II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 November 2002

(concerning the cash advance granted by France to Bull)

(notified under document number C(2002) 4366)

(Only the French text is authentic)

(Text with EEA relevance)

(2003/599/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 these provisions [1],

Whereas:

I. PROCEDURE

(1) On 20 November 2001 the Commission learned from several sources that France was planning to grant a repayable advance of EUR 100 million to Bull. It accordingly sent a request for information to France by letter No D/54828 of 22 November 2001 and a reminder (D/55337) on 21 December 2001. By letter dated 19 December, the French Minister for the Economy informed the Commission about the aid plan in question. By fax dated 7 January 2002, registered as received on 8 January under No A/30093, the Commission received a provisional reply from the French authorities which stated that a cash advance of EUR 100 million had been paid and that the information requested by the Commission would be sent as soon as possible. When it failed to receive the information, the Commission sent France a reminder by letter No D/50581 of 11 February, stating that a decision requiring the information to be provided would be taken under Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty [2] if it failed to received the information within ten working days.

(2) France replied by fax of 4 March 2002, registered on 5 March under No A1/31700, asking for an extension of twenty working days in which to reply. By letter No D/50983 of 7 March, the Commission informed France that it had registered the case as non-notified aid (NN 23/2002) and extended the deadline for providing the information requested to 18 March 2002.

(3) By fax dated 14 March 2002, registered under No A/32004 on 15 March, France notified the aid measures in question. By fax dated 20 March, registered on 22 March under No A/322021, the French authorities sent the Commission a memo on Bull's audited annual accounts. By letter of 20 March, registered by the Commission on 2 April under No A/32431, the French authorities submitted Bull's annual report for 2000.

[1] OJ C 128, 30.5.2002, p. 8.

[2] OJ L 83, 27.3.1999, p. 1.

(4) On 9 April 2002 the Commission decided to initiate the procedure in Article 88(2) of the Treaty and to require France to supply it with certain information concerning the measure in question. The decision was communicated to France by letter No SG/2002/229344/D of 12 April. Publication of the letter in the *Official Journal of the European Communities* ([3]) did not give rise to any comments from third parties.

(5) By letter of 3 May 2002, registered on the same date under No A/332709, France informed the Commission of the confidential information to be removed from the decision before publication. By letter registered on the same day under No A/33300, it also applied for a further month to provide the information requested when the procedure had been initiated. The Commission agreed to the request by letter No D/52321 of 13 May. By letter of 5 June, registered under No A/34118 on 6 June, France sent its comments on the initiation of the procedure and some of the information requested.

(6) On 10 June 2002 a meeting took place between the Commission and the managing director of Bull. On 4 July, by letter No D/53522, the Commission sent France a reminder asking it to send the restructuring plan required in point 23(d) of the Community guidelines on rescue and restructuring aid for firms in difficulty ([4]) (hereinafter referred to as the guidelines) as soon as possible. France sent the plan to the Commission by letter of 17 July 2002, registered on 18 July under No A/35380.

(7) By letter No D/54766 of 26 August 2002, the Commission sent further questions to France, which replied by letter of 23 September, registered under No A/36914 on 24 September. The annexes to the letter arrived on 2 October, registered on the same date under No A/37167.

II. DESCRIPTION OF THE RECIPIENT

1. Earlier Commission decisions concerning Bull

(8) Bull has been the subject of several Commission decisions. In 1992 the Commission decided that the capital injections from state resources amounting to FRF 4 billion (EUR 609 million) contained elements of aid but that the aid was compatible with the common market ([5]). In the same decision, it concluded that aid of FRF 2,68 billion (EUR 408 million) for research and development was also compatible with the common market.

(9) In 1993 and 1994 France granted further aid to Bull. The Commission decided that the aid contained in the advance of FRF 2,5 billion (EUR 381 million) granted in February 1993 and the public contribution of FRF 8,6 billion (EUR 1 311 million) in 1993 and 1994 were compatible with the common market ([6]) provided, however, that the conditions of the restructuring plan were complied with, that the company was privatised and that no further aid not complying with Community law would be granted to the Bull group.

