II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 November 1999

on aid which France is planning to grant to Cofidur to help it take over the former Gooding (ex Grundig) plant at Creutzwald

(notified under document number C(1999) 4229)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/424/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their comments pursuant to those provisions,

Whereas:

I. PROCEDURE

(1) By letter dated 23 June 1997, France notified the Commission under Article 88(3) of the Treaty of a number of aid awards totalling FRF 8,65 million which it intended to grant to the firm Cofidur for the purpose of setting up a new company, Continental Edison. The aid was to be granted by national and regional authorities in the form of decentralised loans and a reimbursable interest-free advance. According to France, the aid was being made available in the context of the second takeover of the former Gooding Electronique SA (GESA) (ex Grundig) plant both as investment aid and as restructuring aid under the criteria laid down by the Commission in the Community guidelines on State aid for rescuing and restructuring firms in difficulty [1] (hereinafter called 'the guidelines').

(2) GESA had taken over the former Grundig plant at Creutzwald. When the plant was taken over, the French authorities provided support in the context of a restructuring plan submitted by the firm. The procedure laid down in Article 88(2) of the Treaty has been initiated separately in respect of the aid to GESA, which went into liquidation in June 1995 [2].

(3) On 25 February 1998 the Commission decided to initiate the same procedure in respect of the abovementioned measures to assist Cofidur. France was informed of this decision by letter dated 22 April 1998 [3]. The Commission invited the other Member States and interested parties to submit their comments on the measures. It has received no replies as part of this procedure.

(4) By letter dated 14 May 1998, France asked the Commission for an extension until 4 June 1998 of the time limit for submitting its comments. The request was granted. The comments were received by the Commission on 16 June 1998, further comments being received by letters dated 8 September and 9 October 1998.

(5) France provided further information at a meeting on 7 June 1999. It also stated that investment had been undertaken and that jobs had been maintained in accordance with the diversification plan and that it wished to fulfil its commitments towards Cofidur.

[1] OJ C 283, 19.9.1997, p. 2.
[2] OJ C 179, 11.6.1998, p. 9.
[3] OJ C 198, 24.6.1998, p. 12.

(6) This information was repeated at a meeting between France and the Commission's departments on 22 September 1999. The result is that Cofidur has decided to concentrate on producing multimedia equipment and top-of-the-range television sets. Lastly, France confirmed by letter dated 30 September 1999, registered as received on 1 October 1999, that the planned investment in diversifying Continental Edison's production had been carried out and the jobs had been maintained in accordance with the original plan.

II. DESCRIPTION OF THE MEASURES

(7) This Decision is concerned with the aid, in the form of investment aid and restructuring aid amounting to FRF 8,65 million, which France intends to grant to Cofidur for the purpose of setting up the new company Continental Edison.

The aid recipient

(8) Following the opening of bankruptcy proceedings on 22 June 1995 and of compulsory administration and winding-up proceedings under Law 85-98 of 25 January 1985, the Metz Regional Court ordered the liquidation of GESA on 21 February 1997. The enforcement of this decision was suspended when a prospective buyer, the Cofidur group, came forward. The Regional Court then drew up an assignment plan in favour of Cofidur, which set up Continental Edison, which in turn was registered in the Commercial and Companies Register on 28 May 1997.

(9) The Cofidur group was admitted to the unlisted securities market of the Paris Stock Exchange on 1 October 1996. It controls 24 industrial and commercial companies throughout the world, including 20 in France, whose activities range from electronic component subcontracting to IT products (printed circuit boards and electronic cards).

(10) In 1997 Cofidur had a workforce of 2 080 and a consolidated turnover, including the results of Continental Edison, of FRF 1 110 million. The group has enjoyed uninterrupted growth since it was set up in 1968. By creating the company Continental Edison at Creutzwald on the site of the former Grundig and latterly GESA plant, it has extended its product range in the electronic cards sector and on the communication and multimedia market.

