

## COMMISSION DECISION

of 9 December 1987

on aid from the French Government to the wood-processing sector (Isoroy and Pinault)

(Only the French text is authentic)

(88/282/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 interested parties notice to submit their observations in accordance with the said Article, and having regard to those observations,

Whereas :

## I

The Isoroy group was created on 25 February 1983, with effect from 1 January 1982, through the merger of three firms in the wood-processing sector (Leroy, Isorel and Baradel). In 1983, the French Government assisted the merger by providing FF 12 million in subsidies and FF 112 million in equity loans without giving prior notification to the Commission under Article 93 (3) of the EEC Treaty.

Isoroy never became profitable, its losses reaching FF 175 million in 1982, FF 124 million in 1983, FF 237 million in 1984 and FF 201 million in 1985, which corresponds to 9 %, 6 %, 12 % and 11 % respectively of annual turnover.

The group's continuous losses prompted further aid from the French Government in 1985, this time in the form of a subsidy of FF 68 million, equity loans totalling FF 40 million and a fiscal moratorium on the sums owed by Isoroy to the public authorities amounting to FF 98,5 million; this again was done without informing the Commission beforehand.

In spite of the repeated injections of aid, Isoroy was soon compelled to suspend payments and was allowed by the 'Tribunal de Commerce' of Caen to continue operations from 2 April to 30 September 1986, under the supervision of the Court.

On 21 July 1986, the 'Tribunal de Commerce' ruled on two alternative plans for a takeover, both of which were limited to Isoroy's assets as its debts by now totalled FF 2 200 million.

The plan put forward by the Pinault group involved a complete takeover, whilst Seribo, representing several European firms, planned to split up Isoroy among those firms.

The Pinault plan had the backing of the French Government, which had agreed in principle to contribute FF 250 million towards the financing. The French Government's preference was also made clear in the statement by the 'Substitut du Procureur de la République' (deputy public prosecutor) in favour of the Pinault plan which he gave in open court at the Tribunal in question.

The Tribunal ruled in favour of the Pinault proposal, on the basis that the plan provided for a total takeover, and would maintain Isoroy as a coherent body in the French economy, saving a considerable number of jobs.

The Tribunal then authorized the transfer of all stocks, shares, assets and debts to the 'Société Commerciale et Industrielle du Meuble' (SCIM), part of the Pinault group, for a largely symbolic sum provided, however, that public and private financing was available by 1 October 1986, in accordance with the plan. That condition having been fulfilled, the takeover was finalized on that date.

## II

The Commission, learning that Isoroy has received several large amounts of aid, invited the French Government by letter dated 23 January 1986 to provide it with detailed information on assistance granted to Isoroy since its creation in 1982, together with the precise conditions attached to the equity loans granted.

The French Government replied by letter of 15 May 1986 containing information on the establishing of Isoroy, the subsidies granted in 1982 and 1985, the cuts in capacity and their effects on employment, and on the cessation of payments, but not on the arrangements in respect of the equity loans or the existence of a moratorium *vis-à-vis* the public authorities, nor on the intention of the French Government to provide further assistance in the event of a takeover by Pinault. On the contrary, it expressed the opinion that it was not for the French authorities to comment on the outcome of the ongoing collective procedures as this was a matter for the national legal authorities.

The Commission, having meanwhile learnt of the French Government's intention to grant new aid to enable Pinault to proceed with the takeover, warned the French Government by letter of 12 June 1986 that, apart from the action to be taken in respect of the infringements of Article 93 committed in 1982 and 1985, all new aid had to be notified in the form of a proposal, whilst any aid granted contrary to the provisions of Article 93 could be subject to a recovery order.

The Commission, having received no reply to its letter of 12 June 1986 and being informed of the decision of the 'Tribunal de Commerce' on 21 July 1986, involving a grant of FF 250 million, wrote again to the French Government on 5 August 1986 requesting that it notify the aid within 30 days.

On 19 November 1986, the decision of the 'Tribunal de Commerce' having become final and the notification requested still not having arrived, the Commission decided to initiate the Article 93 (2) procedure in respect of all the aid granted on the grounds that it came under the prohibition laid down in Article 92 (1) of the EEC Treaty and did not appear to qualify for exemption under paragraphs 2 and 3 of that Article.

