COMMISSION

COMMISSION DECISION

of 20 April 2004

on the measure implemented by France for Société de Réparation Navale et Industrielle SA (SORENI)

(notified under document number C(2004) 1362)

(Only the French version is authentic)

(Text with EEA relevance)

(2005/90/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 the provisions cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) Following information in the press that France had adopted financial measures to assist ship-repair activities in Le Havre, the Commission, by letter of 21 December 2001, asked France for clarification. By letter of 15 March 2002, registered as received on 19 March, France informed the Commission that the public authorities had supported financially a ship-repair firm, Société de Réparation Navale et Industrielle (SORENI). The measure was registered as unnotified aid (NN 53/02) since it already had been granted by the time the information was provided and since, in addition, an amount of EUR 1 720 000 had been paid out in December 2001.

(2) By letter of 4 April 2002, the Commission asked France for further information. France replied by letter of 3 June 2002, registered as received on 4 June.

(3) By letter of 12 August 2002, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure. The case was registered as C 55/2002. The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2] and interested parties were invited to submit comments.

(4) France submitted its comments by letter of 1 October 2002, registered as received on 2 October. Comments from the United Kingdom were received by letter of 16 October 2002, registered on 24 October. These were forwarded to France, which was given the opportunity to react.

[1] OJ C 222, 18.9.2002, p. 21.
[2] See footnote 1.

(5) The Commission asked France additional questions by letter of 4 November 2002. France presented its answers and comments by letter of 14 January 2003, registered as received the same day. It submitted additional information by letter of 2 October 2003, registered on 3 October 2003, and by letter of 10 October 2003, registered as received the following day. The Commission addressed further questions to France by letter of 21 November 2003, to which France replied by letter of 29 December, registered as received on 8 January 2004, and by letter of 29 January 2004, registered as received the same day.

II. **DETAILED DESCRIPTION**

A. **The undertaking concerned**

(6) The recipient of the financial support is SORENI, a ship-repair firm located in Le Havre, i.e. in an area eligible for aid within the meaning of Article 87(3)(c) of the EC Treaty. SORENI was set up on 1 November 2001 to take over the assets of three ship-repair firms, as explained below.

(7) The shipyard *Ateliers et chantiers du Havre — Construction navale* (ACH-CN) in Le Havre closed down in 2000 following its bankruptcy. ACH-CN received closure aid that was approved by Commission decision 2002/132/EC ([3]). Three subsidiaries of ACH-CN active in ship repair (SIREN, TMTM and MECA HELIX, hereinafter 'the three subsidiaries') survived but, before long, they experienced economic problems related to the loss of subcontracting from ACH-CN and of shipowners' confidence.

(8) In 2001 twelve local subcontractors to the three subsidiaries decided jointly to set up a new firm, SORENI, to take over the ship-repair activities from the three subsidiaries.

(9) The bid was presented on 24 August 2001 by the twelve local subcontractors. SORENI was set up on 1 November and acquired the assets of the three subsidiaries on 9 November for EUR 1 001 (i.e. EUR 1 000 for the stocks and one symbolic euro for the assets). According to France, SORENI's bid was the only one after the failure of negotiations with a foreign investor earlier in the year.

(10) Initially, France indicated to the Commission that the three subsidiaries were under judicial reorganisation at the time of the takeover. It corrected this information in the letter of 29 December 2003, stating that the assets were taken over outside of the judicial reorganisation and that, as at December 2003, the three subsidiaries existed only as empty shells for the purpose of litigation and debt recovery and did not exercise any economic activity.

(11) Under the French social legislation relative to the cessation of business activities (Article L 122-12, second subparagraph, of the Labour Code), SORENI was obliged to take over from the three subsidiaries all the work contracts, the conditions of which were to remain unchanged as to qualifications, remuneration and seniority. As a result, according to France, SORENI took over 127 employees from the three subsidiaries. Likewise, it had to assume wage obligations totalling EUR 318 164 incurred before the takeover in connection with the early retirement of workers who had been exposed to asbestos.

([3]) OJ L 47, 19.2.2002, p. 37.

(12) The Commission notes that by 14 January 2003 the workforce had been reduced to 117 employees 99 of whom were engaged in production. France indicated that, in the six years preceding the takeover, the number of production workers had fallen by 47 %, from 188 in total for the three subsidiaries in 1997 to 99 at SORENI in 2002.

