IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 13 July 2009

on rescue aid for the company 'Les Volailles du Périgord' and its transformation into restructuring aid (C 31/08 (ex N 681/06))

(notified under document C(2009) 5494)

(Only the French text is authentic)

(2010/55/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 given notice to the parties concerned to submit their comments, in accordance with the first subparagraph of Article 88(2) of the Treaty, and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter C(2007) 3564 of 19 July 2007, the Commission authorised under No N 681/06 rescue aid of EUR 1 million for the company 'Les Volailles du Périgord'. The duration of this aid was six months.

(2) When the rescue aid was notified, the French authorities undertook to submit to the Commission a restructuring plan and a liquidation plan or proof that the advance has been reimbursed in full not later than six months after the rescue aid measure was authorised by the Commission. This time limit expired on 19 January 2008 without the Commission having received any of the requisite documents.

(3) The Commission asked France by letter of 7 May 2008 to produce the requisite documents without delay and announced that failing this the Commission would be obliged to initiate the procedure laid down in Article 88(2) of the Treaty, in compliance with point 27 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty [1].

(4) As France had failed to submit to the Commission a restructuring plan or a liquidation plan or to submit proof that the advance has been reimbursed in full, the Commission notified the French authorities by letter C(2008) 3540 Final of 16 July 2008 of the initiation of the formal investigation procedure within the meaning of Article 88(2) of the Treaty and of Council Regulation (EC) No 659/1999 [2] concerning the implementation of rescue aid.

(5) The Commission invited France to present its observations, provide information on the present situation of the company 'Les Volailles du Périgord' and submit either a restructuring plan or a liquidation plan or proof that the loan has been reimbursed in full, within one month of receiving the abovementioned letter.

(6) A reminder was sent to the French authorities on 5 September 2008 (AGRI D/21337).

(7) France sent a restructuring plan by e-mail on 18 September 2008. The Commission requested by letter of 4 December 2008 additional information about the restructuring plan and the use made of the rescue aid. The French authorities requested by e-mail on 8 December 2008 additional time to supply information. This extension was granted by the Commission. France sent additional information by e-mail on 12 February 2009 and 26 June 2009.

II. DESCRIPTION [3]

(8) By letter C(2007) 3564 of 19 July 2007, the Commission authorised rescue aid for 'Les Volailles du Périgord', a firm engaged in slaughtering chickens and turkeys and hit by the bird flu crisis.

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

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

[3] For a detailed description of rescue aid No N 681/16 and of the company 'Les Volailles du Périgord', see Commission letter C(2007) 3564 of 19 July 2007, which can be found on http://ec.europa.eu/community_law/state_aids/agriculture-2006/n681-06.pdf

(9) The company, owned 100 % by the Gaye family, had 236 employees in 2006 and a turnover of approximately EUR 43 million [4] at the end of the financial year 2006/2007. The company sold the majority of its products to supermarkets in France. Seventy per cent of its products were sold cut while the rest were sold whole and ready to cook. The exports of the company were marginal.

(10) 'Les Volailles du Périgord' experienced rapid growth in the decade from 1990 to 2000 until the financial year 2001/2002. However, this growth was managed poorly, mainly because of a lack of management and a marketing policy geared towards hard discount outlets. These weaknesses became apparent during the economic downturn, which caused the company to become structurally loss-making. The operating losses accumulated over the three financial years 2002/2003-2004/2005 amounted to EUR 5,3 million. The company management reacted by concentrating on productivity, by controlling overall wages and the use of outside staff more efficiently and by reducing service charges and external charges. These measures resulted in a balanced operating result for the second half of 2005. At the same time, shareholders injected EUR 3 million in current accounts to support liquidity. The bird flu crisis hit the weakened company hard. The net turnover decreased by about EUR 5 million in the financial year 2005/2006 compared to a year earlier. The company's losses came to some EUR 168 000. Liquidity continued to weaken due to the losses and the growing stocks of frozen poultry. The company was still able to finance its operations by resorting to a bank overdraft, granted pending the payment of rescue aid (should this aid not have been granted, the overdraft would have become due and would have led to a declaration of cessation of payments and bankruptcy procedures).

