COMMISSION

COMMISSION DECISION

of 21 June 2000

concerning State aid granted by France to Manufacture corrézienne de vêtements (MCV) and the plan to grant aid to the company that is to succeed it

(notified under document number C(2000) 1729)

(Only the French text is authentic)

(Text with EEA relevance)

(2000/727/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down procedures for the application of Article 93 of the EC Treaty [1],

Having given interested parties notice to submit their comments in accordance with the abovementioned provisions [2],

Whereas:

I. PROCEDURE

(1) An article published in *Les Échos* on 24 March 1998 drew the Commission's attention to State aid allegedly granted by France to Manufacture corrézienne de vêtements (hereinafter 'MCV'), a company in liquidation. Aid was also allegedly to be granted to a new firm (hereinafter 'the firm') which was to acquire MCV's assets once it had been wound up.

(2) By letters of 7 April 1998 (D/51578) and 31 July 1998 (D/53275), the Commission asked France for explanations concerning the context of, and legal basis for the measures in question.

(3) By letter of 25 June 1998, received on 26 June (A/34909), France provided the Commission with incomplete information, while the Commission's second request for information went unanswered.

(4) On 21 April 1999 the Commission decided to initiate the Article 88(2) procedure in respect of the abovementioned aid; it formally requested France to supply the necessary information that would allow it to determine whether the aid was compatible with the Treaty.

(5) The decision was communicated to France by letter of 17 May 1999 (SG(99)D/3460). France sent its comments by letters of 22 September 1999, received on 23 September (A/37235), of 17 November 1999, received on 18 November (A/38788), and of 2 December 1999, received on 3 December (A/39357).

(6) 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 in question.

(7) No comments were received.

[1] OJ L 83, 23.3.1999, p. 1.
[2] OJ C 298, 16.10.1999, p. 11.
[3] See footnote 2.

II. **DETAILED DESCRIPTION OF THE AID**

The measures

(a) *MCV*

(8) MCV is located in Bort-les-Orgues (Corrèze), in a region that is experiencing economic difficulties and is therefore classified as an area eligible for the higher-rate regional planning grant ([4]). According to the French authorities, MCV failed to overcome its financial difficulties, which stemmed from the fact that it continued to manufacture textiles as its main activity. It never possessed a strategy for responding flexibly to market demand and for improving its added value by means of special services such as the development of new designs, quality control and speed. Furthermore, its industrial equipment was antiquated and designed for outdated working methods, and this reduced its productivity. According to an article published in *Les Échos* on 24 March 1998, State aid totalling FRF 100 million (EUR 15 244 902) was granted to help the firm overcome its financial difficulties. On 18 December 1997 the relevant court had started winding-up proceedings for MCV and decided that it should be wound up.

(b) *The firm*

(9) A firm, Core Placements SA, presented a plan to restore the economic viability of the former MCV. On 13 July 1998 the competent court accepted an offer made by Mr Bienaimé, President of Core Placement SA, who was acting on the latter's behalf, to re-employ 110 employees and to purchase the stock and operating plant for FRF 100 000.

(10) Core Placements was a limited company with its headquarters in Bort-les-Orgues (Corrèze) and a registered capital of FRF 1 million. Mr Bienaimé and Mr Terrassoux together held 75 % of the shares, the remaining shares being owned by other individuals.

(11) Core Placements intended to continue MCV's activities through a new firm whose shares would be held by Core Placements SA (35 %), by a subsidiary of Établissements Albert SA (10 %), by a textiles distribution company (10 %) and by individuals (45 %).

(12) To carry out the plan, Core Placements had provided for the following measures, to be implemented up to 2003:

— Core Placements would undertake an FRF 12,8 million investment programme including building work, plant acquisitions and R & D activities,

— a vocational training scheme for MCV employees providing 42 000 hours of training at an investment cost of FRF 4,2 million,

— a supply contract with Établissements Albert (Vendée), a specialist in the manufacture and marketing of children's ready-to-wear clothing with brands such as Chevignon Kids, UCLA and Naf-Naf. Its managing director was Mr Bienaimé. In October 1998 Établissements Albert undertook to supply the firm with a turnover of 150 000 hours of work per annum for five years.