B. **The business plan of the new firm**

(13) The business plan was established in 2001. The viability of SORENI was to be guaranteed by a five-year business plan. France identified the problems of SORENI as being due in the first place to the difficulties encountered by its shareholders, which, as subcontractors, previously depended on the three subsidiaries. Secondly, SORENI is said to have inherited a number of charges and difficulties linked to the assets taken over, i.e. responsibility for all the work contracts, financing of the asbestos-related early retirements, and the need to adapt production tools and to rationalise activities. As SORENI took over the ship-repair activities, it was in all probability going to face similar problems to those encountered by the three subsidiaries: difficulty in subcontracting for a shipbuilding firm in Le Havre (such as ACH-CN), loss of markets in general and loss of credibility of ship-repairing in Le Havre in general.

(14) According to France, the five-year business plan, which it describes as a restructuring plan, is designed to tackle these problems by adopting three sets of measures. The first set of measures consists in adapting the production tools by investing in the renewal of buildings, in transport and in portable tooling (quantified in Part 1 of Table 1). The second set of measures set out to reorganise the firm's commercial policy. According to France, the policy will be targeted both at local ship-owners and at national and international markets, the general aim being to restore the confidence of the clients who dealt with the three subsidiaries in the past. SORENI plans to achieve this by recruiting new managers and by acquiring new technologies allowing it to diversify its activities and hence to respond to a wider range of demands. The costs of this second set of measures are itemised in Part 2 of Table 1. The third set of measures focus on reorganising the production at two levels: management of materials, inventory and orders (rationalisation and computerisation) and training of staff. The costs of this third set of measures are itemised in Part 3 of Table 1 below.

(15) France also considers as restructuring costs charges taken over from the three subsidiaries in connection with the early retirement of workers who had been exposed to asbestos, on the one hand, and salaries for the first three months following the takeover, on the other. According to France, these three months correspond to the period necessary to obtain the first contracts. These costs are itemised in Part 4 of Table 1 below.

TABLE 1

Alleged costs of restructuring SORENI

(EUR)

Item	Amount
Part 1: Investments and renewals	
Renewal of plant (2002)	[…] (*)
Renewal of offices/buildings (2002)	[…]
Cleaning of courtyard/plant	[…]
Movable investments 2002:	
Vehicles	[…]
IT	[…]
Tools	[…]
Movable investments 2002-04:	
Installation of shot blasting/steel plate processing facility	[…]
Lorry	[…]
Miscellaneous portable mechanical tools	[…]
Subtotal 1	[…]
Part 2: Commercial reorganisation	
Recruitment 2002-04	
2 managers	
1 assistant manager	
3 engineers	
4 production managers	
Total salaries and charges	[…]
Marketing costs — until end-2002	
Brochures/logo, mailing shots, agent network, visits to clients	[…]
Costs 2003-05	
Acquisition of new licences	[…]
Training of staff at SORENI's licensors	[…]
Visit by commercial and international agents	[…]
Revision and extension of agent contracts to 3 years	[…]
Subtotal 2	[…]
Part 3: Reorganisation of production	
Organisation and computerisation 2002-03	[…]
Acquisition of software specific to ship-repair 2003-04	[…]
Training: 37 450 training hours/3 years	[…]
Subtotal 3	[…]
Part 4: Salaries and other charges	
Salaries corresponding to existing contracts for 3 months after the takeover	[…]
Costs of asbestos-related redundancies incurred before the takeover	[…]
Subtotal 4	[…]
TOTAL (Subtotals 1+2+3+4)	6 495 164

(*) Confidential information.

(16) Accordingly, the costs allegedly needed to launch SORENI total EUR 6 495 164.

(17) According to France, this plan is based on realistic hypotheses of turnover reflecting the existing and potential demand for ship-repair activities in Le Havre. France points out that the three subsidiaries possessed recognised ship-repair skills and that their employees, now with SORENI, possessed valuable know-how for SORENI. It also notes that the business plan of SORENI and that of the potential foreign investor were similar, which is the sign of a realistic estimation. The personal contacts of the president of SORENI should help in the search for clients. According to France, the ship-repair activities of SORENI are to be viewed in the context of the development of the port of Le Havre.

C. **The financial measures**

(18) According to France, the amount of EUR 6 495 164 needed by SORENI is to be financed by grants and loans provided from the public and private sources specified in *Table 2* below. France took a preliminary decision to grant public support to SORENI on 28 September 2001, i.e. after the bid for the assets of the three subsidiaries was made but before SORENI was established and before its establishment became effective. A legally binding decision on the grant of support was adopted on 29 November 2001.

(19) The French Government provided SORENI with a grant of EUR 3 430 000. Of this amount, two payments, one of EUR 1 720 000 and one of EUR 730 000, had already been made to SORENI in September 2003.

(20) The Haute-Normandie Regional Council, the Seine-Maritime General Council and the City of Le Havre will each provide SORENI with EUR 380 000 in the form of grants. Of the total amount of EUR 1 140 000, EUR 1 070 997 has already been paid in September 2003.