(11) Continental Edison has re-hired 200 of GESA's 375 employees; the workforce should increase to 288 by the end of 1999.

(12) Continental Edison is, in accordance with a restructuring plan presented to, and deemed feasible by, the Commercial Chamber of the Metz Regional Court, producing a new line of top-of-the-range television sets with high value added as well as the existing line of more down-market TV sets, of which the company will raise output to 440 000 units a year. Under the plan, Continental Edison will also manufacture under subcontract to Cofidur electronic components for the latter's customers in Germany and eastern France and produce innovative multimedia equipment which will diversify its target market into that high-technology growth area.

(13) Following the poor results achieved by Continental Edison in 1998, especially in the down-market television set sector, the company's diversification was delayed. In order to ensure Continental Edison's viability, Cofidur chose to give priority to the development of personal computers (hereinafter called 'PCs'), a more buoyant market. According to France, however, the production of top-of-the-range television sets — a more profitable sector than that of more down-market television sets, which is in sharp decline — is expanding in tandem with multimedia PC production following the investment carried out.

(14) Cofidur is injecting FRF 20 million of fresh capital into the new company, plus FRF 5 million in the form of equity loans. This figure of FRF 25 million constitutes the own funds or quasi-own funds of Continental Edison and is intended to cover acquisitions of fixed assets (including the assets taken over) and to carry out the restructuring plan.

The aid

(15) The planned public assistance is as follows:

(a) exceptional State aid for investment amounting to FRF 2,25 million, granted in the form of decentralised funds administered by the Regional Prefecture and paid as a proportion of the investment actually made. This aid is to be granted under the funds for industrial restructuring scheme of the Ministry of Industry (CIRI, budget heading 64-96) authorised by the Commission [4];

(b) aid for a firm in difficulty granted by the Moselle General Council under Article L.3231-3 of the General Local Authorities Code, amounting to FRF 1,4 million and paid under the same conditions as the exceptional State aid;

(c) assistance for a firm in difficulty granted by the Lorraine Regional Council under Article L.4211-1 of the General Local Authorities Code, amounting to FRF 5 million in the form of a reimbursable five-year interest-free advance to facilitate the creation and, subsequently, safeguarding of jobs. The Regional Prefecture and the General Council will closely monitor the three-year recruitment plan.

[4] OJ C 181, 12.7.1991, p. 3; state aid E 1/90 — NN 120/90 — France; Funds for industrial restructuring.

(16) The new investments are estimated by France at FRF 21,5 million. To this amount must be added, according to a memorandum from France dated 30 September 1999, GESA's assignment price, i.e. assets worth FRF 7,5 million. The total investments therefore come to FRF 29 million.

III. COMMENTS UNDER THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

Reasons given by the Commission for initiating the procedure

(17) In the decision to initiate the abovementioned procedure, the Commission expressed doubts about the compatibility of the aid with the common market. Its reasons were basically as follows:

(18) According to France, the new company Continental Edison is the result of a takeover, by Cofidur, of GESA. This takeover was effected in accordance with French bankruptcy law, under the assignment procedure. Assignment is intended to ensure the survival of activities that are capable of operating independently and to save some or all of the associated jobs, with the proceeds from the assignment serving to meet some or all of the liabilities. Thus, according to France, GESA and Continental Edison are entirely separate legal entities.

(19) The conditions for exemption under the guidelines are not met because Cofidur/Continental Edison is not taking over all the assets and liabilities of the liquidated company, GESA. Being a new company, Cofidur is *prima facie* neither capable of being responsible for any aid paid previously to GESA, nor eligible for restructuring aid.

(20) If Continental Edison were to continue the business activities of GESA and to be responsible for any aid paid previously to that company, it might still qualify as a firm in difficulty and be eligible for restructuring aid provided such aid complies with the guidelines.

