COMMISSION

COMMISSION DECISION

of 9 April 1997

concerning aid granted by France to the textile, clothing, leather and footwear industries

(Only the French text is authentic)

(Text with EEA relevance)

(97/811/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular point (a) of Article 62 (1) thereof,

Having, in accordance with the abovementioned Articles, given notice to the parties concerned to submit their comments,

Whereas:

I

By letter dated 26 March 1996 from its Permanent Representation to the European Union, France notified the Commission of 'experimental measures to reduce social security contributions for the textile, clothing and leather/footwear industries'.

France decided that, in addition to the measures applying general relief on social security contributions taken in June 1995, the abovementioned industrial sectors should qualify for total exemption from employers' social security contributions for the guaranteed minimum wage (SMIC), the level of which is set by the State, and degressive relief on wages up to one and a half times the SMIC.

By letter dated 31 May 1996 [1], the Commission informed France that it had decided to initiate Article 93 (2) proceedings in respect of the measures.

At the time of the notification, the objective pursued by the reductions in social security contributions was job creation and, in particular, the recruitment of young people in the four industries. This objective was also to be pursued through undertakings entered into by the two sides of industry regarding reductions in working time and the encouragement of part-time working. No details were given as to the content of these undertakings.

For the four industries as a whole, the reductions in social security contributions are intended to encourage the recruitment of 7 000 unemployed young people and the safeguarding of 35 000 jobs.

The 7 000 jobs for young people represent net job creation, while the 35 000 others are jobs which will not be shed in the two years following the entry into force of the arrangements. Without the new measures, the four industries anticipate a loss of 60 000 jobs over the relevant two-year period. The effect is thus clearly a slowdown in the number of redundancies.

The grounds on which it was decided to initiate proceedings are as follows:

— since the reductions in social security contributions were not granted to all French firms, they amount to sectoral aid. The Commission consistently queries this type of aid, because of its impact on the economy and competition, particularly in industries in which there is substantial Community trade,

— even in the case of aid for the creation of jobs, the Commission has to adopt a strict stance on sectoral aid in order to pre-empt any escalation of aid and, over and above that, to ensure that the very concept of

[1] OJ C 206, 17. 7. 1996, p. 8.

the internal market is not called into question. The guidelines on aid to employment [2] allow sectoral aid for the safeguarding or net creation of jobs only in a limited number of circumstances, which did not seem to apply to the measures proposed,

— because France did not provide all the necessary details on the measures, the Commission did not have clear evidence of the need for preferential treatment of the relevant industries as compared with other sectors of the French economy, or as compared with competing industries in the other Member States.

France's reply to the Commission's letter was received on 16 July 1996. It was apparent from the reply that the reductions in social security contributions, while being intended for the creation of jobs, were in fact designed to offset in whole or in part, depending on the individual case, the extra costs involved in reorganizing and reducing working time under the abovementioned sectoral agreements. According to France, the arrangements, viewed in this light, were financially neutral in that they did not entail any benefit to the firms.

This prompted the Commission to extend the scope of the proceedings, by decision of 2 October 1996 [3], so as to take account of the new and fuller information provided by France. The Commission informed France of this new decision by letter dated 15 October 1996.

The reasons which prompted the Commission to adopt this second decision may be summarized as follows:

— the costs incurred by firms as a result of agreements concluded by both sides of industry in a given sector, whether concerning the reorganization of working time or other areas, which result in wage increases or extra paid leave not required by law, constitute costs which should should normally be covered by firms' budgets. Consequently, any direct or indirect reduction in such costs which is authorized by the public authorities could constitute State aid that is prohibited in principle by Article 92 (1),

— furthermore, the Court of Justice has consistently held that Article 92 (1) does not distinguish between State aid measures on the basis of their causes or objectives, but defines such measures in terms of their effects. In this instance, the reduction in social security contributions enjoyed by firms in these sectors is likely to place them at an advantage compared with competitors that have reorganized working time or taken similar measures without State support. In principle, the fact that the advantages granted to the firms are intended to offset costs resulting from the agreements concluded by them does not *a priori* rule out the possiiblity that such advantages constitute aid,

— there is no clear evidence to support France's argument that the measure is neutral in its effect. In the first place, a number of factors on which calculation of the aid and additional costs is based give rise to questions that may affect the final result. Secondly, the assessment made of the measure's impact fail to take into account its other induced effects, such as firms' improved efficiency as a result of tailoring working time more closely to the specific needs of the sector, notably the seasonal and cyclical nature of its production.

