COMMISSION DECISION

of 30 March 1999

on State aid which France is planning to grant as development aid in the sale of two cruise vessels to be built by Chantiers de l'Atlantique and operated by Renaissance Financial in French Polynesia

(notified under document number C(1999) 903)

(Only the French text is authentic)

(Text with EEA relevance)

(1999/719/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Directive 90/684/EEA of 21 December 1990 on aid to shipbuilding [1], as prolonged by Regulation (EC) No 2600/97 [2], and in particular Article 4(7) thereof,

Having called on interested parties to submit their comments pursuant to the provisions cited above,

Whereas:

I. PROCEDURE

By letter dated 4 February 1998, France notified the Commission of the aid which it planned to grant for two cruise vessels that were to be built in Chantiers de l'Atlantique. By letter dated 20 march 1998, France furnished the Commission with supplementary information.

By letter dated 18 June 1998 and a corrigendum dated 30 July 1998, the Commission informed France of its decision to initiate the procedure laid down in Article 93(2) of the Treaty in respect of the aid.

The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [3]. The Commission invited interested parties to submit their comments on the aid.

The Commission has received no comments from interested parties. France has furnished the Commission with its comments by letters dated 9 July 1998, 31 August 1998 and 25 February 1999.

II. DESCRIPTION OF THE AID

Development aid to French Polynesia, hereinafter referred to as 'FPO', is to be granted in the form of tax concessions related to the purchase of two cruise vessels, which are to be built in Chantiers de l'Atlantique. The aid was notified in accordance with Article 4(7) of Directive 90/684/EEA, hereinafter referred to as 'the Shipbuilding Directive'.

The aid is to be granted under a fiscal scheme [4] allowing tax concessions on investments in the French departments and territories. The Commission approved the scheme by letter of 27 January 1993 [5], in which it stated that the application of the scheme was subject to the Community rules, guidelines and frameworks on aid for various purposes and for various sectors.

The cruise vessels are to be sold to investors who are in a financial position to take advantage of the tax exemption offered to investors who reinvest their profits in the vessels. The tax relief amounts to 41,6 %, which equals the aid intensity. The group of investors will lease the vessels to Renaissance Financial, hereinafter referred to as 'RF'. RF is obliged to run the vessels in FPO for at least five years (that is, for seven years after the placing of the order). Further, the company has committed itself to the investors to buy the vessels at the end of that period. The cruise vessels have a contractual value of FRF […] (*) each.

RF is a subsidiary of the American company, Renaissance Cruise Inc. RF was established for the purpose of purchasing and operating the two vessels, and at the time of the notification it was domiciled in Paris. France argued that in the absence of the aid the operator could not acquire the vessels at normal market conditions, because the normal interest rate would be too high to allow their operation in FPO. Despite the

(1) OJ L 380, 31.12.1990, p. 27.
(2) OJ L 351, 23.12.1997, p. 18.
(3) OJ C 307, 7.10.1998, p. 6.
(4) La loi du 11 juillet 1986 modifiée, relative aux investissements productifs dans les départements et territoires d'Outre-Mer.
(5) SG(93) D/1300.
(*) Parts of this text have been edited to ensure that confidential information is not disclosed; those parts are enclosed in square brackets and marked with an asterisk.

advantage derived from the aid, the forecast budget for the vessels will balance only if capacity utilisation is more than 75%. In fact, in the first five years an annual deficit of FRF 50 million is expected. The French authorities conclude that the project is not viable without the aid.

France further claims that the regional authorities in FPO are seeking to develop tourism, and cruises in particular. The aim to increase the annual growth rate of tourism from the current 3,2% to approximately 9% in the year 2010. It argues that the project is especially suitable for pursuing this goal. The two vessels, with 350 cabins each, will treble the capacity of cruise trips by the end of 1999, and it is claimed that the local authorities in FPO have given a very favourable reception to the project.

The Commission decided to initiate the procedure provided for in Article 93(2) of the Treaty. The Commission was doubtful that the development aid was compatible with the conditions laid down in Article 4(7) of the Shipbuilding Directive.

According to Article 4(7) of the Shipbuilding Directive, aid granted as development assistance to a developing country may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the understanding on Export Credits for ships or any addendum or corrigendum to the Agreement. The Commission has to verify the particular 'development content' of the proposed aid and satisfy itself that it falls within the scope of the Agreement mentioned above.

The OECD criteria require among other things that the donor shall give appropriate assurances that the real owner is resident in the beneficiary country and that the beneficiary company is not a non-operational subsidiary of a foreign company ([6]).

In this case the Commission interprets the abovementioned provision as meaning that the owner must be resident in FPO. Since the investors were resident in France and the operator was registered in Paris, the Commission had doubts that the aid proposal complied with the OECD criteria.