(21) The private contributions are described as capital contributions by SORENI shareholders (EUR 462 000) and bank loans (EUR 1 300 000) secured by assignment of the working capital.

TABLE 2

Financial measures related to the restructuring of SORENI

(EUR)

Source	Amount
1. Public	
French State	3 430 000
Haute-Normandie Regional Council	380 000
Seine-Maritime General Council	380 000
City of Le Havre	380 000
Subtotal 1	4 570 000
2. Private	
SORENI shareholders	
— capital	462 000
— bank loans (BNP Paribas)	1 300 000
Subtotal 2	1 762 000
TOTAL (Subtotals 1+2)	6 332 000

D. **Market information**

(22) According to France, development of the port of Le Havre necessitates the presence of ship-repair activities, which would guarantee it a stable level of activity. France argues that the measures in question will have a limited impact on competition thanks to three factors. First, the restructuring plan is said to comprise workforce reductions. Second, France identifies ARNO in Dunkirk and SOBRENA in Brest as the main competitors of SORENI on the domestic and international markets. However, these two firms do not, it is claimed, compete with SORENI as far as local clients are concerned. In this connection, France States that local clients generate between 40 % and 45 % of SORENI's turnover. As a result, SORENI's interference with its main customers (*) is said to be reduced. Third, SORENI is an SME within the meaning of Article 2(b) of Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ([4]).

E. **The decision to initiate the procedure under Article 88(2) of the EC Treaty**

(23) In the decision to initiate the formal investigation procedure (hereinafter the decision to initiate the procedure), the measures in question were assessed in the light of Council Regulation (EC) No 1540/98 establishing new rules on aid to shipbuilding ([5]) (hereinafter the Shipbuilding Regulation) as well as of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([6]) (hereinafter the Restructuring Guidelines).

(24) In the decision to initiate the procedure, the Commission expressed doubts as to whether the financial measures in question could be authorised as restructuring aid, on the one hand, since SORENI seemed to be a newly created firm emerging from the liquidation of the three subsidiaries and, on the other, in the light of point 7 of the Restructuring Guidelines, according to which a newly created firm is not eligible for rescue or restructuring aid even if its initial financial position is insecure.

(25) The Commission also had doubts whether the business plan for SORENI would be such as to deliver long-term viability within a reasonable timescale and whether it was based on realistic assumptions, as required by the Restructuring Guidelines. It considered in particular that the plan submitted to it by France lacked a market survey as well as sales and cost estimates for the years ahead.

(26) The Commission moreover noted that the foreign investor mentioned in paragraph 9, basing himself on a similar plan, had declined to take over the ship-repair activities. Lastly, it wondered whether the financial contribution from public sources was limited to the minimum needed to enable the business plan to be undertaken and in particular whether the contribution of the beneficiary was significant, as required by the Restructuring Guidelines.

III. **COMMENTS FROM INTERESTED PARTIES**

(27) The United Kingdom submitted the following comments. Firstly, it had difficulty in understanding how the proposed package could be considered as restructuring aid when the shipyard will carry on the same activity as its predecessors, apparently without any significant reductions in either capacity or the workforce. Secondly, it is of the opinion that certain investments and costs are not eligible for restructuring aid. Thirdly, it notes that SORENI is a direct competitor for the UK ship-repair industry.

(*) Substantive error: instead of 'customers', read 'competitors'.
([4]) OJ L 10, 13.1.2001, p. 33. (Regulation amended by Regulation (EC) No 364/2004: OJ L 63, 28.2.2004, p. 22).
([5]) OJ L 202, 18.7.1998, p. 1.
([6]) OJ C 288, 9.10.1999, p. 2.

IV. COMMENTS FROM FRANCE

(28) In response to the decision to initiate the procedure, France submitted the following additional information and comments.

(29) As to the question of whether SORENI is a firm eligible for restructuring aid, France argues that SORENI, although being a new legal entity, constitutes in fact a continuation of the previous ship-repair activities and should therefore be eligible for restructuring aid. To support this view, it argues that the takeover of the assets, of the type of activity and of the goodwill of the three subsidiaries as well as of their material and human resources, and in particular of the charges resulting from social security legislation (i.e. the asbestos-related early retirements), makes it possible to liken SORENI to the three subsidiaries, i.e. to an existing firm.

(30) Furthermore, France claims that, even if SORENI were to be viewed as a new firm, it still remained a firm in difficulty within the meaning of the Restructuring Guidelines owing to the charges (work contracts, asbestos-related early retirements) and difficulties (need to adapt production tools and need for rationalisation) associated with the assets.