By letter of 1 December 1986, the Commission invited the French Government to submit its observations.

### III

By letter of 27 November 1986, the French Government confirmed its decision to grant the Pinault group FF 176 million in interest-free repayable advances, FF 24 million in regional planning grants and FF 50 million in equity loans at reduced interest rates, stating that in its opinion, these amounts formed only a small part of the resources the undertaking required in order to restructure. The French Government stressed the additional reductions in production capacity and announced that it would be sending further comments as soon as it had more details.

By letters dated 9 January, 30 April, 4 June and 5 June 1987, and at a bilateral meeting on 26 May 1987, the French Government submitted its observations under the procedure.

It criticized the fact that the letter giving notice dated 1 December 1986 did not take account of the content of the notification of 27 November and that the Article 93 (2) procedure had been opened in respect of both aid to Isoroy and the aid to its purchaser Pinault.

It specified the amounts of aid granted to Isoroy in 1983 and 1985 although it did not describe the exact arrangements relating to the soft equity loans.

It submitted that the intensity of the aid to the Pinault group was small, that it could not have affected intra-Community trade, especially in view of the number of

imports from non-member countries, that it corresponded to the Commission's own guidelines for the wood industry and that it was justified in the light of the knock-on effects at the regional, social and environmental levels.

In the course of consulting other interested parties, observations were submitted by the governments of four other Member States, together with four industrial federations and two enterprises in the same sector.

### IV

State assistance in the form of subsidies, interest-free advances repayable solely in the event of excess profits, soft equity loans and the fiscal moratorium on sums owed to public authorities constitute State aid within the meaning of Article 92 (1) of the EEC Treaty as they discharge the recipient enterprises and the production of goods from part of the costs which they would otherwise have to bear themselves.

In the case in question, the aid granted to Isoroy in 1983 and 1985 was composed of FF 80 million in subsidies, FF 152 million in equity loans, at a concessionary rate of interest not communicated to the Commission by the French Government, and the sum of FF 98,5 million owed by Isoroy to the public authorities.

The Government having authorized the payment of this sum to be staggered over 1986 and 1987, the effect was the same as a subsidy from the time Isoroy stopped payments in 1986.

The aid granted to Pinault in 1986 amounted to FF 176 million in interest-free advances, repayable only in the event of excess profits; a 12-year equity loan of FF 50 million incorporating a three-year non-call period, at 5,5 % interest during the non-call period and a variable rate depending on profits in the remaining nine years; lastly, aid of FF 24 million in the form of regional planning grants. The enterprise benefits financially from the absence of a fixed repayment period for the advances, from a total interest subsidy (this advantage can be evaluated at 9,25 % per annum, i.e. the rate applied by the Crédit National in November 1986) and from the aid element of a partial interest subsidy on the equity loans in the first three years, which may be evaluated at 3,75 % a year (i.e. the difference between 9,25 % and the 5,5 % on the equity loan in question).

Article 93 (3) of the EEC Treaty provides that 'the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid ... The Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision.' Apart from the question of

prior notification, by granting aid to Isoroy in 1983 and 1985 and to Pinault in 1986 as part of the Isoroy takeover without respecting the suspensory effect, the French Government did not fulfil its obligations under Article 93 (3). The aid in question is thus improper in any event for breach of procedure and is moreover incompatible with the common market within the meaning of Article 92.

When Isoroy was allowed to continue operations under the supervision of the Court, it owned some 30 plants and workshops on 16 sites in France, with a work-force of approximately 4 000 persons involved in the production of wood-based panels, packaging for cheese, tannin, doors and articles for the construction industry. Wood-based panels represented 80 % of Isoroy's sales in 1985.

As regards the market situation, consumption of the panels in question (plywood, blockboard, etc. — NIMEXE code 44.15, fibre building board — NIMEXE code 44.11, particle board — NIMEXE code 44.18) is partly determined by the economic situation in the building and furniture sectors, which are the main customers for such panels.

Not only have the two sectors experienced a levelling-off, they also face competition from wood-panel substitutes in every area. This is why the structural trends in the wood-panels sector show a levelling-off for panels in general, while the market for special, higher added value panels, such as structured 'OSB' board and medium-density fibreboard (MDF), is growing.