(21) The company is located in an assisted area within the meaning of Article 87(3)(c) of the Treaty by virtue of the regional planning grants (Prime a l'aménagement du territoire — PAT) scheme ([5]), under which the maximum authorised aid ceiling is 17 % gross for a large firm. The Commission found when it initiated the procedure that Continental Edison does not meet the independence criterion laid down in Article 1(3) of the Annex to Commission Recommendation 96/280/EC of 3 April 1996 concerning the definition of small and medium-sized enterprises ([6]). If France were to change the legal basis of the restructuring aid and call it investment aid, the intensity of the notified aid would be 21,16 %. Lastly, pursuant to point 18(i) of the Annex to the 1979 Commission communication on regional aid systems ([7]), the takeover of an establishment which has closed or which would have closed had such takeover not taken place may also be deemed to be initial investment.

([5]) OJ C 364, 20.12.1994, p. 6.
([6]) OJ L 107, 30.4.1996, p. 4.

Comments from France

(22) In the course of the proceedings France advanced the following arguments:

(23) France did not comment on whether the new company, Continental Edison, is eligible for restructuring aid under the guidelines. It merely reiterated the aim of keeping the Creutzwald production plant going in difficult economic and social circumstances. It stated that, in accordance with the guidelines, 'the Commission has to take account of regional development needs when it assesses restructuring aid in an assisted area'.

(24) As regards the conditions under which Continental Edison is operating, France provided a detailed description of the major structural difficulties facing the company which have induced it to invest in adapting its production facilities and diversifying and rationalising its activities and working methods.

(25) The company's image has suffered as a result of GESA's bankruptcy, and its relations with customers, suppliers and creditors have been affected. The worsening of the company's image has had an impact from a commercial and financial point of view and in the social sphere. To stay in business, Continental Edison must both tackle the weaknesses of the former company GESA and confront the new difficulties stemming from the latter's cessation of payments. To allow a return to viability, a large-scale restructuring plan presented to, and deemed feasible by, the Commercial Chamber of the Metz Regional Court has been devised. It has three points:

(a) a drastic reduction in the workforce (dismissal of 47 % of GESA's employees) to 200;

(b) the business will be reorganised so as to reposition Continental Edison on the television set market. Without abandoning the lower-price segment, the company will develop a complementary line of top-of-the-range, high-value-added sets. At the same time, it will diversify into electronic component subcontracting and the innovative production of multimedia equipment in the booming high technology sector.

([7]) OJ C 31, 3.2.1979, p. 9.

The shift of business emphasis has necessitated the introduction of a new industrial organisation and new working methods, generating design, adaptation and product defect costs initially. This has been coupled with a search for better cost control (introduction of a management control tool).

(c) lastly, a major training plan costing FRF 3 million has been drawn up to enable staff to keep pace with technological change and adjust to the more modern working methods.

(26) The linking of Continental Edison to a strong group, Cofidur, which ensures the security of certain outlets and provides a financial safety net.

(27) However, France has provided the Commission with no projected balance sheet or market survey such as might enable it to check whether the proposed restructuring is appropriate.

(28) As to the investment needed to implement the restructuring plan, France states that it is aimed at:

(a) technical adaptation of the existing industrial plant in order to create a full range of television sets where the company previously had only three models. The technical adaptation costs are put at FRF 800 000;

(b) the development of new equipment for making television moulds and for the production of new types of apparatus (multimedia consoles and TVs with built-in satellite reception), the cost of which is put at FRF 20,7 million.

(29) France wishes to apply to the company a three-part scheme (FRF 2,25 million in central government support, FRF 1,4 million in Moselle General Council support and FRF 5 million in Lorraine Regional Council support). It considers that the investment to which these three parts apply may be considered new investment aimed at helping the company diversify.