Furthermore, whilst tourism is a priority sector in development terms in the Pacific region, in the light of the specific conditions under which it was to be implemented, the Commission was not convinced that the project contained a genuine development content. The development element in FPO appeared to be limited, since the immediate beneficiaries of the aid were the investors who enjoyed the tax exemption. In other words the recipients of the quantifiable aid would not be resident in the developing country. It appeared that FPO would only benefit to the extent to which extra passengers might visit the islands, which would mainly profit from the money spent by visiting tourists, and, *inter alia*, from the positive impact on local employment.

In addition, the Commission doubted that the viability of the project was as low as the estimation indicated, given that French private companies would invest their profits in the vessels. Logically, investors will only invest in a project if they anticipate a profit.

Thus, the Commission initiated the procedure because at that stage of the investigation it was doubtful that the OECD criteria were met or that the development element could be verified.

III. **COMMENTS FROM FRANCE**

In the course of procedure France stated that the Commission had approved the application of 'la Loi Pons' to similar projects. The Commission had agreed in the past not to call into question such projects when run in an overseas territory. Thus, for a similar procedure commenced in 1995, the Commission had indicated in its letter SG(97) D/500 of 23 January 1997 that the application of the law was only restricted in respect of ships intended for the overseas departments. Accordingly, ships such as the 'Club Med II' or more recently the 'Paul Gauguin' will be able to continue to benefit from the provisions of article 4(7) of the Shipbuilding Directive when they are assigned mainly to the overseas territories.

The real objective of 'la Loi Pons' is to help the operators overseas to develop their business so as to compensate for the specific disabilities facing them (insularity, in the case of French Polynesia). The aid enables the investors to engage in a joint ownership that provides the operator with vessels. The company RF, domiciled in Paris, leases the ships from the investors in order to run them in FPO for at least five years (seven years after the order). Furthermore, RF has committed itself to the investors to buying the vessels at the end of this period. The profitability is linked to fiscal measures, whereby the benefit of the aid is transferred towards the operator of the vessels who is the effective recipient of the aid. This set-up allows the tax aid effectively to flow back to the operator.

It was initially planned that RF should be domiciled in (metropolitan) France in order to ensure better security for the investors who thus contract with a company established in the metropolis. This domicile does not change the fact that the vessels will be run in FPO. However, France has confirmed to the Commission that the operational domicile of the company RF would be transferred to FPO, but that such a transfer would take approximately three months.

([6]) Commission letter to Member States SG(89) D/311 of 3 January 1989.

France further argues that the operation of the cruise vessels would confer considerable advantages on the economic development of FPO. Tourism is a priority in the strategic programme of FPO, adopted by the FPO Government for the years 1996 to 2005. By the end of that period it should yield net resources of about FRF 3 billion per year. In this context, the potential of developing cruising in FPO is very important, considering the four million-odd square kilometres of ocean across which it lies and the fact that it consists of hundreds of islands and islets with extremely varied physical features.

The cruising envisaged by RF is suited to the objectives sought by the Government of French Polynesia. The activity will entail hotel stays on the ground, and calling at ports, thereby involving local suppliers. Three preparatory missions by the organisers have already served to locate the ports of call and to establish contacts with local companies and to devise how best to pace visits to the various islands, using groups of passengers of reasonable size and safeguarding the environment. It is plain that the current infrastructure, in view of additional arrangements envisaged in two years' time by the local authorities, will be compatible with the size of the ships once they are brought into service.

The organisers of the on-shore excursions evaluate expenditure on the arranged programme at FRF […](*) per year per ship. These forecasts are consistent with the sales of excursions realised for cruises in the Seychelles using cruise vessels belonging to the RF holding company. In addition, air transfer expenditure is expected to be approximately FRF […](*) per year, with an equivalent expenditure by passengers on local purchases (souvenirs, handicrafts, flowers, and restaurants). Also, a considerable part of RF's operating costs (harbour expenses, victualling, local maintenance costs) will benefit FPO. On the basis of the operating accounts, the expenditure of this nature accruing to FPO is expected to be approximately FRF […](*) per year and per ship. Altogether, the yearly revenue generated for FPO is about FRF 145 million per ship.

Finally, France emphasises the number of jobs created in FPO by the arrival of these vessels. The jobs on board the ships or on land, created by the shipowner, will employ about 40 persons, in addition to which jobs will be generated by tourist infrastructure, reception and various resultant activities (tourism, folklore and handicrafts) as well as by the supply of agri-foodstuff products from the local market. In all, the impact of the commissioning of the vessels is estimated at 852 direct and indirect jobs.

IV. **ASSESSMENT OF THE AID**

According to Article 4(7) of the Shipbuilding Directive, aid granted as development assistance to a developing country should not be subject to the ceiling. It may be deemed compatible with the common market if it complies with the terms laid down for that purpose by OECD Working Party No 6 in its Agreement concerning the interpretation of Articles 6 to 8 of the Understanding on Export Credits for ships or any corrigendum to the said Agreement. The Commission must be given prior notification of any such individual aid proposal. It is required to verify the particular development content of the proposed aid and satisfy itself that it falls within the scope of the Agreement mentioned above.