(13) France had planned to grant aid as follows:

— the firm would have equity of FRF 3 million, of which FRF 2,2 million from Mr Bienaimé and Mr Terrassoux and FRF 0,8 million from Sofred ([5]),

— public grants (central government, local authorities and the ERDF) totalling FRF 12,3 million,

(in million FRF)

	Amount
New Plant	1,2
Land	0,9
Vocational training	3,4
Unspecified measures	6,8
Total	12,3

— loans: FRF 8,7 million, of which FRF 2,7 million at subsidised rates (4 % and 4,5 %) and the balance at market rates.

The other winding-up procedures

(14) On 19 January 1999 Établissements Albert filed for bankruptcy. On 24 February Artal Europe made an offer for its assets without, however, concluding the supply contract with the firm, as envisaged in the restructuring project presented by Core Placements.

([4]) 'Zone PAT'.

([5]) Société de financement pour la restructuration des industries de défense.

(15) As a result, the supply contract with Établissements Albert, an essential part of the recovery plan drawn up by Core Placements with a view to setting up a new company that would benefit from MCV's existing production plant, was cancelled. According to the information in the Commission's possession, the plan was never carried out. Core Placements was compelled to petition for bankruptcy on 30 September 1999. By decision of the competent court of 21 October, the company was put into liquidation. As a result, the company ceased trading completely. The French authorities confirmed that no aid had been granted to the plan to restart production at the former MCV site.

III. COMMENTS FROM FRANCE

(16) By letters of 25 June 1998, 22 September 1999, 17 November 1999 and 2 December 1999, France replied to the questions put by the Commission in its letters of 7 April and 31 July 1998 and in its formal request for information of 21 April 1999. The comments may be summarised as follows.

Measures relating to MCV

(17) By letter of 23 September 1999, France confirmed that it had granted aid to MCV but pointed out that the amount of FRF 100 million on which the Commission based itself was incorrect. It did not provide any further details concerning the exact amount granted. Nor did it challenge the Commission's assumption in its decision of 21 April 1999 that the aid had been granted on an ad hoc basis. It also stated that MCV was located in a regional eligible for regional planning grants and that, if this had not been the case, MCV would have been covered by the national aid scheme of 12 April 1996. However, France failed to provide any further information on the schemes which may have served as a basis for the aid granted.

Measures relating to the firm

(18) Following the Commission's formal request for information on 21 April 1999, France provided an explanation by letters of 22 September and 17 November 1999 of the attempts by Core Placements to restore the financial viability of the former MCV plant and the reasons for the failure of those attempts. Core Placements had presented the proposed measures to the French authorities with a view to obtaining aid. Following its bankruptcy, no aid was granted or paid.

IV. ASSESSMENT OF THE AID

Aid under Article 87(1) of the EC Treaty

(a) *MCV*

(19) Article 87(1) of the Treaty states that, except where otherwise provided, aid which distorts or threatens to distort competition by favouring certain enterprises or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the common market. France confirmed that State aid had been granted to MCV, although it did not specify the exact amount. It therefore failed to comply with the Commission's formal request for information of 21 April 1999. Accordingly, the Commission is taking its decision on the basis of the information available, in accordance with Article 13(1) of Regulation (EC) No 659/1999. According to the article published in *Les Échos* on 24 March 1998, State aid totalling FRF 100 million (EUR 15 244 902) was granted before December 1997 [6]. The aid allowed MCV to be relieved, by means of public resources, of some of the costs which it would normally have had to bear itself.