(30) Because France's arguments revealed an inconsistency between the precise nature of the FRF 5 million of aid intended for employment-promoting measures and the training plan costing FRF 3 million, the Commission contacted France once more. By letter dated 8 September 1998, registered as received on 9 September, France confirmed that the Lorraine Regional Council assistance in the form of a FRF 5 million advance was intended to cover the supporting of jobs as part of the overall restructuring plan. In return for this aid, Cofidur had undertaken, as buyer, initially to keep on 200 employees and subsequently to create 88 new jobs over three years.

(31) In its memorandum of 30 September 1999, France drew the Commission's attention to the fact that the FRF 3 million training plan with which it was proposed to back up the multimedia equipment development and electronic component subcontracting had been delayed.

IV. ASSESSMENT OF THE MEASURES

Restructuring aid

(32) Under French bankruptcy law, assignment is intended to ensure the maintenance of activities susceptible of independent operation and of some or all of the associated jobs, with the proceeds from the assignment serving to meet some or all of the liabilities. According to the French authorities, the pre-existing company and the emerging company are entirely separate legal entities even if the emerging company is without question continuing a pre-existing economic activity.

(33) When the procedure was initiated, the Commission took the view that, in this type of takeover, there are three possible scenarios:

(a) either the new company does not take over all the assets and liabilities of the bankrupt company. In this case, the company cannot *prima facie* be held responsible for any aid paid previously or be eligible for restructuring aid;

(b) or the company does take over all the assets and liabilities, in which case there is a presumption that it may be eligible for restructuring aid if the requirements of the Community guidelines are met, and that it must also be held responsible for repaying any aid which the Commission might declare incompatible with the Treaty;

(c) or, as the French authorities maintain, the company has its debts written off during the bankruptcy proceedings, this write-off being part of a restructuring process involving economic continuity. In this event, the Commission will examine the possibility of considering such write-off to be aid assignable to the new company and forming part of a restructuring plan.

(34) The company in this case is a new company which is not taking over all the assets and liabilities. The second alternative therefore does not apply.

(35) Even if the Commission were to consider that Continental Edison is eligible for restructuring aid, the necessity of the aid would not be proved as any difficulties the firm might be experiencing should have been quantified and factored into the buyer's economic calculation and hence deducted from the purchase price of the

assets. Quite apart from the fact that under the French Receivership Act it is not possible to consider the writing-off of debts to be aid assignable to the new company, the amount of aid thus calculated would be so large that the principle of proportionality required by the guidelines would not be observed.

(36) France contends that the first two aid measures totalling FRF 3,65 million support more specifically physical investment and that the third measure (FRF 5 million, of which the aid element comes to FRF 900 000) supports measures to promote employment linked to that investment.

(37) In its memorandum of 30 September 1999, France takes the view that the aid can be considered aid for initial investment within the meaning of the guidelines on national regional aid ([8]). The Commission must therefore conclude that, by this argument, France has altered its assessment of the aid in question, calling it now investment and employment aid. This explains why France has not transmitted, in addition to information on the strategy proposed by the buyer, a restructuring plan within the meaning of the guidelines.

Regional aid

(38) The aid proposed by France is to be paid for out of resources of the French State (FRF 2,25 million), the department of Moselle (FRF 1,4 million) and the Lorraine Region (FRF 5 million). The amount of FRF 3,65 million is earmarked for investment, an advance of FRF 2 million, of which the aid element comes to FRF 360 000, is earmarked for employment, and an advance of FRF 3 million, of which the aid element comes to FRF 540 000, is earmarked for training. This aid favours the recipient company in so far as it reduces the cost of the investment project, which totals FRF 29 million, a cost which the company in question ought normally to have borne entirely on its own. It is therefore State aid within the meaning of Article 87(1) of the Treaty which is likely to distort competition and affect trade between Member States.