As the Commission informed the Member States by letter SG(89) D/311 of 3 January 1989, the projects of development aid must comply with the following OECD criteria:

(1) The vessels must not be operated under a flag of convenience.

(2) In the event that the aid cannot be classified as public development aid for the purposes of the OECD, the donor must confirm that the aid is part of an intergovernmental agreement.

(3) The donor must give appropriate assurances that the real owner is resident in the beneficiary country and that the beneficiary company is not a non-operational subsidiary of a foreign company.

(4) The beneficiary must give undertakings not to sell the ship without governmental approval.

Also, the aid granted must include a concessionary element of 25 % at least.

By letter to Member States SG(97) D/4333 of 10 June 1997, the Commission provided an updated list of countries eligible for development aid under the Shipbuilding Directive.

On the basis of the notification and comments from France made during the procedure, the Commission considers that all requirements related to development aid set out in its letters SG(89) D/311 and SG(97) D/4333 are met in this case:

(1) The vessels will be operated under French flag, which is not a flag of convenience.

(2) French Polynesia is listed in the Annex to letter SG(97) D/4333 regarding countries that are eligible for development aid.

(3) The Commission accepts the arguments put forward by France that RF is the effective recipient of the aid, and since RF is obliged to buy the vessels, RF can be considered to be the de facto owner of the vessels. In addition if, as is suggested by France, RF is going to be

registered in FPO, the owner may be considered to be resident in FPO. Also, RF is not a non-operational subsidiary of a foreign company.

(4) The operator is obliged to deploy the vessels in FPO for at least five years (seven years after placing the order). Since RF has promised the French authorities to deploy the vessels in FPO, the vessels cannot be sold without the knowledge of the French Government.

Also, the level of the OECD grant element exceeds the required minimum of 25 %.

Regarding the development content of the project, the Commission acknowledges the importance of developing tourism in FPO. The Commission has found no information to support its initial fear that the profitability of the vessels will be lower than was anticipated by France. France has on the other hand clarified that the investments will be profitable for the investors, despite the fact that the operator expects a loss over the first five years.

Moreover, on the basis of the study put forward by France showing an overall revenue for FPO of almost FRF 300 million per year and an impact on employment of more than 800 jobs, the Commission is satisfied that the vessels will contribute significantly to the economic development as well as having a positive impact on employment. Furthermore, the Commission considers that the aid is necessary, since the vessels would probably not be used in FPO without it. First, RF will not be obliged to use the vessels in that region. Secondly, the low profit expectations in FPO are likely to encourage the operator to deploy the vessels elsewhere. Finally, since Renaissance Cruise Inc. is already active on other routes, it would be able to adjust its schedule and deploy the vessels wherever it anticipates a higher level of profitability. The Commission therefore regards the aid as necessary in order to ensure that the vessels will actually be deployed in FPO and thereby enhance its development.

Clearly, if the vessels are not deployed in FPO, they will not bring about any economic development there. Therefore, it is essential that the aid is linked to a requirement that the vessels be deployed in FPO. France has undertaken that the vessels will be used exclusively in FPO for at least five years. The Commission has decided make this a condition upon which it approves the aid, since the development content of the project would otherwise be compromised.

It should be noted that in the event of a breach of this Decision whereby the aid could not be considered to comply with Article 4(7) of the Shipbuilding Directive, it would follow that the aid would have to be regarded as aid to the yard. Therefore, in such an event the Commission would request France to recover the aid from the yard. In addition, the fact that the Commission has approved projects in the past where the same scheme has been used to grant development aid to French territories, does not absolve the Commission of its obligation to verify that an individual application to shipbuilding is in accordance with the Community rules governing state aid to shipbuilding.

V. **CONCLUSIONS**

In the light of the foregoing, the notification and the comments made by France in the course of the procedure have allayed the doubts which originally prompted the Commission to initiate the procedure. Subject to the transfer of RF's place of residence from Paris to FPO, and subject also to the exclusive use of the vessels in FPO for a minimum of five years, the Commission considers the aid to be in accordance with Article 4(7) of the Shipbuilding Directive,

HAS ADOPTED THIS DECISION:

Article 1

The aid which France is planning to grant in the form of tax concessions in the sale by Chantiers de l'Atlantique of two cruise vessels and which the notification states as having an aid intensity of 41,6 % is compatible with the common market, subject to the conditions set out in Article 2.

Article 2

France shall ensure that the company Renaissance Financial is registered in French Polynesia prior to delivery of the two vessels. In addition, the vessels shall be deployed solely in French Polynesia for a minimum of five years.

Article 3

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

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 30 March 1999.

For the Commission
Karel VAN MIERT
Member of the Commission