(31) As to the doubts surrounding the viability of the business plan, and specifically the lack of market information, France describes the market in which SORENI operates as comprising the following activities: repair works for minor damages, preventive maintenance works and major repair works. The main competitors of SORENI, ARNO in Dunkirk and SOBRENA in Brest, are said to compete with SORENI for national and international clients, but not for local clients, which account for between 40 % and 45 % of SORENI's turnover. France also argues that the existence of a ship-repair activity in a port the size of Le Havre is an indispensable element for the proper functioning of the port as a whole. Since SORENI is the only ship repairer in Le Havre, its existence is, according to France, vital to the port.

(32) To illustrate the viability of the business plan, France provided an estimation of turnover and costs for the five years during which the restructuring plan is to be implemented. These data are given in *Table 3* below.

TABLE 3

Estimates of SORENI's turnover and costs of SORENI

Year	Turnover (EUR m)	Annual increase (%)	Costs (EUR m)	Annual increase (%)
2001	[…]			
2002	[…]	[…]	[…]	
2003	[…]	[…]	[…]	[…]
2004	[…]	[…]	[…]	[…]
2005	[…]	[…]	[…]	[…]
2006			[…]	[…]

(33) France further States that the reasons for which the foreign investor declined to take over the activities of the three subsidiaries were independent of the quality of the business plan. They stemmed from the difficulty of concluding agreements with the workforce and the port authorities, as well as from the financial difficulties of the investor himself.

(34) As to the proportionality of the measures in question, France claims that the amount corresponds to the minimum necessary for relaunching ship-repair activities in Le Havre. It points out that the contribution of SORENI's shareholders has to be assessed in light of the fact that they themselves are in a difficult financial situation.

(35) Furthermore, France asked the Commission to consider the compatibility of the financial measures in question with the common market directly on the basis of Article 87(3)(c) of the EC Treaty if the aid were not compatible under the Restructuring Guidelines. It argues that ship-repair activity is essential for the proper functioning of the port of Le Havre, i.e. it is necessary in order to ensure the admission of ships, the maintenance of ships indispensable for the port's activity, services related to maritime safety and services related to tourism (repair of pleasure craft). France goes on to argue that the continuation of ship-repair in Le Havre is of Community interest since it is in line with the common transport policy, which promotes maritime transport. Finally, It stresses historical and strategic reasons for safeguarding ship repair in the port of Le Havre.

V. **ASSESSMENT**

A. **State aid**

(36) According to Article 87(1) of the EC Treaty, 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, in so far as it affects trade between Member States, be incompatible with the common market.

(37) Firstly, the grant of EUR 3 430 000 to SORENI from the French Government constitutes a financial advantage granted through State resources. Moreover, the criterion of State resources also applies to economic advantages granted by regional or local bodies in the Member States. Accordingly, the first criterion determining the applicability of Article 87(1) of the EC Treaty is met as regards the grants received by SORENI from the Region of Haute-Normandie, the Department of Seine-Maritime and the City of Le Havre (each amounting to EUR 380 000).

(38) Secondly, since the grants in question were intended for one firm in particular, SORENI, the selectivity criterion determining the applicability of Article 87(1) is met.

(39) Thirdly, the financial measures in question confer on SORENI an economic benefit which it would not have received from the private sector. Hence, by their very nature, such measures are such as to distort competition.

(40) Fourthly, the criterion of trade being affected is met if the beneficiary carries out an economic activity involving trade between Member States. This is indeed the case of ship-repair carried out by SORENI. This point is not contradicted by France, which argues simply that the 'main' competitors of SORENI are French. It is also clearly confirmed by the United Kingdom, which notes that SORENI is a direct competitor for is domestic ship-repair industry.

(41) The Commission thus concludes that the grants to SORENI, as described in Section II, constitute State aid within the meaning of Article 87(1).

(42) The Commission also notes that France failed to comply with its obligation under Article 88(3) of the EC Treaty to inform the Commission, in sufficient time to enable it to submit its comments, of its plans to grant the aid. The aid therefore is considered to be unlawful.

B. **Derogation under the Treaty**

(43) Since SORENI is active in ship-repair, aid granted to support its activities falls within the scope of the special rules on State aid applicable to shipbuilding. Since 1 January 2004 these rules have been enshrined in the Framework on State aid to shipbuilding ([7]), which replaced the Shipbuilding Regulation. Nevertheless, in accordance with the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([8]), unlawful State aid, i.e. aid put into effect in contravention of Article 88(3) of the EC Treaty, is assessed in accordance with the texts in force at the time when the aid was granted. The Shipbuilding Regulation is, therefore, applicable. For the sake of completeness, irrespective of whether the Commission applies the Shipbuilding Regulation or the Framework on State aid to shipbuilding, which replaced it, it must be pointed out that this does not affect the conclusions reached in the assessment of compatibility since the substantive criteria for assessing rescue and restructuring aid, regional aid and training aid are identical ([9]).