(20) Where financial aid granted by a State strengthens a firm's position in relation to that of its competitors in the Community, it must be regarded as affecting competition. Competition in the textile industry is extremely strong. According to the 1997 *Panorama of EU industry* [7], Community textile producers had to cope both with weak domestic demand for their products and with increasing competition from developing countries. As a result, production and employment in the industry have fallen. Between 1990 and 1994 output declined by 14 % at constant prices while employment fell by 21 %. The industry is currently undergoing restructuring in order to make it more competitive at international level. The aid in question is therefore liable to distort competition and affect trade between Member States in the relevant sector and consequently constitutes State aid within the meaning of Article 87(1) of the Treaty.

(b) *The firm*

(21) In its decision initiating the procedure, the Commission assumed that various measures for restoring the viability of the former MCV plant were to be subsidised through public resources. It emerged in the course of the procedure that Core Placements had submitted an investment plan. The receiver appointed to MCV therefore sold the latter's assets to Core Placements. When the main purchaser of the products to be produced by the firm replacing MCV went bankrupt, Core Placements itself was wound up by decision of 21 October 1999. France confirmed that no aid had therefore been granted. In the circumstances, there is no need for the Commission to take a decision on this matter.

[6] Winding-up decision taken on 18 December 1997.
[7] Pages 4 to 9.

Compatibility of the aid granted to MCV with Article 87 of the EC Treaty

(22) France stated that the aid for MCV could have been granted under the 'textile plan'. By Decision 97/811/EC [8] concerning aid granted by France to the textile, clothing, leather and footwear industries, the Commission took the view that the aid measures provided for in the 'textile plan' were not compatible with the Treaty. The action for annulment instituted by France was rejected by the Court of Justice of the European Communities [9]. France failed to communicate any evidence that measures had been taken to recover the aid granted to MCV. On the contrary, by letter of 22 September 1999, i.e. after the negative Commission decision concerning that aid scheme, France claimed that the aid granted to MCV conformed to the 'textile plan'. The Commission therefore based its assessment on the assumption that no steps had been taken to recover the aid.

(23) In its decision of 21 April 1999 to initiate the procedure, the Commission based its assessment on the assumption that the aid had been granted on an individual ad hoc basis. France did not challenge this assumption and simply mentioned the other hypotheses which might serve as a basis for the measure. The Commission decision does not therefore cover the hypothetical application of the PAT regional aid scheme.

(24) In view of the foregoing, the aid should have been notified in advance and France failed to fulfil its obligations under Article 88(3) of the Treaty.

(25) Article 87(2) and (3) allow several derogations from the principle that aid is incompatible with the common market.

(26) As the aid granted to MCV is intended to assist in its restructuring, it cannot be exempted under Article 87(2). In particular, the aid (a) does not have a social character and is not granted to individual consumers, (b) does not make good the damage caused by natural disasters or exceptional occurrences and (c) is not granted to the economy of certain areas of the Federal Republic of Germany. Nor is it granted in a region qualifying for regional aid under Article 87(3)(a). Finally, the derogations provided for in Article 87(3)(b) and (d) for projects of common European interest and aid to promote culture and heritage conservation are not applicable, and France has not invoked them.

(27) As regards the derogation under Article 87(3)(a) of the Treaty, the Commission points out that point 2 of the guidelines on national regional aid [10] provides that an individual ad hoc payment made to a single firm may have a major impact on competition in the relevant market, and its effects on regional development are likely to be too limited. It therefore considers that such aid does not fulfil the requirements of the guidelines. Consequently, the derogations in question are, in principle, granted only in respect of multisectoral aid schemes applicable in a given region to all firms in the sectors concerned. France has not shown that the equilibrium between the resulting distortions of competition and the advantages of the aid in terms of the development of a less-favoured region can be guaranteed. The derogation is not therefore applicable.

(28) As regards the first part of the derogation under Article 87(3)(c), i.e. aid to facilitate the development of certain economic activities, the Commission based its assessment on the fact that the aid was essentially intended to restructure a firm in difficulty. The aid was granted before 18 December 1997, the date on which MCV was wound up.