France's comments regarding the initiation of proceedings were received by the Commission on 16 July 1996 and its comments on the 2 October 1996 decision were received by the Commission on 5 December 1996. Further information was received by the Commission on 17 Febraury 1997. This was in reply to the Commission's letter of 30 January 1997 concerning the method of assessing the net impact of the measure.

In addition, meetings were held between Commission officials and officials from the French ministries concerned on 1 August 1996 in Brussels and 21 January 1997 in Paris.

Commission notices giving the other Member States and interested parties notice to submit their comments on the two abovementioned decisions were published in the *Official Journal of the European Communities*, on 17 July 1996 [4] and 26 November 1996 [5].

Seven textile and clothing associations submitted comments to the Commission in response to the first notice. The German, Netherlands and United Kingdom Governments and the authorities of the Flemish region in Belgium also responded to the notice.

Two industrial associations submitted comments in response to the second notice. The Austrian and Netherlands Governments also responded to it.

In accordance with the procedure, the comments of the third parties (all opposed to the measures) were communicated to France on 16 October 1996 and 24 January 1997 respectively. France's replies were received by the Commission on 21 November 1996 and 17 February 1994.

[2] OJ C 334, 12. 12. 1995, p. 4.
[3] OJ C 357, 26. 11. 1996, p. 5.
[4] See footnote 1.
[5] See footnote 3.

II

France's comments on the initiation of proceedings are set out in the abovementioned decision of 2 October 1996. France's position on that decision may be summarized as follows:

— First, France disagrees with the Commission's view that the nature of the measures changed between the date of notification, 27 March 1996, and the date when France responded to the Commission's initiation of proceedings. The objective pursued by the experimental measures in question had always been and remained the safeguarding of employment through the reorganization of working time.

At no time had the final objective of the measures changed; only the implementing arrangements had been adjusted to take account of the result of the negotiations between the two sides of industry and, thus, of the undertakings entered into by the firms regarding there organization of working time,

— France also disputes that any reduction in social security contributions can be termed State aid. The collective agreements concluded between the employers and the trade unions had obliged the firms to go beyond the statutory requirements regarding the remuneration of overtime. The conclusion of such agreements did not amount to evidence that a large number of firms had no qualms about accepting the new requirements.

France considers that support provided for the efforts made by firms to combat unemployment cannot automatically be termed State aid that distorts competition, since such efforts may, despite the support provided, impose additional costs on the firms over and above what they would incur if they complied strictly with their statutory requirements.

In response to any objection made by the Commission along these lines, France states that it does not know of any cases in which other Member States had pursued a similar policy of reorganizing working time without State support,

— France provided a number of technical details on the methods of calculating the net impact of the measures (reductions of social security contributions compared with additional costs imposed by the reorganization of working time). France continues to maintain, in the light of this information, that the measures are neutral in their financial impact: large firms do not ultimately benefit in reductions in social security contributions, since the costs of reorganizing working time are greater for them. Other firms with between 50 and 500 employees benefit from a 'net' reduction with remains below the *'de minimis'* threshold, namely ECU 100 00 over three years (some FF 650 000).

Applying its method of calculation, France estimates the net impact of the measures as follows:

1. Textile and clothing [6]:

Category of firm by number of workers	Industry average: 71	100 to 199	200 to 499	500 or more
Gain from the reduction as % of wage bill	3,64	3,31	2,53	2
Theoretical cost of the reduction as % of wage bill	2,71	2,71	2,71	2,71
Estimated cost of the reduction as % of wage bill	2,15	2,15	2,15	2,15
Net gain or loss as % of wage bill	1,49	1,16	0,38	– 0,15
Annual gain or loss in FF	156 301	256 580	209 270	– 221 373
Gain or loss during life of measure	234 451	384 870	313 905	– 332 059

[6] It is surprising to note that the average firm for each of the categories of firms concerned employs an identical number of workers in both textiles and clothing and in leather and footwear. The Commission also notes that the data on the workforce allocated to production are different in textiles and clothing, which should normally give a different estimate of the cost of reorganizing working time.