2. The recipient and its development since 1994

(10) The shareholders of the French computer group Bull are the French State with 16,3 % and France Télécom, Motorola and NEC with 16,9 % each. The other shareholders are institutions with 14 %, individuals and employees with 7 % each and Dai Nippon Printing (DNP) ([7]) with 5 %. Bull is a limited company under French law.

(11) Bull is an international computer group based in Europe, with businesses in over 100 countries. It operates chiefly in two areas:

— *Top of-the-range professional servers*

(12) Bull designs and supplies a range of large professional servers based on the proprietary operating system GCOS. It also markets servers using IBM and NEC technology. In addition, Bull provides its customers with maintenance services directly linked to the servers. The French authorities reported that Bull's share of the European market in this sector is estimated at 3 %. Its main competitors are IBM (46,6 % of the market), Fujitsu (11,75 %) and Sun (11,07 %).

([3]) OJ C 128, 30.5.2002, p. 8.
([4]) OJ C 288, 9.10.1999, p. 2.
([5]) OJ C 244, 23.9.1992, p. 2.
([6]) Commission Decision 94/1073/EC of 12 October 1994 (OJ L 386, 31.12.1994, p. 1).
([7]) DNP is a Japanese group.

— *Specialised computer engineering services*

(13) Bull's activities in the computer engineering sector (development and integration of different applications, engineering of software architectures, etc.) are housed in Integris. Here its main competitors are Xerox, Compaq, IBM, Hewlett Packard, Oracle and SAP. Bull's share of the European market amounts to some 2 %, according to the French authorities.

(14) In 2001 Bull's turnover, broken down by activity, was as follows:

— 44 % in systems integration and information management services,

— 17 % in proprietary servers,

— 20 % in standard servers,

— 19 % in various infrastructure products and services.

(15) Bull's customer breakdown is as follows: 40 % in the public sector, 20 % in telecommunications, 8 % in energy and transport, 20 % in banking and insurance, and the remainder in various sectors.

(16) In 1994 Bull implemented the measures advocated in Decision 94/1073/EC. Following that restructuring, Bull again became profitable in 1995 and employed 21 400 persons in 85 countries in 1996, with a turnover of FRF 24 billion. In addition, as recommended by the independent expert appointed by the Commission, France launched Bull's privatisation by opening up its capital to DNP, France Télécom, Motorola and NEC in 1995-1996. In 1997 the company was listed on the stock exchange.

(17) In 1999, however, Bull again showed a loss, chiefly owing the depreciation of certain financial assets. In 2000 the operating result was still negative. Bull was therefore compelled to sell some assets (see Table 1) and to lay off staff under a social plan. By 2001 Bull employed only some 9 500 persons throughout Europe ([8]).

TABLE 1

Bull: assets sold in the last two years ([9])

(in EUR million)

Date	Business	Amount
December 1999	29,7 % holding in Ingenico	104,4
February 2000	Automated teller machines	70
July 2000	Electronic subcontracting	50-100
February 2001	Smart cards (CP8)	341
February 2001	Irish service subsidiaries (CARA)	31
End 2001	European services	Various financial tools including acquisition of 13,4 % stake in Steria
2002	Louveciennes headquarters	50
2002	Lottomatica	11
2002	SOFOM	5
2002	Sale on the market of the first tranche of Steria shares ([10])	29

(18) Bull acquired the Italian activities ([11]) of Integris Europe from Steria on 19 December 2001 in exchange for a reduction in the debt taken over by Steria of EUR 11 million (instead of the expected EUR 21 million) ([12]).

([8]) Of these employees, 1 026 work in Italy, 498 in the United Kingdom, 316 in Germany, 234 in the Netherlands, 441 in Spain and Portugal, and the others (nearly 6 800) in France.

([9]) According to *Les Echos*, 20 November 2001.

([10]) The first package of shares had been received in payment for the transfer to Steria of Bull's service business in Europe (excluding its information management activities in the United Kingdom) and its Scandinavian and Swiss subsidiaries.