(39) Continental Edison operates in the consumer electronics market, where the company will offer a product mix consisting essentially of still-to-be-developed top-of-the-range television sets and more down-market television sets already produced by GESA, and of multimedia equipment. The Commission notes that Continental Edison is turning once more towards the market segment of top-of-the-range television sets which was abandoned by the pre-existing company in favour of more down-market sets. The top-of-the-range market is considered to be a growth market following the introduction of 16:9 format screens, in which sales should continue to expand ([9]). But the small-screen market segment may, despite the fact that nearly 100 % of EU households have at least one TV set, remain buoyant thanks to the increasing tendency for households to own more than one set. Continental Edison is in direct competition, however, with imports from low-wage Asian countries. The markets for electronic cards and multimedia equipment, on which Continental Edison has been focusing since 1999, are expanding ([10]). In 1998 the world market for PCs grew by 23,4 %, and in 1997 the European PC market saw a 49 % surge in demand ([11]).

(40) Continental Edison's share of the overall television set market will, after the planned increase in production, amount to 440 000 units, or the equivalent of 2,13 % of the Community colour television market in 1996. Cofidur's investment in Continental Edison will have the effect of maintaining (down-market products) or increasing (top-of-the-range products) its output. Any aid to the company might therefore influence Cofidur's position on that market vis-à-vis its competitors in the Community.

(41) As to Continental Edison's share of the PC market, it is clear that, at a time when it is just starting up, production has yet to reach an intense level in what is a highly competitive growth sector.

(42) The aid's compatibility with the common market cannot be justified on the basis of the exceptions provided for in Article 87(2)(a) and (b) of the Treaty as it is not aid having a social character granted to individual consumers and it is not intended to make good the damage caused by natural disasters or exceptional occurrences. The exception provided for in Article 87(2)(c) is likewise not applicable. Nor can the aid be considered compatible on the basis of Article 87(3)(a), (b) and (d). It is not intended to promote the economic development of an area where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 87(3)(a), within the meaning of the Commission communication on the method for the application of Article 87(3)(a) and (c) to regional aid ([12]), or within the meaning of the Commission decision on the regional planning grants scheme. And it is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State, or to promote culture and heritage conservation.

([8]) OJ C 74, 10.3.1998, p. 4.

([9]) *Panorama of EU Industry 1997*, Volume 2.
([10]) See previous footnote.
([11]) CeBITViews 18-24 March 1999.
([12]) OJ C 212, 12.8.1988, p. 2.

(43) Under the exception provided for in Article 87(3)(c) of the Treaty, the Commission may consider aid to facilitate the development of certain economic areas to be compatible where it does not adversely affect trading conditions to an extent contrary to the common interest. By decision of 14 September 1994 on the regional planning grant scheme for industrial projects ([13]), the Commission decided, on the basis of the socio-economic data for the regions concerned, that initial investment within the meaning of point 18(i) of the Annex to the Commission communication on regional aid systems, undertaken in the region where Continental Edison is situated, may be eligible for regional aid with an aid intensity of 17 % gross in the case of a large firm.

(44) According to the arguments put forward by France, the new investment, the eligibility of which has been verified by the Commission and which has been evaluated at FRF 29 million, is intended for the purchase of GESA's assets and for the rationalisation, diversification and modernisation of production. The investment aid proposed for Cofidur totals FRF 3,65 million, giving an intensity of 12,6 % gross of the total of FRF 29 million. This investment may be regarded as initial investment within the meaning of the 1979 communication. Consequently, and in the light of the above, the investment aid amounting to FRF 3,65 million may be considered compatible with the common market on the basis of the exception provided for in Article 87(3)(c) of the Treaty.

Employment aid

(45) The third aspect of the public assistance for Cofidur, amounting to FRF 5 million in the form of an interest-free advance of which the aid element comes to FRF 900 000, is the supporting of measures to promote employment and training. An amount of FRF 2 million, of which the aid element comes to FRF 360 000, has been earmarked for the creation of new jobs. Cofidur has undertaken, in return for the aid, to maintain 200 existing jobs and to create 88 new ones over three years. It has also undertaken to provide the Lorraine Regional Council with salary statements on 31 May of each year.