2. Leather and footwear (7):

Category of firm by number of workers	Industry average: 71	100 to 199	200 to 499	500 or more
Gain from the reduction as % of wage bill	3,62	3,29	2,51	1,99
Theoretical cost of the reduction as % of wage bill	2,71	2,71	2,71	2,71
Estimated cost of the reduction as % of wage bill	2,19	2,19	2,19	2,19
Net gain or loss as % of wage bill	1,43	1,1	0,32	– 0,2
Annual gain or loss in FF	150 134	243 943	179 982	– 295 319
Gain or loss during life of measure	225 201	365 914	269 973	– 442 978

As the two tables show, France has adjusted the theoretical cost of reorganizing working time by reference to the workforce allocated to production: 77,9 % in the case of the textile industry and 80,8 % in the case of the leather and clothing industries. However for the purpose of looking at labour costs, the Commission stated that reference should be made not to the number of persons affected by the measure, but to the wage bill relating to them. France therefore presented new figures based on the criterion of the wage bill relating to the staff affected by the reorganization and concluded that the figure should not differ significantly from that of the workforce allocated to production, while at the same time asserting that no precise assessment of such wage bill could be carried out,

— Last, France stressed that the proposed arrangements did not necessarily entail any gains in competitiveness for the firms. It emphasized that such gains were potential and difficult to measure and that they could become apparent only in the medium or long term, whereas the measure covered only 18 months.

The figures put forward by the Commission (12 to 13 % in gains in competitiveness as a result of the measures) were in the nature of a summary assessment, prior to any final working out of the measure and corresponding to a long-term hypothesis for very small firms, all of whose employees would be paid at under 1,5 times the SMIC.

(7) Since the data on the workforce allocated to production are not available for the footwear industry, the Commission does not see how the estimated cost of reorganizing working time could have been calculated for that industry.

III

As part of the proceeding, the Commission received 15 sets of comments, all negative, from both Member States and business associations in the sector. 11 sets of comments reached the Commission following publication of the letter informing France of the initiation of proceedings.

In addition to stating their general support for the Commission's position in the case, the comments stress the fact that, in all Member States, the four industries concerned are facing the same type of difficulties and that some have had to accept much larger staff cutbacks than in France. In virtually all the Member States, the industries have had to undergo painful restructuring in order to restore some competitiveness, without the benefit of any specific sectoral aid from government.

A large number of comments point out that the majority of the firms concerned (those with fewer than 50 workers) receive aid below the *'de minimis'* threshold and that, in industries in which the vast majority of firms are very small, even aid below that threshold can have devastating effects for competitors. Firms in other Member States do not have the financial resources to react to the French aid.

Four separate sets of comments were received by the Commission following publication in the *Official Journal of the European Communities* of France's letter regarding the decision of 2 October 1996.

The Dutch Government confines itself to reiterating the opposition which it had already stated when proceedings were initiated. The Austrian Government informed the Commission that a similar measure, negotiated between employers' organizations and trade unions in the textile industry, for adjusting working time had been implemented in Austria. The measure had been introduced without any aid from the public authorities, since the productivity gains resulting from the adjustment of working time had been sufficiently great to offset the costs associated with the introduction of more flexible working hours.

A Greek association in the clothing industry took the view that the average gain from the aid as a percentage of the wage bill was much higher than stated by France. As evidence, the association sent the Commission a newspaper article (*Journal du textile* No 1472 of 28 October 1996) in which a firm with more than 100 employees stated that, thanks to the reduction in social security contributions introduced in France, it had been able to save 8 % of its total wage bill, enabling it to reduce its production costs.

Lastly, an Italian association in the textile and clothing industry stated that the costs of reorganizing working time were incurred as a result of free and independent negotiations embarked upon and concluded by firms in the industry and that they should not be offset.

As stated above, France was asked for its views on all the comments received. As regards the first eleven sets of comments, France explained, in its letter of 19 November 1996, that 'the details which it provided during the summer regarding the measures which are the subject of the Article 93 (2) proceedings alter to a large extent the basis on which such comments are founded. Consequently, the new Article 93 (2) proceedings that take account of these details and are soon to be published in the Official Journal prompt the French authorities to conclude that it does not need to express any views on such comments.'

As regards its views on the second four sets of comments from third parties, France reiterates that the measures proposed are original and neutral and do not therefore affect competition. It argues that the reductions in social security contributions have made it possible 'to restore momentum to collective negotiations (hitherto stalled) in which the State has a role of guidance and encouragement'.

As regards any underestimation on its part of the average gain from the aid of a percentage of the wage bill, France points out that, in order to assess the impact of the measures reducing social security contributions, it is essential that account be taken simultaneously of the gain derived form the measures and their cost. While the real long-term gains are difficult to quantify, the direct gains from the measures are easily calculated and anticipated by firms. The costs, however even though they are immediate, are less clear,

Lastly, France replied that a comparison cannot be made between the French measures and those introduced in Austria without State aid, since the resulting gains in competitiveness largely offset the costs of the adjustment. The French measures apply across the board and are of short duration, whereas the Austrian measures are spread over time and are applied on a voluntary basis. In addition, the French plan includes very advantageous treatment for employees.