([11]) It should be noted that Bull's Italian service activities are in deficit.

([12]) See 'Bull va racheter tout de suite sa division italienne à Steria', *La Tribune*, 28 December 2001.

(19) According to the information in the possession of the Commission, a recovery and development plan for 2001-2003 (known as the 'strategic plan') was adopted in November 2000 ([13]) and was implemented at the beginning of 2001. It provided for a strategic recentering on its services and mainframes and the conversion of the two businesses into subsidiaries. It also provided for disinvestment, the sale of non-strategic assets, a reduction in costs and workforce adjustments.

(20) In 2001, according to the French authorities, Bull experienced several setbacks. First, the strategic plan failed. It had been aimed partly at selling the loss-making French service businesses. Negotiations were under way with a consortium of French investors, and it was planned to list Integris on the stock exchange. However, the crisis in the technology stock market scuppered this plan. In addition, the sharp fall in technology shares in March 2000 affected the financing of Internet technology activities in which Bull had invested heavily, focussing its commercial offer on the concepts of 'e-services' and 'net-infrastructure'.

(21) A fresh restructuring phase began in December 2001 with the appointment on 2 December of a new CEO who was given the task of analysing the financial situation and assessing Bull's prospects. The analysis resulted in a three-stage recovery strategy which was adopted in principle by Bull's board of directors on 14 March 2002. The recovery strategy was presented to the Commission in July 2002 (see Section V).

(22) Bull also planned to sell other assets: its second tranche of Steria shares received in exchange for the transfer of its United Kingdom service business and the proceeds from the sale of Louveciennes and from the transaction with Steria. The sale of other property was also planned, as was the outsourcing of spare parts and the termination of the pension plan at Bull HN Information Systems Inc.

(23) The 2001 financial report showed losses for 2001 totalling EUR 253 million (compared with EUR 243 million in 2000), whereas the subscribed capital was EUR 340 million and there was a negative net worth of EUR 158 million (compared with EUR 86 million in 2000). Consolidated net losses amounted to EUR 544 million (compared with EUR 292 million in 2000).

([13]) By the end of 2000 Bull was already discussing selling assets so as to reduce its debts.

(24) As regards the firm's most recent figures, the accounts for the first half of 2002 show the loss of 2 160 jobs, of which 1 240 in France. According to the French authorities, the redundancy plan was fully financed from the sale of assets ([14]). The plan of 14 March 2002 also provided for a reduction in administrative costs and overheads. According to the results presented on 25 July 2002, total distribution and administration costs were reduced to 18 % of turnover in the second half of 2002, compared with 25 % in 2001. The report also showed a turnover of EUR 780 million ([15]), a gross margin of EUR 170 million and a negative net result of EUR 524,2 million ([16]). The losses before tax and interest payments amount to EUR 151 million. Business nevertheless continued at the same pace in the first half of 2002 and the group received orders worth EUR 713 million ([17]).

III. DESCRIPTION OF THE AID

(25) The French Government granted aid totalling EUR 450 million to Bull. This figure covers a first instalment of EUR 100 million at the end of 2001 which was not notified and a second instalment of EUR 350 million in the first half of 2002. The aid was subject to several conditions that were listed in the notification:

— the aid was a loan in the form of repayable shareholder's advance,

— the loan carried an annual interest rate of 5,23 %, equivalent to the Commission reference rate applicable on the date of the first payment of the cash advance,

— the loan was to be reimbursed no later than 12 months after the final payment,

— the aid would be paid over a maximum period of six months,

— France undertook to submit a restructuring plan to the Commission by 30 June 2002,

([14]) The total cost of the redundancy plan amounts to EUR 210 million, which corresponds to the total revenue from assets sold or asset sales decided on in September 2002.

([15]) Compared with the target for March 2002 of EUR 700 million, turnover in the previous having been EUR 1,27 billion.

([16]) The loss is due, among other things, to provisions for restructuring of EUR 225 million.