(46) The measures in question constitute employment aid linked to initial investment within the meaning of the regional aid guidelines.

([13]) See footnote 5.

(47) In this respect, the Commission notes that Cofidur has undertaken to create 88 new jobs over three years. In its analysis, the Commission takes account of the fact that the regional planning grants scheme leads, for this number of jobs, to an eligible amount of FRF 4,4 million. In the present case, the grant proposed for job creation purposes amounts to FRF 2 million.

(48) The maximum ceiling of intensity of regional aid for investment and job creation, linked to initial investment, is set at 17 %. The aid for job creation in the form of an interest-free advance contains an aid element of FRF 360 000. Combining the aid for initial investment, namely FRF 3,65 million, with the job creation aid element, namely FRF 360 000, gives FRF 4,01 million. If this amount is compared with the investment cost of FRF 29 million, an aid intensity of 13,8 % gross is obtained. The Commission notes that the intensity of the planned aid is lower than the 17 % maximum ceiling authorised for large firms in an assisted area under Article 87(3)(c) of the Treaty. In this context, mention should be made of the assurance given by France in its letter of 30 September 1999 that no other investment or employment aid will be granted.

Training aid

(49) Some training aid measures may be covered by one of the exceptions in Article 87(3) of the Treaty. Under Article 87(3)(c), the Commission may authorise aid to facilitate the development of certain activities where it does not adversely affect trading conditions to an extent contrary to the common interest. The Commission considers that training plays an indispensable part in the introduction of new technologies and that it can help to create and maintain jobs. A training-promoting measure may, however, be covered by the above-mentioned exception only if it is in the nature of an incentive and is commensurate with the Community objectives it sets out to achieve.

(50) The training measures contained in the training plan drawn up by Cofidur seek to adapt the 200 employees taken over from GESA to technological change and to the modernisation of working methods as part of the overall restructuring plan. The Commission considers that training aid always has an incentive effect in the case of small and medium-sized firms, and this effect is also presumed to exist even in the case of large firms owing to the relatively large externalities which training may produce in some regions covered by Article

87(3)(c) of the Treaty. It is in these regions that expenditure on training and the level of skills are the lowest and that the Community interest in increasing that level so as to improve the employment situation and attract new investment is the strongest. The Commission considers that the skilling of workers also plays an important part in the framework of industrial redevelopment.

(51) The cost of the measures, the eligibility of which has been examined by the Commission, comes to FRF 3 million, the aid element of which is FRF 540 000, or 18 %. The Commission considers, given the relatively low rate of the aid intensity of these measures and the incentive effects they have in an area affected by conversion of the coalmining and mining industry and covered by Article 87(3)(c) of the Treaty, that the aid for training the workforce of Continental Edison is not likely to adversely affect trading conditions to an extent contrary to the common interest and that it is compatible with Community law.

V. **CONCLUSION**

(52) In the light of the above, the Commission considers that the aid for initial investment amounting to FRF 3,65 million, combined with the job creation aid element (linked to the initial investment) of FRF 360 000, giving a total of FRF 4,01 million, is compatible with the common market pursuant to Article 87(3)(c) of the Treaty.

(53) The Commission notes that the training aid in the form of an advance of FRF 3 million contains an aid element of FRF 540 000 the intensity of which, compared with the eligible costs of FRF 3 million, is 18 %. In view of the important role played by the training and skilling of workers and the incentive effect this has in some regions covered by Article 87(3)(c) of the Treaty, the Commission concludes that this aid is compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid for initial investment amounting to FRF 3,65 million (EUR 556 439) and the aid for job creation, linked to that investment, in the form of an advance of FRF 2 million (EUR 302 898) which France plans to grant to Cofidur is compatible with the common market pursuant to Article 87(3)(c) of the Treaty.

Article 2

The training aid in the form of an advance of FRF 3 million (EUR 457 347) is compatible with the common market.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 16 November 1999.

For the Commission

Mario MONTI

Member of the Commission