There is trade between Member States in these products and strong competition between manufacturers in the Community, who also have to cope with a high level of imports from non-member countries. In 1985, the Community of 10 imported 503 556 tonnes of fibreboard from other countries and exported 45 058 tonnes; it imported 1 241 401 tonnes of plywood and exported 71 744 tonnes; it imported 1 363 770 tonnes of particle board and exported 141 799 tonnes.

In 1985, Isoroy accounted for 26 % of particle board production in France and held 17 % of the French market. France exported 170 000 tonnes to other Member States and imported 300 000 tonnes. French exports represented 11 % of total intra-Community trade.

Isoroy accounted for 20 % of French production of plywood and held 10 % of the French market; it

exported 29 % of its production. France exported 74 000 tonnes of plywood to other Member States and imported 48 000 tonnes. French exports represented 30 % of total intra-Community trade.

In 1985, Isoroy accounted for 80 % of French production of fibreboard and had 65 % of the French market. It exported 27 % of its production. France exported 68 000 tonnes of fibreboard to other Member States and imported 24 000 tonnes. French exports amounted to 26 % of total intra-Community trade.

Production of tannin accounted for only 3 % of Isoroy's turnover, although it should be noted that Isoroy was the only producer of tannin in France and exported most of its production. In 1985, France exported 6 061 tonnes of tanning extracts (NIMEXE code 32.01-40) to other Member States and imported 1 820 tonnes from Italy.

As a result, the various aid granted by the French Government distorted or threatened to distort competition and affected trade between Member States within the meaning of Article 92 (1) by clearly favouring first the Isoroy group and subsequently the Pinault group and their products.

Where State aid strengthens the position of certain firms in relation to others competing with them in the Community, it must be regarded as affecting such competitors.

Article 92 (1) of the EEC Treaty provides that aid having such features is in principle incompatible with the common market. The exceptions provided for in Article 92 (2) are not applicable in the case in point because of the nature of the aid proposed.

Article 92 (3) lists the aid compatible with the common market. Compatibility with the Treaty must be determined in a Community context and not in relation to a single Member State. To ensure the smooth operation of the common market in accordance with the principles of Article 3 (f) of the EEC Treaty, the exceptions set out in Article 92 (3) should be construed narrowly when an aid scheme or an individual aid is examined.

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 prospective recipient towards patterns of behaviour that would serve one of the objectives of the exceptions.

As regards the exceptions provided for in Article 92 (3) (a) of the Treaty in respect of aid to promote the economic development of certain areas, it should be noted that 11 of Isoroy's 16 plants are eligible under the French regional aid schemes because of their relatively unfavourable social and economic situations, but that none of the industrial sites has the characteristics of a region with an abnormally low standard of living or serious under-employment within the meaning of the exception referred to in paragraph (a).

As regards the exceptions under Article 92 (3) (b) of the Treaty the aid in question is clearly not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the French economy. Within the framework of the procedure, the French Government submitted that the Pinault take-over of Isoroy would lead to a synergy of activities, which would help to reduce imports from non-member countries. It also pointed out that the Pinault investment programme would allocate FF 45,6 million to pollution control. It should be noted here that the argument that the aid has a knock-on effect on the trade balance of the Community does not justify exemption under Article 92. As regards the investments of FF 45,6 million, this represents 9 % of the total planned investment. No proof has been furnished as to any link between the FF 250 million granted to Pinault as part of the Isoroy takeover and the specific investments referred to above. It should also be stressed that there are several specific environmental aid schemes in France; the government has not indicated whether they will be applied to the said investments or whether the investments are even eligible under the special schemes.

As regards exceptions under Article (3) (c) of the EEC Treaty concerning aid to facilitate the development of certain economic activities or areas, the aid decided in 1986 as part of the Pinault plan comprises FF 24 million in regional planning grants (PAT). The French Government pointed out in this respect that it had complied with Commission Decision 85/18/EEC of 10 October 1984 on the French regional planning grant scheme<sup>(1)</sup>. In as much as the French Government also complied with the principles of coordination of regional aid schemes<sup>(2)</sup>, the present application of the PAT scheme may be regarded as compatible with the common market under the terms of the exception provided for in Article 92 (3) (c) in respect of aid to facilitate the development of certain economic areas. Under these conditions, the regional and social compensating benefits

referred to by the French Government as part of the procedure may be regarded as being fulfilled by the aid granted under the PAT scheme.