IV

The relevant industries, textiles, clothing, leather and footwear, although different in size textiles and clothing account for 86 % of the total production of the four industries, footwear accounts for 9 % and the leather industry for 5 %), have similar characteristics and have seen their situations develop in similar ways in recent years. Furthermore, both characteristics and development are fairly similar from one Member State to another.

All the industries consist for the most part of small and medium-sized enterprises, and all face stiff competition both within the Community and from low-wage countries, mainly in South-East Asia. Such competition mainly involves lower and middle-range products as far as the Asia countries are concerned and top-of-the-range products as far as the Member States are concerned.

The four industries are concentrated in a number of Member States, in most cases the same ones. Output by Member State in 1993 breaks down as follows:

Textiles (1)	Italy (24,5 %)	Germany (22,6 %)	France (17 %)	United Kingdom (14,5 %)
Clothing	Italy (22 %)	Germany (21 %)	France (18 %)	United Kingdom (16,5 %)
Footwear	Italy (32 %)	France (19 %)	Germany (15 %)	United Kingdom (13 %)
Leather	Italy (60 %)	Spain (14 %)	Germany (7,5 %)	United Kingdom (7 %)

(1) In the case of textiles, clothing and footwear, value added; in the case of leather, turnover. *Source: Panorama of EC Industry 1995*, European Commission.

In the leather industry, France is in fifth place, applying the turnover criterion, with a share of 5,24 %.

All four industries (taking all the Member States) have in the past ten years seen a sharp or very sharp fall in employment, particularly the textile and leather industries. This is due to the efforts made to improve productivity during the period, but also to the poor economic situation and to competition from non-Community countries.

At Community level, production (in current prices) has risen sharply in the textile and footwear industries, while in the other two industries it rose until the mid-1980s, but subsequently declined. By contrast, production in constant prices has fallen in all four industries.

With the exception of the leather and textile industries (in the latter case, only if the figures are expressed in value terms), the industries, in the Member States as a whole, have for some years experienced a growing trade deficit with the rest of the world.

France's share in total Community trade (in value terms) may be put as follows (8):

(%)

	Exports		Imports	
	1993	1994	1993	1994
Textiles	15,36	15,62	16,39	15,60
Clothing	11,33	10,73	17,75	17,78
Leather	15,20	15,49	16,93	16,61
Footwear	7,78	6,75	20,34	20,01

During the proceedings, the Commission obtained other statistics. According to a French textile-industry association, the five largest customers of the French textile industry in 1995 were other Member States. Those five Member States accounted for a total of 51 % of French exports of textile products (9).

In the first half of 1996, the Community received 62 % of French exports of textile and clothing products and provided 52 % of French imports (10).

V

The Commission regards measures to promote employment as a fundamental Community priority and believes that success in this area is conditional upon closer integration of the macroeconomic and industrial policies of the Member States, which, together with the Commission, need to show greater imagination and boldness in seeking new solutions to overcome the scourge of unemployment.

The adoption of the White Paper on growth, competitiveness and employment in 1993 is a step in this direction and confirms the absolute priority which the Commission attaches to these objectives.

The Commission has on numerous occasions taken specific steps to promote employment. It has in particular adopted guidelines on aid for deprived urban areas (11),

(8) *Source:* Eurostat.
(9) Statistics provided by the Association Textiles de France, 22 July 1996.
(10) Source, *L'industrie textile*, No 1208, October 1996.
(11) OJ C 146, 14. 5. 1997, p. 6.

guidelines on aid to employment and a notice on monitoring of State aid and reduction of labour costs ([12]) which explains clearly what types of public assistance are acceptable for creating or safeguarding jobs without distorting competition between Member States. The Commission considers that its constant efforts to ensure that Member States do not solve their own unemployment problems by aggravating those of their partners bear witness to the overriding importance it attaches to net job creation and to the safeguarding of stable employment within the Community.

The Commission's remarks on the measures in question do not relate to the objectives pursued by France in the area of job creation (for young people in particular), but rather to the arrangements which they plan to introduce in order to attain those objectives and their consequences Moreover, it should be noted that, while recent European Councils have recommended both the reduction of social security contributions for low salaries and work sharing in order to create jobs, this must not be done in a way that is incompatible with the Treaty.

VI

When it initiated the proceedings, the Commission reminded France of the suspensory effect of Article 93 (3) of the Treaty and drew its attention to the Commission communication published on 24 November 1983 and to the letters sent to all Member States on 4 March 1991, 22 February 1995 and 30 May 1995 in which it reminded Member States that, where they grant aid unlawfully, the Commission may require them to recover it.