([17]) C. Jay 'Bull a assaini son bilan mais doit encore faire ses preuves'. *La Tribune*, 29 July 2002.

— the maximum amount of the loan was EUR 450 million. The cash advance of EUR 450 million was justified by the French authorities on the basis of the liquidity plan shown in Table 2 ([18]) and a margin of EUR 7 million granted in view of the fact that the firm's liquidity requirements might exceed EUR 443 million by June 2002 ([19]). The liquidity prospects for the period 31 December 2001-30 June 2002 were presented as follows by the French authorities:

TABLE 2

Liquidity plan

(in EUR million)

Available liquidity	Position at start of period	Operating liquidity generated (cash consumption)	Increase (decrease) in available resources	Position at end of period
January 2002	103 ([20])	– 84	– 12	7
February 2002	7 ([21])	– 43	– 30	– 66
March 2002	– 66	– 79	– 116	– 261
April 2002	– 261	– 28	– 42	– 331
May 2002	– 331	– 10	– 2	– 343
June 2002	– 343	8	– 4	– 339

IV. REASONS WHY THE ARTICLE 88(2) PROCEDURE WAS INITIATED

(26) The Commission decided to initiate proceedings under Article 88(2) of the Treaty for five main reasons based on its review of the compatibility of the aid with the guidelines.

(27) First, the Commission questioned the one-off nature of the aid in question which, according to paragraph 25 of the guidelines, must be designed to keep a company in business for a limited period, during which its future can be assessed. In the present case, it seemed at this stage that the firm was committed to a long-term restructuring process.

(28) Second, the Commission was not certain about the exact date on which the first tranche of EUR 100 million had been granted. The importance of knowing the exact date is due to the fact that the guidelines provide that the Member State must, not later than six months after the rescue aid measure has been authorised, communicate a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full.

(29) Third, the duration of the aid did not seem clear. According to the guidelines, the aid must cover a maximum period of six months. However, according to the notification, there was a risk that the aid granted would last more than six months.

(30) Fourth, the Commission doubted that the aid would have no 'spillover' effect, as claimed by France, as Bull had businesses in other Member States ([22]).

(31) Fifth, the Commission had doubts as to the source of the cash requirements. As the firm had started restructuring some years earlier, as stated in Section II, the aid could be intended more to finance the current restructuring. As Bull had already received restructuring aid in 1993-1994, fresh restructuring aid would have come up against the principle of 'one time, last time' aid provided for in Section 3.2.3 of the guidelines.

V. COMMENTS FROM FRANCE

(32) Following the initiation of the procedure, the French authorities provided the following details:

([18]) The cash advance is in two parts: a first advance of EUR 100 million at the end of 2001 and a further advance of EUR 350 million on 14 March 2002.

([19]) The French authorities explained that, for example, the firm's self-financing capacity could deteriorate more rapidly than expected.

([20]) This figure includes the EUR 100 million already paid by the State at the end of 2001.

([21]) Situation as at 31 December 2001 after payment of the cash advance by the State.

([22]) See Section II.2.

(33) The French authorities pointed out that, as regards the one-off nature of the aid and the firm's long-term restructuring, Bull was undergoing continuing adjustment, in step with developments on the IT market, like the other firms present ([23]). This adjustment process had led Bull to expand in the services market, regarded as less capital-intensive. These adjustment efforts ([24]), contained in the strategic plan covering end-2000 and 2001, were self-financed by the firm. However, the development of the services sector was not carried out under favourable conditions owing to the lack of financing for certain products, leading to a deterioration in the position of the firm. The French authorities stated that external factors such as the very difficult position on the IT market and the collapse in the stock market value of IT firms had led to the failure of Bull's strategic plan in 2001. They stressed the fact that the price for Bull's European service activities had been amended downwards several times between May and November. The strategic plan having failed, the firm found itself in difficulties once again and encountered problems in finding short-term credit. That was why Bull applied to the French Government for rescue aid at the end of December 2001.