(11) The company's need for liquidity in the second half of 2007 had reached some EUR 1,2 million in July and was predicted to decrease slightly in the second half of 2007.

(12) The rescue aid of EUR 1 million was granted in the form of a repayable advance for a period of six months and was to be paid in part by the State (EUR 850 000) and in part by the Regional Council of Aquitaine (EUR 150 000). It was granted pursuant to circular DPEI/SDEPA/C2006-4019 of 15 March 2006 from the Minister for Agriculture and Fisheries.

(13) The French authorities confirmed that the interest rate was the Commission reference rate applicable at the time of granting the advance.

(14) In its letter C(2008) 3540 Final of 16 July 2008 initiating the formal investigation procedure concerning implementation of this rescue aid, the Commission noted that the aid was probably unlawfully extended beyond the six months' time limit and expressed doubts as to whether the measure is compatible with the common market.

III. **COMMENTS BY THIRD PARTIES**

(15) No third party has made any comments in the context of the formal investigation procedure.

IV. **COMMENTS BY FRANCE**

(16) By e-mail of 18 September 2008, France submitted its comments on the Commission's decision to initiate the procedure laid down in Article 88(2) of the Treaty concerning the implementation of the rescue aid to the company 'Les Volailles du Périgord'. France sent a restructuring plan and a request for the transformation of the rescue aid into restructuring aid. Additional information was submitted by e-mail on 12 February 2009.

(17) According to the information provided, 'Les Volailles du Périgord' was still in a difficult situation in 2006/2007 because of its continued excessive focus on hard discount outlets, a lack of cut and added-value products, overused resources and a lack of management.

(18) According to the French authorities, EUR 150 000 in rescue aid was paid on 9 August 2007 and the remaining EUR 850 000 on 11 September 2007. The restructuring plan was prepared by the company during the financial year 2007/2008 and implemented starting in January 2008 (measures taken in the first half of 2008: appointment of a new CEO; discontinuing of certain loss-making activities; request for an estimate in order to make the investments necessary for steering the company in a new direction; improvement of the computer system).

Present situation of the company

(19) According to the information provided, the company showed a negative equity of some EUR 2,5 million at the close of the financial year 2007/2008. The company posted a loss until 30 June 2007, putting the losses carried forward at about EUR 4,7 million.

(20) The company achieved its first positive result — of about EUR 525 000 — in the financial year 2007/2008 (recorded on 30 June 2008). Furthermore, the company has already demonstrated a self-financing capacity of over EUR 1 million. According to the French authorities, this was possible due to restructuring measures already implemented in the first half of 2008.

[4] With less than 250 employees and an annual turnover not exceeding EUR 50 million, the company fulfils the conditions for an SME according to Annex I to Commission Regulation (EC) No 800/2008 (OJ L 214, 9.8.2008, p. 3).

(21) The French authorities indicated that without aid the company would be unable to carry out its restructuring plan and become profitable again. Without aid, it cannot regain a healthy financial structure allowing it to finance its operations on its own.

Restructuring plan

(22) The restructuring plan spans three financial years, from 2007/2008 until 2009/2010.

The market

(23) The company 'Les Volailles du Périgord' engages in the slaughter of chickens and turkeys. In 2006/2007, 70 % of its products were sold cut while the rest were sold whole and ready to cook. Forty-four per cent of its turnover came from supermarkets, 32 % from hard discount outlets, 14 % from traditional butchers and 10 % from the out-of-home-dining sector. According to the information provided, the company operates throughout the country. According to this same information, its share of the French market is about 1 %.

(24) By e-mail of 12 February 2009, the French authorities submitted as an annex to the restructuring plan a market study called 'The Poultry Industry and Trade', carried out by the company 'Xerfi' in July 2008 ([5]).

(25) The study shows that poultrymeat production is an important part of the meat industry in France. The poultry sector is relatively concentrated: companies with over 500 employees generate over half of the turnover in the sector. The leader on the French market is the LDC Group, which, with a consolidated turnover of some EUR 1,8 billion, holds 25,5 % of the market. LDC is followed by the Gastronome Group with a 14 % market share and by the Arrive Group with a 9 % market share.