The Commission also requested France to inform the recipient firms forthwith of the initiation of proceedings and of the fact that they might have to repay any aid improperly received.

The Commission notes, however, that, in spite of the abovementioned suspensory effect, France has nevertheless implemented the measures reducing social security contributions. The measures entered into effect on 1 June 1996 in the case of the textile and clothing industries and on 1 July in the case of the leather and footwear industries. France has accordingly rendered the aid illegal and has exposed the recipient firms to the possibility of having to repay it if it is found to be incompatible.

When the measure was notified, it was presented as a temporary, experimental and horizontal measure for the textile, clothing, leather and footwear industries. It was also stated that the measure was designed to create employment and reduce working time.

In order to qualify for the reductions, the two sides of industry had to sign collective undertakings on the creation of jobs, either directly (recruitment of young people), or indirectly (negotiations on a reduction in working time) and on a slowdown in the rate of redundances. Firms employing more than 50 persons also had to enter into specific undertakings with the State.

On examining France's reply to the Commission's letter initiating proceedings, it became apparent that the reduction in social security contributions in the four industries was designed mainly to offset, in whole or in part — depending on the individual case — the extra costs involved in reorganizing and reducing working time under the abovementioned sectoral agreements. This prompted the Commission to extend the scope of the proceedings on 2 October 1996.

In its reply to this second decision, though it acknowledged the need to inform third parties of the new information which it had supplied to the Commission, France disagreed that the nature of the measure notified had been altered. France argued that the final objective of the measure had not at any time been altered and that, despite the new information provided, the objective pursued by the experimental measures remained the safeguarding of employment through the reorganization of working time.

In the light of the information provided to it by France, and in particular the framework agreements signed between the State and the industries concerned, the Commission can accept that the main objective of the measure is the safeguarding of employment. However, it cannot accept the means chosen to achieve that objective.

VII

Article 92 (1) of the Treaty states 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 shall, insofar as it affects trade between Member States, be incompatible with the common market.

The measures reducing social security contributions are intended to relieve firms in four specific industries of some of the financial costs arising from the normal application of the general social security system.

The Commission considers that the costs resulting for the firms from agreements concluded between the two sides of industry in a given sector, whether for the purpose of reorganizing working time or for other purposes and involving wage increases or paid holidays not required by the common rules and regulations are costs which should normally have been borne from their budgets. The fact

([12]) OJ C 1, 3. 1. 1997, p. 10.

that such costs result from the fact that the agreements concluded between the two sides of industry impose on the firms requirements going beyond what is laid down by law does nothing to alter this approach. The Commission therefore takes the view that it is the very assistance provided by the State in this context which constitutes by its very nature and in its totality State aid.

In accordance with the Commission's consistent practice, which the Court drew on in a recent case ([13]), State assistance for certain undertakings or the production of certain goods is deemed to be aid even if the assistance serves to finance costs voluntarily assumed by the undertaking concerned ([14]).

During the proceedings, in reply to remarks from third parties that were similar to those set out above, France stated that it was necessary to relaunch the stalled process of dialogue and collective negotiations, since the stakes involved in the policy of reorganizing working time and its repercussions on employment were sufficiently important to justify state intervention. France argued that, by offsetting the costs borne by firms in reorganizing working time, the reductions in social security contributions had made it possible to restore momentum to collective negotiations in which the State played a role of guidance and encouragement.

The Commission does not find fault with the objective pursued, i.e. the creation of jobs and the recruitment of young people, but with the nature of the measures (provision of public funds) designed to unblock the collective negotiations, since similar adjustments are being carried out or will have to be carried out in Member States by means of sectoral agreements without government support.

Since the concept of aid embraces benefits granted by the public authorities which, in various forms, mitigate the charges which are normally included in the budget of an undertaking ([15]), the measure in question constitutes State aid within the meaning of Article 92 (1) of the Treaty, even if the reduction is intended to offset an additional cost accepted by the undertakings on the basis of the support provided by the State.

Furthermore, as held by the Court of Justice ([16]), neither the fiscal nature of a measure reducing social security contributions, nor its possible social aim, nor the fact that the national industry would be placed at a disadvantage as compared with its main competitors if the social security contributions were not reduced can suffice to shield the measure from the application of Article 92 (1) of the Treaty.

On several occasions, France argued that the reductions in social security contributions were a general measure which it decided to introduce on an experimental basis in all industries in which the percentage of employees receiving a salary of less than 1,5 times the SMIC amounted to more than 70 % of the workforce. In practice, however, the measure relates only to the four abovementioned industries, and only for a period of 18 months, which leads the Commission to think that what is involved is a specific assistance measure designed to resolve economic problems.