(44) Article 2 of the Shipbuilding Regulation stipulates that aid granted for ship-repair may be considered compatible with the common market only if it complies with the provisions of that Regulation.

1. *Restructuring aid*

(45) According to France, the purpose of the aid in question is to restructure the activities of SORENI. Aid for the restructuring of firms active in the ship-repair sector may be considered compatible with the common market provided that it complies with Article 5 of the Shipbuilding Regulation, which not only refers to the Restructuring Guidelines but also lays down specific conditions applicable to the shipbuilding sector.

(46) The Commission examined therefore whether the criteria laid down in the Restructuring Guidelines were met.

1.1. Eligibility of the firm

(47) According to the Restructuring Guidelines, in order to be eligible for restructuring aid, the firm must qualify as a firm in difficulty within the meaning of the Guidelines. Despite the fact that a Community definition does not exist, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term (point 4 of the Restructuring Guidelines). These difficulties are manifested, for instance, by increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.

(48) However, point 7 of the Restructuring Guidelines stipulates that a newly created firm is not eligible for restructuring aid, even if its initial financial position is insecure. This is the case, for instance, where a new firm emerges from the liquidation of a previous firm or merely takes over such firm's assets.

(49) The rationale for excluding newly created firms from the eligibility for restructuring aid derives from the principle that the creation of a firm should be a market-situation-driven decision. Therefore, a firm should be created only if it has a chance to operate on the market concerned, in other words if it is capitalised and viable *ab initio*.

([7]) OJ C 317, 30.12.2003, p. 11.
([8]) OJ C 119, 22.5.2002, p. 22.
([9]) See points 12(b), 12(f) and 26 of the Framework on State aid to shipbuilding.

(50) A new firm is not eligible for restructuring aid because, although it might well face start-up difficulties, it could not encounter such difficulties as those described in the Restructuring Guidelines. These difficulties (specified in recital 47) are linked to the history of a firm, i.e. they stem from its operation. A new firm could not, by its very nature, encounter this type of difficulties.

(51) A new firm can, on the other hand, face start-up losses as it has to finance investments and operating costs that initially may not be covered by the revenues from its activity. These costs are, however, associated with the start of a business activity and not with its restructuring. They cannot therefore be addressed by restructuring aid without depriving the latter of its specific purpose and limited scope.

(52) This limitation of the scope of the Restructuring Guidelines applies to new companies that emerge out of bankruptcy proceedings involving other companies or that take over only their assets. The new firm in such cases does not, in principle, take over the debts of its predecessors, i.e. it does not encounter the difficulties described in the Restructuring Guidelines.

(53) In the decision to initiate the procedure, the Commission raised doubts as to whether SORENI was a new firm.

(54) In this connection, the Commission notes, and France admits, that SORENI represents a new legal entity with a legal personality distinct from that of the three subsidiaries. France nevertheless claims that SORENI, although being a legal entity distinct from its predecessors, constitutes an economic continuation of the three subsidiaries, since the activity, the assets and the goodwill of the three subsidiaries, and in particular some liabilities related to social security legislation, have been passed on to SORENI, which cannot therefore be considered to be a new firm. France further argues that, even if SORENI is to be viewed as a new firm, it remains a firm in difficulty because it exercises the same type of activity as the three subsidiaries and because it is bound by the financial liabilities stemming from social security legislation.

(55) The Commission does not agree with France that SORENI is an economic continuation of the three subsidiaries. It should be noted that, even though SORENI took over the activities, assets and goodwill of the three subsidiaries as well as their workforces and some liabilities stemming from social security legislation (early retirement of workers who had been exposed to asbestos), the takeover marked a discontinuity between the old and the new activity. This is illustrated by the fact that the creditors of the three subsidiaries are paid out of the revenues from the sale and do not have any recourse against SORENI as buyers of the assets.

(56) As to the claim by France that the work contracts taken over and the related social security charges (asbestos-related early retirements) represent liabilities that allow SORENI to be likened to the three subsidiaries, the Commission considers that these social charges are simply a legal consequence of French social legislation (comparable in this respect to that in many other countries), which was known to the investor and was quantifiable. Any cost associated with the acquired assets should therefore have been taken into account when setting the purchase price.

(57) As to France's argument that, even if SORENI were to be viewed as a new firm, it would still be a firm in difficulty, the Commission notes that SORENI does not display the signs of a firm in difficulty within the meaning of the Restructuring Guidelines, as described in recital 47. It simply faces normal set-up costs and normal start-up losses attributable to the embryonic nature of the investment project.