(34) Regarding the exact date on which the first instalment of EUR 100 million was granted, the French authorities indicated that it had been granted on 31 December 2001. The cash advance had been granted under Article 24 of the amending Finance Law for 2001 ([25]). In accordance with the Decree of 5 December 1870 on the promulgation of laws and decrees, this Law became applicable only one clear day after its publication in the French Official Gazette, i.e. on 31 December 2001. The EUR 100 million was actually paid to Bull on 2 January 2002.

(35) As regards the total duration of the aid, the French authorities stated that, following the first tranche of EUR 100 million on 31 December 2001, a second tranche of EUR 150 million had been granted on 2 May 2002 and a third of EUR 200 million on 17 June 2002. They confirmed that the aid had indeed been paid over a maximum period of six months from the date on which it was granted, in accordance with Section 3.1 of the guidelines.

(36) As regards the question of spillover of the rescue aid granted to Bull, France stated that Bull had only a very small share of the market for services and servers ([26]) and that it lagged far behind its competitors. It concluded that the effect of the aid on intra-Community trade and competition was minimal. It also stated that the disappearance of Bull would help to weaken competition in Europe as Bull offered its customers a freedom of choice that would not otherwise exist. France also pointed out that Bull was a recognised specialist in heterogeneous and open environments and thus facilitated the free interplay of competition.

(37) As regards the source of the liquidity requirements and the doubt expressed by the Commission when it initiated the procedure concerning the possible use of the aid to finance the successive restructuring plans, France provided a detailed statement on the use of the cash advance of EUR 450 million:

— EUR 134 million was allocated to financing the operating losses incurred since 1 January 2002. The French authorities stressed that the requirements were set to disappear in the second quarter owing to the reduction in management costs,

— EUR 106 million was used to reimburse short-term credit lines. According to the French authorities, most of the banks had withdrawn their credit lines from Bull, which had been unable to find fresh credit,

— EUR 91 million was allocated to repayment of a debenture loan,

— EUR 37 million was allocated to repayment of yen bonds involving a private placement. The repayment had been contractually obligatory owing to Bull's inadequate capital and reserves as at 31 December 2001,

— EUR 85 million was used to repay a bank loan secured with claims which the lender decided at short notice to terminate, although it has so far agreed to extend the arrangements on a month-by-month basis. The French authorities pointed out that Bull must have sufficient resources to allow it repay the loan at any time.

([23]) This was true of other European mainframe manufacturers such as ICL, Siemens, Nixdorf, Olivetti and Philips, which had to shut down or sell their businesses in this sector.

([24]) Involving changes in the portfolio of activities and staff cutbacks or retraining.

([25]) Law No 2001-1276 of 28 December 2001 (*Journal Officiel de la République Française*, No 302, 29.12.2001).

([26]) France stated that, as regards top-of-the-range servers, Bull held less than 3 % of the European market and its share of the market for IT services was less than 2 %.

(38) The French authorities concluded that the advance from the State allowed Bull to remain in business in the first half of 2002 although the firm had a negative cash flow of EUR 134 million and had to repay EUR 319 million in bank or debenture loans rapidly.

(39) As regards the financing of the restructuring costs, France stated that the cost of the restructuring plan in the first half of 2002 was EUR 55 million and was financed by selling assets: sale of the Louveciennes headquarters (EUR 50 million), sale of Lottomatica (EUR 11 million) and Sofom (EUR 5 million), and sale on the market of the first tranche of Steria stock received in exchange for the transfer to Steria of Bull's service businesses in Europe, as well as its Scandinavian and Swiss subsidiaries (EUR 29 million). The sale of these assets provided Bull with a total of EUR 95 million, giving it a surplus of EUR 40 million over the costs of the redundancy plan in the first half of 2002. The surplus, coupled with the sale of assets decided by the board of directores but not yet carried out ([27]) and involving an amount of [...] (*), will make it possible to finance the rest of the restructuring plan.

(40) The French authorities also submitted a restructuring plan that can be summarised as follows:

Rescue phase — 1.1.2002-30.6.2002

— The aim is to achieve operational equilibrium.