(26) According to the information provided, the poultry market normalised in 2007 after a period of serious turbulence caused by the bird flu crisis in 2006. However, the year 2007 was also marked by a rise in the prices of primary agricultural products, which increased the cost of poultry feed and, consequently, production costs. Within the meat sector, it was the consumer price of poultry that increased the most in 2007.

(27) According to the French authorities, production capacity at Community level had been growing for several years, leading to an increase in the number of animals slaughtered. It is estimated that in the medium term the number of fowls slaughtered will decrease by slightly over 2 % because of reduced consumption due to the present economic crisis. At the same time, however, prices are expected to increase.

The circumstances leading to the company's difficulties

(28) According to the French authorities, the principal causes of the company's difficulties were bird flu, a marketing strategy focused on low-profitability markets as well as the economic situation (see recital 10) ([6]).

Proposed strategy for the future

(29) The restructuring plan of 'Les Volailles du Périgord' calls for changes to the company's marketing strategy. Accordingly, the number of products with a low sales margin (1st basic price) realised as brand label purchases, for example chickens or guinea fowl, should be reduced markedly and replaced with higher value-added and/or more upmarket products. These products, whose production costs are fully controlled upstream, in other words at the breeding stage, are slaughtered and processed by the company.

(30) For example, the Label Rouge and Bio poultry products are developed and marketed in innovative packaging that brings added value (wrapped in modified atmosphere) or marketed in high-growth markets such as the rotisserie market, where profit margins are higher.

(31) 'Basic price' products, which complement upmarket products in supermarkets, will be boosted with higher value-added products (gigolettes, brochettes, flavoured products). In addition, the company's own brand, 'Le Croquant', will continue to account for an important part of the company's sales.

Restructuring measures

(32) The objective of the restructuring plan for 'Les Volailles du Périgord' is to improve production by investing in equipment and reorganising operations as well as the company.

(33) An amount of over EUR 4 million is set aside for the modernisation of the company's equipment. Investments should be made in the buildings (extension of the platform for collecting poultry), the production material (Maxiload platforms for chickens and turkeys, Maxiload modules, lorries, aerial calibration line, wrapping in modified atmosphere) and the IT system (SAP solution, upgrading of IT equipment).

([5]) The study concerns the French domestic market.

([6]) For a detailed analysis of the factors that led to the company's difficulties, please also see Commission letter C(2007) 3564 of 19 July 2007 authorising rescue aid No N 681/16.

(34) The information provided shows that the Maxiload modules will make it faster and easier to load live poultry on the farm and in the lorries and ensure a better rate of vehicle loading and easier unloading in the slaughterhouse. The investments in the platform used to collect poultry will help to reduce the arduousness and costs of the collection work. The purchase of a calibrator should improve the quality of production through a better sorting of poultry, speed up the processing and packaging of products and reduce the number of people in charge of sorting. Furthermore, this investment will be necessary in order to develop the rotisserie market, which requires calibrated chickens. It is essential to buy a modified atmosphere packaging machine in order to meet the needs of supermarkets, which are the main market of the company.

(35) The information provided indicates that the company still does not have an integrated information system. Investing in IT equipment and an SAP solution would enhance considerably the management of the company, from analysing the profitability of each product/market segment to forecasting the development of these markets.

(36) The company today has 205 employees, of whom 55 are on fixed-term contracts and 150 on contracts of indefinite duration. The planned investments would reduce the workforce by 9 employees, resulting in overall savings of over EUR 430 000. Cutting sales to hard discount outlets would allow the company to terminate 55 % of its fixed-term contracts, thus reducing its workforce by a further 30 people or so. This way the company could save over EUR 1 million. The cost of the lay-offs is estimated to be about EUR 170 000. A new CEO was appointed to the company in the first half of 2008. Another objective of the restructuring plan is to hire an administrative controller and a salesman to reinforce the new direction of the company.