France has not shown that the reduction in social security contributions in the four industries is justified by the nature and structure of the general social security system.

As regards France's argument that it needs to proceed by stages in this area, firstly on an experimental basis and subsequently on a more general basis, both in order to ascertain the validity of the approach and because of the limited financial resources available, the Commission has already expressed its position on this subject in its Decision 80/932/EEC ([17]). This position was restated in Decision 96/542/EC ([18]) which the Commission adopted on the 'experimental measures to support production and employment in the footwear industry in Italy'.

The experimental nature of the measures takes nothing away from their sectoral character. Public assistance intended to finance such costs, voluntarily assumed by the firms, could have escaped being termed aid only if there had been no discrimination, and in particular sectoral discrimination.

It has been consistently held in case-law that Article 92 (1) does not distinguish between measures of State intervention by reference to their causes or aims, but defines them in relation to their effects. It is thus necessary to check whether the measures introduced distort competition and affect trade between Member States.

In this instance, the reduction in social security contributions places firms in these industries in a more favourable situation than their competitors, who are carrying out or will in future have to carry out reorganizations in working

([13]) Judgment of the Court of Justice of the European Communities of 26 September 1996 in Case C-241/94 France v. Commission (Kimberly Clark Sopalin), not yet reported. [1996] ECR I-4551.

([14]) Furthermore, in its Decision 80/932/EEC of 15 September 1980 concerning the partial taking-over by the State of employers' contributions to sickness insurance schemes in Italy (OJ L 264, 8. 10. 1980, p. 28), the Commission established that, although the general conditions under which undertakings are operating may well vary from one Community country to another, this does not entitle a Member State to single out any specific factor and offset by aid the additional costs borne by its undertakings as compared with their competitors in other Member States.

([15]) Judgment of the Court of Justice of the European Communities of 15 March 1994 in Case C-387/92 Banco Exterior de España [1994] ECR I-877.

([16]) Judgment of the Court of Justice of the European Communities of 2 July 1974 in Case C-173/73 Italy v. Commission [1974] ECR 709.

([17]) See footnote 14.

([18]) OJ L 231, 12. 9. 1996, p. 23.

time, or similar measures, without State support. These considerations apply equally and more generally to firms which, in other Member States, take steps, without government aid, to rationalize production in order to be able to compete internationally.

In view of the adjustment difficulties facing the textile, clothing, footwear and leather industries throughout the Community and the keen competition that exists both within and outside the Community, the aid is also liable to affect trade to an extent contrary to the common interest. Furthermore, since Community firms in the relevant industries are virtually all faced with similar problems, there is an obvious risk of the aid helping to shift problems from one Member State to another. The large number of negative comments received in the case confirm this.

It is sufficient to point out in this respect that in the clothing industry, labour costs may account for up to 80 % of production costs. It is easy to imagine that a change in labour costs may have not inconsiderable consequences as a result of the plan introduced in France. It is significant that, according to one of the third parties who submitted comments as part of the proceedings, the annual amount of aid (FF 2,1 billion, of which some 40 % would go to the textile industry) is more than the annual profits of the German textile industry as a whole.

In its judgment of 2 July 1974 in Case 173/73 Italy v. Commission ([19]), the Court of Justice held that, since the reduction in social security contributions had the effect of reducing labour costs and since the industry receiving the aid was in competition with undertakings in the other Member States, the modification of production costs in the Italian textile industry by the reduction of social security contributions necessarily affected trade between the Member States.

This position upheld the Commission's analysis in that case, namely that in a market in which the volume of trade is substantial, any aid, irrespective of its amount or intensity, distorts or threatens to distort normal competition if the recipient companies receive State aid which their competitors do not receive.

Consequently, it must be concluded that the measures reducing social security contributions under the 'textile plan' fall within the scope of Article 92 (1) of the Treaty.

For the reasons set out above, the Commission considers that the provision of public funds to the abovementioned industries constitutes by its very nature and in its totality State aid within the meaning of Article 92 (1) of the Treaty. It is not therefore necessary to examine in detail the calculations submitted.

It is sufficient to note, as an additional consideration, that in concluding that the measures are neutral in their impact, France bases its argument on its own statistics and that for the most part such statistics are averages ([20]), either in terms of the relevant industry or in terms of French industry as a whole. In addition, some of the information relating to the leather and clothing industries was communicated to the Commission in the form of aggregates, while in the case of the footwear industry such information was simply not provided.