(29) Accordingly, the Commission examined the aid in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [11] (hereinafter 'the guidelines'), in accordance with point 7.5(b) of the new Community guidelines on State aid for rescuing and restructuring firms in difficulty [12].

(30) MCV is located in Bort-les-Orgues, in a region covered by Article 87(3)(c) of the Treaty. In accordance with point 3.2.3 of the guidelines, the fact that an ailing firm is located in an assisted area does not, however, justify a wholly permissive approach to aid for restructuring. The criteria in point 3.2.2 are therefore equally applicable to assisted areas, even when the needs of regional development are taken into account. In particular, the result of the restructuring operation must be an economically viable business that will contribute to the real development of the region without requiring continual aid — contrary to that prior condition. The MCV production plant will, however, never become an economically viable enterprise. The buyers have not to date succeeded in restoring its viability and have been obliged to file for bankruptcy. The Commission therefore considers that the survival of the production site depends on repeated aid.

[8] OJ L 334, 5.12.1997, p. 25.
[9] Judgment of 5 October 1999 in Case C-215/97.
[10] OJ C 74, 10.3.1998, p. 9.
[11] OJ C 368, 23.12.1994, p. 12.
[12] OJ C 288, 9.10.1999, p. 2.

(31) In addition, point 3.2.2 of the guidelines stipulates that restructuring aid can be considered to be compatible with the common market only if the following conditions are fulfilled: (a) a viable restructuring plan must be submitted and implemented; it must provide for the firm's return to long-term viability within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions; (b) undue distortions of competition must be avoided; (c) the amount and intensity of the aid must be limited to the strict minimum during the restructuring phase and must be related to the benefits anticipated from the Community's point of view.

(32) France has not furnished any evidence that the conditions described above have been met. In so far as the aid in question does not meet the conditions of the guidelines, it cannot be regarded as contributing to the development of economic activities without adversely affecting trade to an extent contrary to the common interest; as the derogation under Article 87(3)(c) is no longer relevant either, the principle of prohibition provided for in Article 87(1) is fully applicable.

(33) If aid is incompatible with the common market, the Commission must, pursuant to the judgment of the Court of Justice in Case 70/72, upheld in its judgments in Cases 310/85 and C-5/89 [13], require the Member State to recover from the recipient all aid granted unlawfully [14]. This measure is necessary in order to restore the previous situation by removing all the financial benefits which the firm receiving the unlawful aid has improperly enjoyed since the date on which the aid was paid [15]. Recovery of incompatible and unlawful aid is an obligation imposed on the Commission by Regulation (EC) No 659/1999.

(34) Recovery must be effected without delay and in accordance with the procedures of French law provided that they allow the immediate and effective execution of the Commission decision. The aid to be recovered includes interest from the date on which it was granted to the recipient until the date of its recovery. Interest is calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

V. **CONCLUSIONS**

(35) The aid for MCV constitutes aid which has distorted competition and affected trade within the meaning of Article 87(1) of the Treaty. The derogation provided for in Article 87(3)(c) is not applicable as none of the conditions set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty have been met. The aid is incompatible with the common market.

(36) The Commission concludes that France unlawfully implemented the aid measures in question in breach of Article 88(3) of the Treaty. The aid must be recovered,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of EUR 15 244 902 (FRF 100 million) granted by France for the restructuring of Manufacture corrézienne de vêtements is incompatible with the common market.

Article 2

1. France shall take all necessary measures to recover from the recipient the aid referred to in Article 1 and unlawfully made available to the recipient.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was granted to the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 3

France shall inform the Commission, within two months of 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, 21 June 2000.

For the Commission

Pedro SOLBES MIRA

Member of the Commission

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[13] Case 310/85 *Deufil* v *Commission* [1987] ECR 901 and Case-5/89 *Commission* v *Germany* [1990] ECR I-3437.

[14] Case 70/72 *Commission* v *Germany* [1973] ECR 813.

[15] Case 310/85, referred to above, and Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959.