(58) The costs of launching a commercial activity are inevitable and are not related to the history of a firm. SORENI would have had to face the same type of costs had its shareholders decided to create a firm entirely independent of the previous ship-repair activities. This hypothesis would inevitably involve start-up costs, such as the purchase of machinery, hiring and training of staff, etc.

(59) In this respect, the Commission is of the opinion that the charges related to the asbestos-related early retirements, being the only liabilities taken over from the three subsidiaries, are not such as to lead SORENI into difficulties within the meaning of the Restructuring Guidelines.

(60) Finally, the workers taken over by SORENI represent a source of know-how which, according to France, is one of the prerequisites for the viability of SORENI's business plan. It can therefore be considered as part of the assets taken over by SORENI and not as a liability. In fact, the takeover should ease SORENI's entry into market since it relieves the firm of the need to incur further costs of recruiting and training new staff.

(61) To sum up, the Commission notes that no financial liabilities were taken over by SORENI from the three subsidiaries that would represent a continuation of the former ship-repair activity. SORENI is a newly created firm that, moreover, does not encounter difficulties within the meaning of the Restructuring Guidelines.

(62) According to the Commission's practice after the entry into force of the Restructuring Guidelines in 1999, a firm is considered as 'new' for the first two years after its creation. The Commission notes that SORENI was created as a new firm on 1 November 2001. Therefore, it was not eligible for restructuring aid within the first two years after its creation, i.e. until 1 November 2003. As the legally binding decision to grant the aid to SORENI was taken on 29 November 2001, this condition is met.

(63) The Commission concludes that SORENI is not eligible for restructuring aid.

(64) The Commission considers below whether its other doubts expressed in the decision to initiate the procedure as to whether the other conditions for restructuring aid were fulfilled could be allayed by the information submitted by France.

1.2. Restoration of viability

(65) According to the Restructuring Guidelines, the grant of the aid is conditional on implementation of a restructuring plan able to restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions, enabling the firm to stand on its own feet. This has to be achieved primarily by internal measures involving in particular the abandonment of activities which would remain structurally loss-making even after restructuring.

(66) The Commission's doubts on this point arose because of the fact that the foreign investor had declined to take over the ship-repair activities in question and especially because of the Commission's lack of information concerning the market survey and the turnover and cost estimates for the years covered by SORENI's business plan.

(67) France explained that the foreign investor had withdrawn its bid on account of difficulties related not to the nature of the restructuring plan but to the financial problems it itself faced.

(68) More importantly, France has provided the Commission with detailed information on estimated operating conditions, such as turnover and costs during the period concerned.

(69) On the basis of this information, the Commission's doubts as to the viability of the business plan were allayed.

1.3. Aid limited to the minimum

(70) Pursuant to the Restructuring Guidelines, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the firm. Aid beneficiaries are expected to make a significant contribution to the restructuring plan from their own resources or from external financing at market conditions.

(71) According to France, the restructuring costs amount to EUR 6 495 164, of which EUR […] is for investments and renewals, commercial reorganisation and reorganisation of production, EUR […] is for salaries for the first three months of operation of SORENI and EUR […] is for asbestos-related early retirements.

(72) The Commission considers that the costs of salaries for the first three months of SORENI's operation and of compensation for workers who had been exposed to asbestos before the takeover cannot be regarded as restructuring costs. They are operating costs that a firm has to meet from its own resources.

(73) The Commission therefore regards as restructuring costs only the costs related to the restructuring plan proper, i.e. EUR 3 900 000.

(74) SORENI was granted EUR 4 570 000 from different public sources.

(75) The Commission takes the view that the proportionality requirement was not met since the amount of aid is higher than the costs eligible for restructuring aid. Consequently, even if SORENI were eligible for restructuring aid, the aid would not have been compatible with the Restructuring Guidelines.

1.4. 1994 restructuring guidelines

(76) In the decision to initiate the procedure, the Commission examined the measures in the light of the Restructuring Guidelines (adopted in 1999). This was not disputed by France in its response to the decision. It should be noted that the Shipbuilding Regulation refers in Article 5 to the 1994 Community guidelines on State aid for rescuing and restructuring firms in difficulty [10] (hereinafter the '1994 Restructuring Guidelines'), which were replaced in 1999 by the Restructuring Guidelines. The Commission, however, concludes that, even if the 1994 Restructuring Guidelines were applied, the above reasoning would be unaffected. Firstly, a new firm cannot, by its very nature, be a firm in difficulty. Even though less explicit, the 1994 Restructuring Guidelines are, particularly as regards their definition of a firm in difficulty, clearly designed to rescue and restructure existing firms and not newly created firms. Secondly, the criterion of 'aid limited to the minimum' already existed in the 1994 Restructuring Guidelines [11] and is not met in the present case.

(77) The aid would not, therefore, be compatible under the 1994 Restructuring Guidelines.

