. In Meurthe-et-Moselle the decline of the steel industry has created structural problems throughout the local economy.

Nièvre, Haute-Marne and Maine-et-Loire have problems of underdevelopment. Nièvre is suffering from rural depopulation and incomes are very low. Haute-Marne is very thinly populated and suffering further rapid depopulation because of the constant loss of local job opportunities. In Maine-et-Loire, population growth is outstripping the increase in jobs and leading to a growing imbalance.

The above facts give the Commission reason to amend its initial assessment of these areas.

The further information supplied on the other areas against which the Article 93 (2) procedure was opened, namely in the departments of Eure, Doubs, Territoire de Belfort, Seine-Maritime (arrondissement of Le Havre), Sarthe, Haute-Saône and some parts of Upper Normandy (Pavilly-Duclar Bernay, Elbeuf and Louviers), did not establish that their inclusion within the PAT scheme would be compatible with the common market.

In those areas which used to be within the regional development grant scheme, an immediate withdrawal of the grants might do harm in the localities concerned which have so far continued to be eligible for grants under the new scheme. These areas should therefore be allowed a transitional period until 31 December 1985 for phasing out the grants.

The areas that were not within the regional development grant scheme should also be allowed a transitional period until 31 December 1985, to avoid discrimination between different areas to be removed from

the PAT scheme, especially where they are situated in the same department.

After this date, regional planning grants will no longer be permitted in these areas, save by special decision under Article 9 of the Decree. The French Government may, however, at any time submit evidence of a change in the social and economic situation in any of these areas.

The French Government has assured the Commission that the power to award regional planning grants outside the designated areas or to raise the maximum rate to 25 % in 17 % areas will be exercised very sparingly and in the latter case only with regard to highly labour-intensive projects. The Government has undertaken to make a survey of the frequency and amount of such exceptional awards under the old PDR scheme and the new PAT scheme and to let the Commission have the results.

In these circumstances the Commission can agree to the continued use of the Article 9 powers to award regional planning grants outside designated areas until 31 December 1986, on condition that any project involving investment of 4,5 million ECU or over, or to be awarded a grant at a nominal rate of 15 % or over, is notified for prior authorization; however, no further exceptions of this kind will be permitted after that date. The raising of the maximum rate to 25 % in 17 % areas can be permitted indefinitely on condition that projects involving investment of over two million ECU, or to be awarded a grant of over FF 35 000 per job, are notified for prior authorization.

In areas belonging to the 'central' regions of the Community for the purposes of Section IV of the principles of coordination of regional aid schemes⁽¹⁾, which are eligible for the higher maximum rate of regional planning grant of 25 % of investment costs, there is a clear danger that the grants, by themselves or in combination with tax concessions, could exceed the Community ceilings for aid in such areas. In its letter of 2 July 1982, the French Government promised to make arrangements similar to those which were in force previously to ensure that the ceilings were observed. However, the Commission has not been given any further details and the French Government has been unable to confirm that the arrangements that were in force in 1981 have been continued.

⁽¹⁾ OJ No C 31, 3. 2. 1979, p. 9.

In order to be able to keep the regional planning grants scheme under review as required by Article 93 (1) of the Treaty, the Commission must be supplied with an annual report on the operation of the scheme and details of individual awards for the purpose of making spot checks.

The Commission has introduced special rules on aid to particular industries including that granted under regional aid schemes,

HAS ADOPTED THIS DECISION:

Article 1

The award of regional planning grants (*Primes d'aménagement du territoire*) for industrial investment in the French departments of Doubs (cantons of Andeux, Etupes and Hérimoncourt), Eure (cantons of Bernay and Louviers and at Pont-Audemer), Territoire de Belfort (cantons of Beaucourt, Delle, Grandvillars, Rougement, Giromagny, Fontaine and Chatenois les Forges), Seine-Maritime (cantons of Pavilly-Duclair and Elbeuf and arrondissement of Le Havre), Sarthe (arrondissements of La Flèche and Le Mans) and Haute-Saône (arrondissement of Vésoul) is incompatible with the common market under Article 92 of the EEC Treaty.

Such grants may, however, continue to be awarded in these areas until 31 December 1985.

Article 2

The award of regional planning grants for industrial investment in the other designated areas of French metropolitan departments listed in the French Government's notification to the Commission is considered to be compatible with the common market under Article 92 (3) of the EEC Treaty.

Article 3

The award of regional planning grants for industrial investment under Article 9 (4) of Decree 82-379 on the regional planning grant scheme is considered to be compatible with the common market under Article 92 (3) of the EEC Treaty until 31 December 1986, on condition that the prior authorization of the Commission is obtained following notification for any project involving investment of 4,5 million ECU or over or to be awarded a grant at a nominal rate of 15 % or over.

The award of regional planning grants for industrial investment in designated areas eligible for a maximum rate of grant of 17 % at a higher rate than 17 % under Article 9 of Decree 82-379 is considered to be compatible with the common market under Article 92 of the EEC Treaty, on condition that the prior authoriza-

tion of the Commission is obtained following notification for any project involving investment of over two million ECU or to be awarded a grant of over FF 35 000 per job created.

Article 4

France shall make the necessary administrative arrangements to ensure that the Community aid ceilings laid down in the principles of coordination of regional aid schemes are observed in the award of regional planning grants either alone or together with other regional aid. It shall inform the Commission of the arrangements made within two months of the date of notification of this Decision.

Article 5

France shall inform the Commission of the arrangements it has made to comply with Article 1 not later than 31 October 1985.

Article 6

France shall supply the Commission, before the end of June of each year, with a report stating the amount of regional planning grants awarded in and outside designated areas, the amount of aided investment, the number of jobs associated with the aided investment and the number of awards, broken down by level III regions of the Statistical Office of the European Communities '*Nomenclature of Territorial Statistical Units*' and by two-digit subdivisions of the Statistical Office of the European Communities' '*General Classification of Economic Activities within the European Communities*'.

In addition, France shall provide the Commission, on request, with details of individual awards for the purpose of making spot checks.

Article 7

This Decision is without prejudice to compliance with present or future special rules applicable to the award of regional planning grants for tertiary or research activities or with present or future special rules on aid to particular industries.

Article 8

This Decision is addressed to the French Republic.

Done at Brussels, 10 October 1984.

For the Commission

Frans ANDRIESEN

Member of the Commission