(37) The company began implementing the restructuring measures in the first half of 2008 (see recital 18). The majority of the investments will be made during the financial year 2008/2009. The reorganisation of the company's marketing operations, started in 2008, will continue during the financial years 2008/2009 and 2009/2010.

Funding arrangements for the restructuring

(38) According to the information provided, the restructuring will be financed as follows:

Funding arrangements for the restructuring of Volailles du Périgord

(EUR)

Costs		Financing	
Investments	4 145 150	Leasing	3 265 150
Lay-offs	170 000	Restructuring aid	1 000 000
Restructuring of the company	850 000	Capital from shareholders	900 000
Total	5 165 150	Total	5 165 150

(39) The leasing contract, used to finance most of the investments, will be signed for a period of 4 to 5 years. The French authorities submitted to the Commission a draft financing contract drawn up by the company ETICA, which belongs to the Crédit Agricole Leasing Group.

(40) Of the EUR 900 000 in total contributions from shareholders, EUR 850 000 will consist of current accounts and be used for the financial restructuring of the company. According to the information provided, this financial restructuring will allow the company to re-build a healthy financial structure and, consequently, be again able to obtain financing from market sources.

The business plan

(41) By e-mail of 18 September 2008, the French authorities sent a business plan for the period ending with the financial year 2009/2010. This business plan, which, according to the information provided, presents a median hypothesis for 'Les Volailles du Périgord', already includes the actual results of the company for the financial years 2006/2007 and 2007/2008. By e-mail of 12 February 2009, the French authorities also submitted business plans including best-case and worst-case scenarios for the company.

(42) The median business plan is based on the following turnover development and product mix:

Turnover and volume development of Volailles du Périgord by client group

	2006/07	2007/08	2008/09	2009/10	Development
Turnover (in 1 000 EUR)					
Supermarkets	19 137	19 680	20 250	21 736	14 %
Hard Discount	13 839	12 462	7 775	5 959	– 57 %
Traditional butcheries	5 927	7 064	5 152	5 357	– 10 %
Specialised rotisseries/out-of-home dining	4 328	5 526	6 616	6 828	58 %
Total	43 231	44 732	39 793	39 880	– 8 %
Volume (tonnes of finished products)					
Supermarkets	5 687	5 289	5 329	5 720	1 %
%/total	39 %	42 %	47 %	51 %	
Hard Discount	4 384	3 748	2 281	1 752	– 60 %
%/total	30 %	30 %	20 %	15 %	
Traditional butcheries	2 968	1 653	1 610	1 633	– 45 %
%/total	20 %	13 %	14 %	14 %	
Specialised rotisseries/out-of-home dining	1 679	1 929	2 198	2 202	31 %
%/total	11 %	15 %	19 %	19 %	
Total	14 718	12 619	11 418	11 307	– 23 %
Average price (EUR/kg)	2,94	3,54	3,49	3,53	

(43) The restructuring plan aims to improve the value of the production of 'Les Volailles du Périgord' by concentrating on more profitable operations. Overall the company will reduce the volume of its operations by 23 % during the restructuring period (2006/2007-2009/2010). The reductions will target hard discount outlets (– 60 %) and butcheries (– 45 %). In contrast, volume sales will grow by 1 % in supermarkets and by 31 % in specialised rotisseries and out-of-home dining (a sales channel where, according to the information provided, demand is forecast to develop positively).

(44) Despite the substantial overall contraction in volumes, the turnover will only decrease by 8 % during this period. The French authorities estimate that the company will hold a 0,8 % share of the (French domestic) market once the restructuring period is over.

(45) The key figures of the median business plan are presented below:

Key figures of the business plan for Volailles du Périgord

(in 1 000 EUR)

	2006/07	2007/08	2008/09	2009/10
Turnover	43 231	44 732	39 793	39 880
Sales margin	11 525	12 390	10 872	10 223
Added value	6 931	7 774	7 868	7 318
Operating profit	– 465	445	1 115	828
Net operating income	– 570	326	974	553
Accounting result	– 57	525	823	675
Self-financing capacity	ns	1 001	1 204	1 233
Working capital	– 4 376	– 3 660	– 1 895	– 1 013
Shareholders' equity	– 3 071	– 2 466	238	791
Long- and medium-term liabilities	871	603	3 408	3 057
Liquidity	– 844	– 1 295	428	785
Repayment ability (*)	ns	0,60	2,83	2,48

(*) Long- and medium-term liability/Self-financing capacity.