— Workforce cut by some 1 500 persons, of whom 1 200 in France.

— Reduction in overheads (from 25 % in 2001 to 18 % in 2002) ([28]).

— Consolidation of positive results achieved by Bull in proprietary servers and their maintenance, reversal of negative results in the other fields.

— Financing of the redundancy plan through the sale of Bull's assets: sale of land and buildings, sale of Steria stock, transfer to IBM of maintenance parts management business and the corresponding stocks.

Lasting recovery strategy — 2002-2005

— The purpose of this phase is to combine all the strengths of the group so that together they provide their customers with applications development and information management services, together with advice on computer architecture systems and help with putting it into practice in order to optimise the corresponding physical infrastructures.

— As regards servers, reduction in the supply of servers, concentration on servers using the new Intel Itanium 2 components. These will essentially be top-of-the-range servers. Bull plans to withdraw from the development and marketing of [...]*.

— As regards infrastructure services, Bull's aim is to increase the added value of services supplied. To that end, a small number of services will be promoted using specific Bull products in the field of systems security and administration, open-source solutions or the tools provided by a small number of first-rank partners. Synergy between the different teams will be established in order to enhance productivity.

— In the field of applications services and security products, Bull's aim is to restore the profitability of the systems integration activities through professional management and a gradual increase in skills on the basis of the experience already acquired in the telecommunications sector, the public sector and the energy sector. Bull is also planning to expand in the defence sector in view of the possibilities for cooperation offered by the development of new scientific sectors. Bull is already offering competitive services, especially in the field of electronic messaging services, 24-hour call management, portals for mobiles and invoicing of telephone calls. It also plans to improve tools and skills in the area of the security of information systems. The skills will be available [...]*.

— In figures, Bull's aim is to have [...]* departments and [...]* products by 2005. The products would consist of proprietary servers, large open servers and security products.

(*) Square brackets with an asterisk denote confidential information which has been deleted from the text.

([27]) [...]*.

([28]) Bull's budget was based on overheads reduced to some 17,5 %, excluding the cost of the redundancy plan.

Recapitalisation of the group — September 2002 to 30 June 2003

— On the basis of the activities described above, Bull should reach equilibrium by the second half of 2002 and return to profit by 2003. Even if Bull returns to profit, it will not be able to reimburse the cash advance of EUR 450 million from its own resources by 17 June 2003.

— That is why Bull will need to be recapitalised. It plans to achieve this either through one or several large private-sector shareholders wishing to participate in a capital increase or through other private investors interested in acquiring a stake in Bull.

— The search for capital will start on [...]*, once Bull has shown it can return to operational equilibrium.

VI. ASSESSMENT OF THE AID

1. Existence of aid

(41) Article 87(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'.

(42) In the present case, the shareholder's advance was granted by the French State under Article 24 of the amending Finance Law for 2001. The aid consists in a repayable cash advance from the French State, a Bull shareholder. The advance is for a specific firm, Bull. It does not comply with the principle of a private investor in a market economy since the other Bull shareholders have not stated that they intend to grant an advance to Bull and as Bull, in view of its financial situation, was not able to obtain the advance on the market. Furthermore, the aid strengthens the position of the firm by enabling it cover its normal operating costs and distorts or threatens to distort competition since Bull is an international company and its products are the subject of international trade. Furthermore, Bull has foreign competitors such as IBM, Fujitsu and Sun.

(43) It can be concluded therefore that the shareholder's advance granted by the French State to Bull constitutes aid within the meaning of Article 87(1) of the Treaty.

2. Obligation to notify

(44) Article 88(3) of the Treaty requires Member States to notify any plans to grant or alter aid. The Member State concerned may not put its proposed measures into effect until the procedure has resulted in a final decision.

(45) It is clear that, in the present case, the aid was granted and paid both before France officially notified the aid and before the Commission could ascertain whether it was compatible with the common market, the aid having been granted on 31 December 2001 and paid on 2 January 2002, with the formal notification reaching the Commission only on 14 March 2002.