[10] OJ C 368, 23.12.1994, p. 12.
[11] See point 3.2.2. (C).

2. *Regional investment aid*

(78) In the decision to initiate the procedure, the Commission suggested that the measures in question could be regarded as regional investment aid.

(79) The conditions governing compatibility of regional investment aid with the common market are laid down in Article 7 of the Shipbuilding Regulation. First, the measures must concern a region referred to in Article 87(3)(a) or (c) of the EC Treaty. Second, the intensity of the aid must not exceed the ceiling determined by the Shipbuilding Regulation. Third, the measures are designed to support investment in upgrading or modernising existing yards with the objective of improving the productivity of existing installations. Fourth, the aid cannot be linked to financial restructuring of the yard. Fifth, the aid is limited to supporting expenditure eligible under the guidelines on national regional aid ([12]).

(80) The region of Le Havre is an assisted area under Article 87(3)(c). According to the Shipbuilding Regulation and pursuant to the regional map approved by the Commission, the aid intensity for this region cannot exceed 12,5 % net ([13]).

(81) In accordance with point 4.5 of the guidelines on national regional aid, eligible expenditure is defined as a uniform set of items of expenditure: land, buildings and plant/machinery. In accordance with point 4.6, eligible expenditure may also include certain categories of intangible investment.

(82) The total presented by SORENI as restructuring costs are specified in *Table 1* above. The Commission reconsidered these costs in the light of their eligibility for regional investment aid and concluded that only the expenditure shown in *Table 4* fulfils the criteria described in recital 81.

TABLE 4

Expenditure eligible for regional investment aid

(EUR)

Item	Amount
Buildings:	
1. Renewal of plant (2002)	[…]
2. Renewal of offices/buildings (2002)	[…]
Machinery:	
2002:	
3. Vehicles	[…]
4. IT	[…]
5. Tools	[…]
2002-04:	
6. Installation of shot blasting/steel plate processing facility	[…]
7. Lorry	[…]
8. Miscellaneous portable mechanical tools	[…]
Intangible investment:	
9. Acquisition of new licences (2003-2005)	[…]
10. Acquisition of software specific to ship-repair (2003-2004)	[…]
TOTAL	1 550 000

([12]) OJ C 74, 10.3.1998, p. 9.
([13]) Net grant equivalent (nge).

(83) The Commission accepts that these investments contribute to the attainment of the goals of SORENI's business plan as described in point 14 and hence to the upgrading and modernisation of the yard with the objective of improving productivity. These investments moreover correspond to the uniform set of investments: investment in buildings (items 1 and 2 of *Table 4*) and investment in plant/machinery (items 3 to 8 of *Table 4*). The items 9 and 10 of *Table 4* constitute intangible investment (acquisition of patents and software).

(84) The Commission observes that the remaining investment items specified in *Table 1* are not eligible for regional investment aid because they are simply operating expenditure or expenditure on training. As to the item Organisation and computerisation (EUR […]; see *Table 1*), the Commission cannot conclude from the information provided by France that it satisfies the criterion of eligibility for regional investment aid.

(85) To conclude, the total expenditure eligible for regional investment aid amounts to EUR 1 550 000 (EUR 1 412 560 at present value, base year 2001, discount rate of 6,33 %).

(86) The maximum allowable aid intensity is 12,5 % net (corresponding in this case to 18,9 % gross [14]). Admissible aid thus amounts to EUR 266 691.

(87) The Commission concludes that the aid for SORENI can be partially approved as regional investment aid to the extent of EUR 266 691.

3. *Training aid*

(88) The Commission noted that some of the expenditure listed in SORENI's business plan relates to training. The aid was granted after the entry into force of Commission Regulation (EC) No 68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid [15] (hereinafter the 'Training Aid Regulation').

(89) The Training Aid Regulation was adopted by the Commission pursuant to Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid [16]. As *lex posteriori*, it amends the Shipbuilding Regulation, which itself does not provide for the possibility of granting training aid to shipbuilding. It stipulates in Article 1 that it applies to training aid granted in all sectors, shipbuilding thus being included.

(90) Pursuant to the Training Aid Regulation, individual aid is compatible with the common market if it fulfils all the conditions laid down in the Regulation, i.e. it does not exceed the relevant maximum allowable aid intensity and covers costs eligible under Article 4(7) of the Regulation.

(91) The training costs eligible for aid are given in *Table 5* below and amount to EUR 700 000. They fulfil the conditions laid down in Article 4(7) of the Training Aid Regulation.

[14] Gross grant equivalent (gge).
[15] OJ L 10, 13.1.2001, p. 20. Regulation amended by Regulation (EC) No 363/2004 (OJ L 63, 28.2.2004, p. 20).
[16] OJ L 142, 14.5.1998, p. 1.