It is very difficult to argue in such circumstances that the measures are neutral in their effect. One third party who submitted comments as part of the proceedings cited the case of a French textile firm ([21]) with more than 100 employees which claims to have saved 8 % of its total wage bill through the reduction in social security contributions, enabling it to cut its costs.

Another source ([22]) reports on a meeting held on 23 January 1997 by the body set up in France to monitor the textile plan, at which an initial statistical assessment of the measures was carried out. According to that source, firms covered by the plan benefited from reductions in low-wage social security contributions equivalent to an average decrease of 10 to 12 % in their total wage bill.

While average gains of the order of 10 to 12 % of the total wage bill may seem excessive, the figures reflect considerable fluctuations around the averages indicated in the above tables. This suggests that a large number of firms have a wage structure that differs substantially from the averages and that their gain from the aid is much higher.

In addition, the Commission notes that France did not include in its calculations the direct effects of the reorganization of working time, and in particular the gains in competitiveness, which it should have done.

It may reasonably be supposed that any reorganization of labour that helps a firm adjust its resources better to market conditions and characteristics will allow the firm to increase its efficiency. This is a direct effect of the measures that would not in any way be open to criticism if it were not due to State support falling within the scope of Article 92 (1) of the Treaty.

([19]) See footnote 16.

([20]) This has the effect of mitigating the effects of the measures described and does not give a true picture of the real situation for the French firms concerned.

([21]) *Journal du textile* No 1472, 28. 10. 1996.

([22]) *Le Monde*, 25. 1. 1997.

In a case involving the restructuring of a textile firm employing 248 persons that is currently being examined by the Commission (State aid No 731/96 'la Lainière de Roubaix'), France states that the implementation of the textile plan will allow gains in competitiveness of around 5 % through improved use of productive plant (i.e. a gain in productivity), This also appears to confirm experience in Austria, where competitive gains easily offset the costs of reorganizing working time.

At all events, the Commission considers that, because of the problematic nature of the figures available, which are not always representative of the real situation of the firms, and the failure to take account of all the factors affecting the firms (gains from the reduction in social security contributions, costs of the reorganization of working time and gains in competitiveness as a result of such reorganization), the neutrality of the French measures cannot be demonstrated.

VIII

In view of the above, the Commission considers that the reduction in social security contributions on salaries that do not exceed 1,5 times the SMIC, as implemented, constitutes aid within the meaning of Article 92 (1) of the Treaty. It is therefore necessary to examine whether the aid qualifies for one of the derogations provided for in Article 92 of the Treaty.

The derogations provided for in Article 92 (2) are not applicable, since the aid is not granted to individual consumers, intended to make good the damage caused by natural disasters or intended to compensate for the economic disadvantages caused by the division of Germany.

The derogation provided for in Article 92 (3) (a) is not applicable, since the measure covers the whole of France.

The derogation provided for in Article 92 (3) (b) is not applicable, since France has not shown that the reduction in social security contributions for firms in the relevant industries is necessary in order to remedy a serious disturbance in the French economy.

The derogation provided for in Article 92 (3) (d) is not relevant, since the aid does not have the effect of promoting culture and heritage conservation.

Nor has France at any time invoked the abovementioned derogations, since it has always maintained that the nature of the measure and the objective pursued are the safeguarding of employment through the reorganization of working time.

The aid is sectoral aid intended to safeguard and create employment. It must therefore be examined in the light of the guidelines on aid to employment (hereinafter referred to as 'the guidelines') in order to determine whether the derogation provided for in Article 92 (3) (c) is applicable.

Aid to maintain jobs ([23]), which is similar to operating aid, may be authorized by the Commission only in the event of natural disasters or exceptional occurrences in regions eligible for the derogation under Article 92 (3) (a), as part of a rescue, restructuring or conversion plan for an ailing firm. Aid to maintain jobs may be granted by means of general measures.

At no time has France shown that the proposed aid could fulfil any of these criteria. The aid cannot therefore be authorized on the basis of the guidelines.

As far as aid to create jobs is concerned, point 23 of the guidelines states the following: 'Aid to create jobs that is limited to one or more sensitive sectors experiencing overcapacity or in crisis is also generally viewed less favourably than aid to create new jobs that is available to the economy as a whole.

Such sectoral aid constitutes an advantage for the sector(s) concerned which improves their competitive position in relation to firms from other Member States. Aid that reduces wage costs throughout one or more productive sectors reduces production costs in those sectors, and this enables them to improve their market share to the detriment of their Community competitors both within the Member State concerned and for exports inside and outside the Community, with all the attendant implications in terms of a worsening of the employment situation in those sectors in the other Member States. Consequently, the protective effect of such aid for the sector(s) in question, in particular those in crisis, and its adverse effects on employment in competing sectors in other Member States generally outweigh the common interest involved in active measures to reduce unemployment; the Commission will usually consider such aid to be incompatible with the common market.'

