COMMISSION

COMMISSION DECISION

of 4 April 2007

on State aid N 575/04 implemented by France for Ernault and measure C 32/05 (ex N 250/05), the subject of proceedings under Article 88(2) of the EC Treaty

(notified under document number C(2007) 1405)

(Only the French text is authentic)

(Text with EEA relevance)

(2007/674/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 [1] pursuant to the provisions cited above and having regard to their comments,

Whereas:

1. PROCEDURE

(1) By decision of 20 January 2005 [2], the Commission authorised France to grant rescue aid to Ernault. The aid took the form of a loan of EUR 2 million at an interest rate of 4,43 % for a maximum period of six months from the first payment of amounts loaned to the undertaking. According to information provided by the French authorities, this aid was implemented on 14 February 2005.

(2) By letter of 19 May 2005, registered as received by the Commission on 23 May, France notified the European Commission that it intended to grant EUR 2 million in restructuring aid to Ernault. The case was registered under number N 250/05. By letter of 2 June 2005, the Commission asked additional questions about the notification which France answered by letter of 12 July.

(3) By letter of 6 September 2005, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the measure referred to in paragraph 2. The decision was published in the *Official Journal of the European Union* [3]. The Commission invited interested parties to submit their comments.

(4) The Commission received comments from the French authorities, registered as received on 16 November 2005, 16 May 2006, 29 June 2006, 24 July 2006 and 21 September 2006. Meetings were held between the French authorities and Commission staff on 3 July and 26 October 2006.

(5) By letter of 13 December 2006, registered as received by the Commission on 14 December, the French authorities informed the Commission that Ernault was in receivership and that they were withdrawing the notification of restructuring aid.

(6) By letter of 2 March 2007, registered as received by the Commission on 5 March, the French authorities informed the Commission that on 13 September 2006 they had registered their claim for the rescue aid with the official receiver in charge of the Ernault case.

[1] OJ C 324, 21.12.2005, p. 23.
[2] OJ C 16, 21.1.2006, p. 21. Case N 575/04 — Rescue aid for Ernault.
[3] See footnote 1.

2. **RESCUE AID**

(7) In its decision of 20 January 2005, the Commission expressed the view that the loan of EUR 2 million was compatible with the common market as rescue aid within the meaning of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [4] (the Guidelines). This assessment was based on compliance with certain conditions, in particular the French authorities' undertaking to submit to the Commission, within six months of the Commission's authorisation of the aid, a liquidation plan, a restructuring plan or proof that the loan had been repaid in full.

(8) The French authorities did notify a restructuring plan to the Commission on 19 May 2005, which was within six months of the Commission's decision. However, they later withdrew the notification.

(9) Under paragraph 26 of the Guidelines, notification of a restructuring plan to the Commission is a precondition for extending the deadline for repayment. Therefore, when a notification is withdrawn, the extension of the deadline cannot be maintained beyond the date of withdrawal, and the loan becomes repayable immediately.

(10) The Commission also notes that the French authorities have not provided it with proof of repayment of the loan or informed it about a liquidation plan for Ernault. Therefore none of the conditions for extending the deadline set out in paragraph 26 of the Guidelines is met.

(11) The Commission must therefore find that the loan granted to Ernault by the French authorities as rescue aid is incompatible with the common market under the Guidelines and has been so since 14 December 2006, the date on which notification of the restructuring plan was withdrawn. It also finds that there is no other legal basis for deeming the aid to be compatible with the common market. The loan granted as rescue aid must therefore be considered to be incompatible state aid as it has been maintained beyond 14 December and must, therefore, be recovered by France from the beneficiary, Ernault.

(12) The Commission notes that the French authorities have registered the claim for the rescue aid with the official receiver in charge of the receivership of Ernault.

3. **RESTRUCTURING AID**

(13) The Commission notes that, under Article 8 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 [5], the Member State concerned may withdraw its notification in due time before the Commission has taken a decision on the aid. In cases where the Commission has already initiated the formal investigation procedure, it must close that procedure.

(14) Therefore, the formal investigation procedure opened by the above-mentioned Decision of 6 September 2005 must be closed since, as the notification has been withdrawn, it no longer serves any purpose in respect of the restructuring aid for Ernault,

HAS ADOPTED THIS DECISION:

Article 1

The state aid which was implemented by France for Ernault as rescue aid and was the subject of the Commission decision of 20 January 2005 is incompatible with the common market since it has been maintained beyond 14 December 2006.

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.

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 at the disposal of the beneficiary until the date of its recovery. For the period from 14 December 2006, the date on which notification of the restructuring plan was withdrawn, and the date of recovery of the aid, interest shall be calculated in accordance with the provisions of Chapter V of Commission Regulation (EC) No 794/2004 [6].

[4] OJ C 244, 1.10.2004, p. 2.

[5] OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Commission Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

[6] OJ L 140, 30.4.2004, p. 1.

Article 3

The procedure provided for in Article 88(2) of the Treaty and opened by the Commission decision of 6 September 2006 (measure C 32/05) is closed as a consequence of the withdrawal of the notification of 23 May 2005.

Article 4

France shall inform the Commission, within two months of notification of this Decision, of the measures which it has already taken and plans to take to comply with Articles 1 and 2. It shall supply this information by completing the questionnaire set out in the Annex hereto.

Article 5

This Decision is addressed to the French Republic.

Done in Brussels, 4 April 2007.

For the Commission
Neelie KROES
Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision of 4 April 2007 on State aid 575/04 implemented by France for Ernault, and measure No C 32/05 (ex N 250/05), the subject of proceedings under Article 88(2) of the Treaty

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

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

Date(s) of payment (°)	Amount of aid (*)	Currency	Identity of recipient

(°) Date or dates on which the aid or individual instalments of aid were put at the disposal of the recipient; if the measure consists of several instalments and reimbursements, use separate rows.
(*) Amount of aid put at the disposal of the recipient, in gross grant equivalent.

Comments:

1.2. Please explain in detail how the interest payable on the amount to be recovered will be calculated.

2. **Recovery measures planned or already taken**

2.1. Please describe in detail what measures have been taken and what measures are planned to bring about the immediate and effective recovery of the aid. Where relevant, please indicate the legal basis for the measures taken or planned.

2.2. By what date will the recovery of the aid be completed?

3. **Recovery already effected**

3.1. Please provide the following details of aid that has been recovered from the recipient:

Date(s) (°)	Amount of aid repaid	Currency	Identity of recipient

(°) Date or dates on which the aid was repaid.

3.2. Please attach supporting documents for the repayments shown in the table at point 3.1.