(46) The Commission concludes that, in failing to notify, France unlawfully implemented the aid in question and was thus in breach of its obligations under Article 88(3) of the Treaty.

3. Compatibility of the aid with the common market

(47) The aid cannot be exempted under Article 87(2) of the Treaty as it is not aid of a social character, granted to individual consumers, or aid to make good the damage caused by natural disasters or to compensate for the economic disadvantages caused by the division of Germany.

(48) Nor can the aid be exempted under Article 87(3)(a), (b) and (d) of the Treaty as it is not intended to promote economic development in certain regions, to promote the execution of an important project of common European interest or to promote culture and heritage conservation.

(49) It is therefore necessary to determine whether the aid qualifies for exemption under Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities where it does not adversely affect trading conditions to an extent contrary to the common interest.

(50) This is the Treaty provision that prompted the Commission to adopt the guidelines it applies to assess measures in the field of rescue and restructuring aid. And rescue aid is precisely the exemption claimed by the French authorities.

4. **Assessment of the aid under the guidelines**

(51) According to the figures supplied by the French authorities and given in Section II.2, Bull can be regarded as a firm in difficulty within the meaning of the guidelines.

(52) In view of its status as a limited company, Bull can thus be regarded as a firm in difficulty under point 5(a) of the guidelines 'where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months'. In the present case, the losses in 2001 amounted to EUR 253 million (against EUR 243 million in 2000), the capital subscribed to that date amounting to EUR 340 million. Bull had a negative net worth of EUR 158 million (compared with EUR 86 million in 2000), which is less than half the equity. Furthermore, over a quarter of the capital has disappeared in the last twelve months.

(53) An analysis of these figures shows that Bull is indeed in the position of a firm in difficulty within the meaning of the guidelines, a fact also confirmed by the mounting losses and the necessary disposal of a large number of assets.

(54) A review of the aid under Section 3.1 of the guidelines produces the following assessment:

(55) In accordance with point 23(a) of the guidelines, the aid consists of liquidity support granted at an interest rate corresponding to the reference rate adopted by the Commission. In case in question, the rate is 5,23 %, which was the reference rate on the date on which the first tranche of aid was granted, i.e. 31 December 2001.

(56) Point 23(b) of the guidelines stipulates that the aid must be linked to loans that are to be reimbursed over a period of not more than twelve months after disbursement of the last instalment to the firm. In the present case, the last instalment having been granted on 17 June 2002, reimbursement must be completed by 17 June 2003. The Commission notes that, according to France, Bull will not be able to repay that sum from its own resources and is planning a recapitalisation operation. It proposes to verify this condition at a later date and insists that the reimbursement take place as soon as possible, and no later than 17 June 2003.

(57) Point 23(c) of the guidelines states that the aid must be warranted on the grounds of serious social difficulties and have no unduly adverse spillover effects on other Member States. This condition had caused doubts when the procedure was initiated owing to the fact that Bull operated in other Member States. However, France has provided sufficient information for the Commission to conclude that the aid has no negative spillover effect, thereby dispelling the latter's doubts. Bull has only a small market share and, in addition, it is selling most of its businesses outside France, which limits the adverse effect of the aid in other Member States.

(58) Point 23(d) of the guidelines requires France to communicate, not later than six months after the rescue aid has been authorised, a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full and/or that the guarantee has been terminated. When the procedure was initiated, this point posed difficulties as the Commission did not know the exact date on which the first aid instalment had been granted. France stated that it had been granted on 31 December 2001. As a result, it was required to submit a restructuring plan by 30 June 2002, an undertaking it gave at the time of the notification. It communicated the restructuring plan with a slight delay six and a half months after payment of the first aid instalment. The Commission regrets that France failed to communicate the restructuring plan by the deadline set but concludes that the submission of the plan satisfies the requirements of the guidelines.