The other aid granted to Isoroy in 1983 and 1985 and to Pinault in 1986 as part of the Isoroy takeover is not covered by regional aid schemes approved by the Commission. The primary effect of the aid was that Isoroy's activities were kept together as a coherent part of the French economy. The aid to Pinault in particular must also be regarded as having given that firm a distinct advantage by enabling it to submit a more favourable plan for the Isoroy takeover than any other.

In 1986, the French Government stated that the aid granted to Isoroy in 1982 had enabled the latter to invest FF 294,5 million over the period 1982 to 1984. It also submitted that the purpose of the aid granted to Isoroy in 1985 was to allow the latter to invest FF 219,1 million over the period 1985 to 1987.

The French Government, as part of the procedure, stressed in particular that the aid granted to Pinault would allow the latter to carry out an investment programme of FF 533 million over three years aimed at modernizing the production process, increasing productivity, converting to new products and relocating several production lines.

The Government also pointed to the cuts in production capacity and employment that had already been or were to be carried out at the Isoroy plants.

According to available data, Pinault plans under the programme to reduce Isoroy's production of plywood by some 9 %, to cut production of ordinary particle board by approximately 7 %, to continue with the building of a new plant manufacturing 'OSB' board, i.e. structured chipboard, to decrease production of hardboard by 12 %, increase production of medium-density fibreboard, and modernize and rationalize other production lines.

It should be borne in mind that between 1978 and 1984, the number of mills in the wood-based panels sector in the Community fell by 27 % (from 588 to 432) and that production capacity diminished by 5 % (from about 19 million m<sup>3</sup> to 18 million m<sup>3</sup>). The study carried out by the United Nations in 1984 on the wood-based panels industries assesses the situation as follows: 'During the

<sup>(1)</sup> OJ No L 11, 12. 1. 1985, p. 28.

<sup>(2)</sup> OJ No C 31, 3. 2. 1979, p. 9.

period from 1978 to 1984, the position of the wood-based panels' sector, Nordic, EEC and central European countries, where the number of operating plants production and production capacity has decreased while average plant capacity has increased indicate that changes occurred in the structure of the wood-based industries, many small plants with obsolete equipment were shut down and modern plants with special machinery began producing special panels in an effort to achieve a better balance between supply and demand for panels on the domestic and external markets'.

The developments at Isoroy and those projected under the management of Pinault are not radically different from the trend in the sector in question. Plant closures, job losses, investment in modernization, rationalization and diversification towards more specialized products with a higher added value are also regularly carried out by Pinault's competitors without any special assistance. It must also be noted that the Commission proposal for a Community action programme for forest-based industries of 30 May 1983 (COM(83) 222 final) does not express a favourable view of such aid and could not therefore affect the scope of Article 92 of the Treaty.

Therefore, in view of the situation of the market for the products in question, the investments initiated by the Isoroy and Pinault groups should be regarded as forming part of the tasks which undertakings should normally finance from their own resources, without the help of State aid.

As regards the aid to Pinault, it should be noted that it already received considerable benefits in terms of added value when it acquired the entire assets of Isoroy (fixed capital, claims and stocks) for the symbolic sum of FF 168 million, of which FF 100 million were intended to cover the social costs of Isoroy's operations when it was placed under the supervision of the Court. Pinault for its part undertook to provide FF 220 million in own resources. It thus acquired partly modernized factories for a price well below the real value. The French Government believes that the gross rate of internally generated finance of the companies taken over will exceed 8 % of turnover by 1990.

The French Government also stated as part of the procedure that one of the aims of the aid was to enable Pinault to cope with the fierce competition from imports from non-Community countries. It referred in particular to the number of Indonesian exports of plywood and cases of dumping of fibreboard by Eastern countries. However, any problems involving trade with non-member countries should be settled in compliance with Community rules and not by having recourse to unilateral national measures, such as State aid.