TABLE 5

Expenditure eligible for training aid

(EUR)

Item	Amount
Training: 37 450 training hours/3 years	600 000
Training of staff at SORENI's licensors	100 000
TOTAL	700 000

(92) In accordance with Article 4 of the Training Aid Regulation, aid intensity cannot, in the case of small and medium-sized enterprises in areas qualifying for regional aid under Article 87(3)(c) of the Treaty, exceed 40 % for projects involving specific training. In the present case, the French authorities have not specified which part of the training could be considered as 'general' within the meaning of Article 2(e) of the Training Aid Regulation.

(93) As a result, the total amount of training aid is EUR 280 000.

(94) The Commission concludes that the aid for SORENI can be partially approved as training aid to the extent of EUR 280 000.

4. *Direct application of Article 87(3) (c) of the Treaty*

(95) France asked the Commission to examine the compatibility of the financial measures in question with the common market directly on the basis of Article 87(3)(c) of the Treaty, arguing that ship-repair is an activity essential for the proper functioning of a port the size of Le Havre.

(96) The Commission firstly notes that, in so far as the repair services offered by SORENI would indeed be essential for the functioning of the port, these activities should, in principle, be secured by the own resources of the port, without the need for recourse to State aid. In addition, it approves part of the aid as regional investment aid and thereby takes into account the regional problems involved.

(97) Moreover, the Shipbuilding Regulation constitutes a specific and exhaustive set of rules applicable to the sector, i.e. ship-repair, which ranks as *lex specialis* in relation to the Treaty. Authorisation of the aid by way of direct application of the Treaty would circumvent the objectives pursued by laying down specific and restrictive rules applicable to the sector.

(98) The Commission cannot, therefore, assess the aid in question directly on the basis of the Treaty.

VI. **CONCLUSION**

(99) The Commission finds that France has unlawfully implemented aid amounting to EUR 4 570 000 in breach of Article 88(3) of the Treaty. On the basis of the assessment of this aid, it concludes that, as restructuring aid for SORENI, it is incompatible with the common market since it does not meet the conditions set out in the Shipbuilding Regulation and the Restructuring Guidelines. However, the Commission considers that the aid is partly compatible with the common market as regional investment aid within the meaning of Article 7 of the Shipbuilding Regulation and as training aid within the meaning of the Training Aid Regulation. The difference between the amount already disbursed (EUR 3 520 997) and the compatible amount (EUR 266 691 + EUR 280 000 = EUR 546 691) has to be recovered (EUR 2 974 306). The difference between the incompatible amount granted (EUR 4 023 309) and the amount to be recovered (EUR 2 974 306) cannot be disbursed (EUR 1 049 003),

HAS ADOPTED THIS DECISION:

Article 1

Of the aid totalling EUR 4 570 000 granted by France to Société de réparation navale et industrielle (SORENI):

(a) EUR 266 691 is compatible with the common market as regional investment aid under Article 87(3)(e) of the Treaty;

(b) EUR 280 000 is compatible with the common market as training aid under Article 87(3)(e) of the Treaty;

(c) EUR 4 023 309 is incompatible with the common market, of which EUR 1 049 003 has not been disbursed and EUR 2 974 306 has been made available.

Article 2

1. France shall take all necessary measures to recover from the beneficiary the aid referred to in Article 1 and unlawfully made available to the beneficiary. This amounts to EUR 2 974 306.

2. Recovery shall be put into effect without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision.

3. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiary until the date of its recovery.

4. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

5. This reference rate shall be applied on a composite basis throughout the period referred to in paragraph 3.

Article 3

France shall inform the Commission, within two months of notification of this Decision, of the measures planned and taken to comply with it. It shall provide the information using the information sheet annexed hereto.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 20 April 2004.

For the Commission

Mario MONTI

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision of 20 April 2004

1. **Calculation of the amount to be recovered**

1.1. Please provide the following details on the amount of unlawful State aid that has been put at the disposal of the beneficiary:

Date(s) (*)	Amount of aid (**)	Currency

(*) Date(s) on which (individual instalments of) the aid has been put at the disposal of the beneficiary.
(**) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents).

Comments:

1.2. Please explain in detail how the interests to be paid on the amount of aid to be recovered will be calculated?

2. **Measures planned and already taken to recover the aid**

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. What is the timetable for the recovery process? When will the recovery of the aid be completed?

3. **Recovery already effected**

3.1. Please provide the following details on the amounts of aid that have been recovered from the beneficiary:

Date(s) (*)	Amount of aids repaid	Currency

(*) Date(s) on which the aid has been repaid.

3.2. Please attach proof of the repayment of the aid amounts specified in the table under point 3.1 above.