(59) Point 23(e) of the guidelines states that rescue aid must be restricted to the amount needed to keep the firm in business. The Commission had doubts concerning this point when it initiated the procedure as Bull had been restructuring for several years and it was possible that the aid would be used to finance the restructuring. Bull had received restructuring aid in 1993-1994, so that further restructuring aid would have come up against the principle of 'one time, last time' aid referred to in Section 3.2.3 of the guidelines. The Commission considers that the details supplied by France when the procedure was initiated are sufficient to enable it to conclude that the cash advance was used solely to reimburse the credit lines, debenture loans and bank

loans and to finance operating losses. France also presented data confirming that the restructuring costs, notably the redundancy plan, had been financed in full by the sale of assets (Section V). The Commission accordingly concludes that the aid was used in accordance with point 23(e) of the guidelines since it was limited to the amount needed to keep the firm in business for the six months during which the rescue aid was authorised.

(60) The Commission points out, however, that France will have to comply strictly with the principle of 'one time, last time' aid and must not grant restructuring aid to Bull before 31 December 2004. Any recapitalisation of Bull will thus have to conform to the private investor principle.

(61) Point 24 of the guidelines requires rescue aid to cover a maximum period of six months. The situation as regards this requirement was not clear when the procedure was initiated as the Commission did not know when the first aid instalment was paid or what the total duration of the aid was. The Commission concludes from the explanations provided by France that the aid granted complies with that requirement since the first instalment was granted on 31 December 2001 ([29]) and the last instalment on 17 June 2002, a period of less than six months. The Commission's doubts concerning this aspect were thus removed.

(62) Under point 25 of the guidelines, rescue aid must be a one-off operation designed to keep a company in business for a limited period, during which its future can be assessed. The situation regarding this requirement gave rise to questions when the procedure was initiated as the company had been engaged in a long-term restructuring process and the cash advance could have served to cover the costs of restructuring. According to the information communicated by France, the rescue aid allowed the company to take stock and to develop a recovery strategy which was implemented in early 2002. France also supplied evidence that the cash advance had been allocated to cover liquidity requirements and that restructuring costs had been financed from the sale of assets. The Commission's doubts were accordingly dispelled.

(63) However, the Commission stresses that no further rescue aid may be granted as such aid must be a one-off operation.

VII. **CONCLUSION**

(64) The cash advance granted by France to Bull constitutes aid within the meaning of Article 87(1) of the Treaty.

(65) The aid granted by France in breach of its obligations under Article 88(2) of the Treaty constitutes unlawful aid.

(66) The exemption in Article 87(3) of the Treaty is applicable in so far as the cash advance satisfies the criteria spelt out in the guidelines. The Commission has accordingly assessed the aid in the light of the guidelines.

(67) The Commission concludes, having regard to the information communicated by the French authorities, that the cash advance was granted to a firm in difficulty, that it consists in liquidity support subject to the Commission reference rate, that it is linked to a loan to be reimbursed over a period of not more than 12 months after disbursement of the last instalment and that the aid will not have any adverse spillover effects on other Member States.

(68) The Commission must, however, ensure that the reimbursement obligation is satisfied not more than twelve months after payment of the last instalment, i.e. by 17 June 2003. France will accordingly be required to submit evidence to the Commission that Bull has repaid in full the cash advance and interest as soon as possible and by 17 June 2003 at the latest.

(69) The Commission must also ensure that rescue aid is a one-off operation. Accordingly, France may not grant any further rescue aid to Bull in the future in order to safeguard the one-off nature of the aid.

(70) In order to comply with the 'one time, last time' condition, the Commission points out that no restructuring aid may be granted by France to Bull within ten years of payment of the last restructuring aid, i.e. until 31 December 2004,

([29]) See Section V.

HAS ADOPTED THIS DECISION:

Article 1

The aid granted by France to Bull in the form of a cash advance of EUR 450 million is compatible with the common market, subject to the conditions set out in Article 2.

Article 2

France shall submit evidence of the reimbursement by Bull, no later than 17 June 2003, of the cash advance of EUR 450 million, including interest.

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, 13 November 2002.

For the Commission

Mario MONTI

Member of the Commission