Furthermore, the statistics furnished by NIMEXE show that while imports from non-member countries have indeed increased, there are far more imports into France of wood-based panels from other Member States, amounting (by weight — all panels) to 71 % in 1983, 70 % in 1984, 71 % in 1985 and 72 % in 1986 and that consequently the aid in question primarily affects the conditions of intra-Community trade.

Account should also be taken of the cumulative effect of the aid from which the Isoroy plants, taken over by Pinault, benefited unduly for several years.

In view of the above, the aid granted to Isoroy and Pinault cannot be considered to facilitate the development of the wood-processing industry without altering trading conditions to an extent contrary to the common interest, and consequently may not benefit from exemption under Article 92 (3) (c).

## V

### *Conclusion*

As regards the aid granted to Isoroy in 1983 and 1985, a recovery order would have no real effect in view of Isoroy's debts of FF 2 200 million and the fact that its assets were purchased by Pinault for a largely symbolic amount. Although the recipient undertaking has meanwhile entered into liquidation, the Commission believes it is necessary to adopt a negative final decision in respect of the two aid measures in question. The decision responds essentially to the need to protect the rights of the competing undertakings in as much as they have been harmed by the failure to comply with the provisions of the Treaty as regards State aid.

The aid granted to the Pinault group in 1986 totals FF 250 million. Of this amount, the grant of FF 24 million under the PAT scheme may be regarded as compatible with the common market within the meaning of Article 92 (3) (c) and the Commission has no objections in this respect. On the other hand, the remaining aid of FF 226 million (i.e. interest-free repayable advances of FF 176 million and equity loans at 5,5 % in the first three years totalling FF 50 million) is incompatible with the common market as it does not qualify for any of the exemptions provided for in Article 92.

A part of the overall amount in question, i.e. FF 50 million in advances, has not been paid to Pinault and it is therefore necessary to ensure that the French Government does not implement this aid measure.

However, the balance of the amount in question, namely FF 126 million in advances and FF 50 million in equity loans was paid to Pinault in November 1986, i.e. during the aid examination procedure. Since the suspensory effect rule provided for in the last sentence of Article 93 (3) was not complied with, the aid is also improper by reason of breach of procedure; it should be abolished from the date on which the French Government is notified of this decision. The abolition concerns in particular the aid elements contained in the assistance granted: the lack of a repayment schedule and the interest subsidy on the advances of FF 126 million, and the partial interest subsidy assessed at 3,75 % a year on the equity loan of FF 50 million; a recovery order should also be placed on the interest due on the two principal sums referred to above which Pinault has unduly benefited from since November 1986 (the date on which they were paid).

To date, the interest amounts to FF 12 million on the sum of FF 126 million, and FF 2 million on the sum of FF 50 million,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid in the form of subsidies of FF 12 million and equity loans of FF 112 million granted to Isoroy in 1983, of subsidies of FF 68 million and equity loans of FF 40 million granted to Isoroy in 1985, together with the aid resulting from the authorization granted by Isoroy in 1985 to stagger its debt payments to the public authorities amounting to FF 98,5 million, is illegal and incompatible with the common market within the meaning of Articles 92 and 93 (3) of the EEC Treaty.

*Article 2*

1. The aid elements contained in the assistance granted to Pinault in 1986 in the form of repayable interest-free

advances amounting to FF 176 million and equity loans at the rate of 5,5 % during the first three years (totalling FF 50 million) are incompatible with the common market within the meaning of Article 92 of the EEC Treaty and must therefore be abolished from the date of notification of this Decision to the French Government.

2. Of the assistance referred to in paragraph 1, FF 126 million in advances and FF 50 million in equity loans were granted to Pinault in violation of the rules of procedure provided for in Article 93 (3) and are therefore illegal.

3. The French Government shall recover the interest on the sums of FF 126 million and FF 50 million referred to in paragraph 2 which Pinault has enjoyed since November 1986 and which amounts to FF 12 million and FF 2 million respectively on the date of adoption of this Decision.

*Article 3*

The French Government shall inform the Commission of the arrangements made to comply with this Decision within two months of the date of notification of this Decision.

*Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 9 December 1987.

*For the Commission*

Peter SUTHERLAND

*Member of the Commission*