([23]) Guidelines, point 22.

In accordance with point 23 of the guidelines, the Commission is obliged, even in the case of aid for job creation, to adopt a strict attitude to sectoral aid in order to forestall any escalation of aid in good time and, over and above that, to ensure that the very concept of the internal market is not called into question.

No information indicating that the four industries are not covered by the description in point 23 have been provided by France during the course of the proceedings. The four industries are in a state of crisis and overcapacity throughout the Community.

Furthermore, the industries must be regarded as sensitive sectors under the guidelines. All Community producers are facing very severe pressure from third-country imports, the employment situation is difficult in these industries in all Member States, and intra-Community trade is substantial and plays a prime role as a source for the procurement and marketing of goods for the four French industries.

The aid cannot therefore be accepted as facilitating development, since aid is assessed from a Community point of view and not from the point of view of a specific Member State. The sectoral measure may alter the balance between the Member States, all of which are facing similar problems.

Point 23 of the guidelines also states that 'the Commission will, however, be more favourably disposed towards aid to create new jobs where the jobs are in growth niche markets or sub-sectors that hold out the prospect of considerable job creation'. Once again, no information indicating that the four industries comply with this criterion has been provided. In addition, the measure does not apply to some activities but to the four industries as a whole.

The Commission's negative position on employment targeted on certain sectors was moreover reiterated in its notice on monitoring State aid and reduction of labour costs ([24]).

In its notice on the *'de minimis'* rule for State aid ([25]), the Commission stated that the maximum amount of ECU 100 000 over a three-year period represented an aid threshold below which Article 92 (1) of the Treaty could be considered inapplicable and that such aid was no longer subject to the prior notification requirement pursuant to Article 93 (3).

However, the Commission specified conditions for implementing this rule, such as monitoring arrangements to ensure that the combination of different types of aid granted to the same recipient under the *'de minimis'* rule comply with the threshold, and conditions relating to the conversion into cash grant equivalent where assistance is provided otherwise than as a grant. This *'de minimis'* rule concerns mainly small and medium-sized businesses, but is applicable irrespective of the size of the recipient firms.

Consequently, the aid in question does not qualify for the derogations provided for by the guidelines and is thus incompatible with the Treaty, in the case of the part not covered by the *'de minimis'* rule. In addition, by implementing the aid in spite of the suspensory effect of Article 93 (2) of the Treaty, before the Commission had taken a decision on it, France has rendered the aid illegal. The aid is thus incompatible with the proper operation of the EEA Agreement as well.

Lastly, the Commission considers that illegal aid that is incompatible with the common market must be recovered so as to eliminate is economic impact and restore the status quo,

HAS ADOPTED THIS DECISION:

Article 1

The reduction in employers' social security contributions introduced under the 'textile plan' by Article 99 of Law No 93-314 of 12 April 1996 implementing various economic and financial provisions and by Decree No 96-572 of 27 June 1996 on the degressive reduction of employers' social security contributions in firms in the textile, clothing, leather and footwear industries is, as regards the part not covered by the *'de minimis'* rule, illegal aid in that it was implemented before the Commission had taken a decision on it, in accordance with the provisions of Article 93 (3) of the Treaty.

As regards the part not covered by the *'de minimis'* rule, which set a threshold of ECU 100 000 over three years, the aid is also incompatible with the common market in accordance with the provisions of Article 92 (1) of the Treaty and Article 61 (1) of the EEA Agreement and does not qualify for any of the derogations provided for in Article 92 (2) and (3) of the Treaty and Article 61 (2) and (3) of the EEA Agreement.

([24]) OJ C 1, 3. 1. 1997, p. 10.
([25]) OJ C 68, 6. 3. 1996, p. 9.

Article 2

France shall take the appropriate measures to terminate forthwith the granting of the reduction referred to in Article 1 in so far as the total amount of the reduction is not covered by the *'de minimus'* rule referred to in that section.

France shall take the appropriate measures to ensure the recovery of the aid illegally granted within the meaning of Article 1. Recovery shall be carried out in accordance with the procedures and provisions of French law, with interest until the date of actual repayment, calculated at a rate equal to the percentage value on such date of the reference rate used to calculate the net grant equivalent of regional aid in France.

Article 3

France shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply therewith.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 9 April 1997.

For the Commission

Karel VAN MIERT

Member of the Commission