(46) According to the median business plan, improvements in the value of production should be accompanied by cuts in external costs (less use of employment agency services, lower energy costs) and personnel costs (smaller headcount). It is therefore estimated that the company's result will improve markedly during the restructuring period and reach approximately 1,7 % (calculated on the accounting result) in 2009/2010. The annual self-financing capacity should reach about EUR 1,2 million in 2009/2010 and it should be possible to increase the working capital by some EUR 3,4 million during the restructuring period.

(47) The median business plan predicts considerable improvements in the financial structure of the company. Shareholders' equity will become positive again starting in the financial year 2008/2009 ([7]). Despite an increase in long- and medium-term liabilities in 2008/2009 (leasing contract used to finance most of the planned investments), the company's repayment ability defined in recital 44 will not exceed 2,48 at the end of the restructuring period. Liquidity should be positive starting in the financial year 2008/2009.

(48) According to the French authorities, this development is confirmed by the positive results in the financial year 2007/2008 (see recital 20)

([7]) The restructuring aid of EUR 1 million is included in the shareholders' equity as of the financial year 2008/2009.

(49) The best-case and worst-case scenarios for 'Les Volailles du Périgord' submitted by the French authorities (see recital 41) are based on the following hypotheses:

(50) Optimistic hypothesis: same tonnages as in the median hypothesis, with a slight improvement in the development of volumes in out-of-home dining and an average apparent price of EUR 3,56 compared to EUR 3,53 in the median hypothesis. Pessimistic hypothesis: Reduced tonnages in the supermarket sector in 2009/2010, contrary to what is forecast in the intermediate scenario; stagnant tonnages in the out-of-home dining sector and insufficient development of this market; average apparent price of EUR 3,48 compared to EUR 3,53 in the median hypothesis.

(51) According to the best-case scenario, profitability will improve markedly during the period in question. In this scenario, the result shows an increase of EUR 1,3 million compared to the median hypothesis. This would affect the financial situation by restoring the working capital, which would recover its balance. The assumption in the worst-case scenario is that profitability will weaken and the results will be EUR 1 million lower than in the median hypothesis. Although liquidity would improve during the period in question, it would not be restored and would remain negative in 2009/2010.

Other information

(52) According to the information provided by the French authorities, the company 'Les Volailles du Périgord' will not receive other aid before the end of its restructuring period.

V. **ASSESSMENT**

(53) The company 'Les Volailles du Périgord' engages in the slaughter of chickens and turkeys. The Commission notes that Articles 92, 93 and 94 of the Treaty (now Articles 87, 88 and 89) apply to the production of poultrymeat pursuant to article 19 of Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organisation of the market in poultrymeat ([8]), which was applicable at the time the aid was granted ([9]).

1. **Provision of aid within the meaning of Article 87(1) of the Treaty**

(54) Pursuant to Article 87(1) of the 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'.

(55) The aid is granted by the State and by the Regional Council of Aquitaine (see recitals 12 and 18), and it favours a particular company. Case-law has repeatedly stated that international trade is considered to be affected when the beneficiary company engages in an economic activity and competes with products coming from other Member States ([10]). The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition ([11]). 'Les Volailles du Périgord' operates in a sector where there is trade between Member States ([12]). As the Commission already pointed out in its letter C(2007) 3564 of 19 July 2007, the aid granted is likely to affect competition and trade between Member States and therefore constitutes State aid within the meaning of Article 87(1) of the Treaty.

([8]) OJ L 282, 1.11.1975, p. 77.

([9]) This Regulation was repealed as of 1 July 2008 by Council Regulation (EC) No 1234/2007 (OJ L 299, 16.11.2007, p. 1). Article 180 of Regulation (EC) No 1234/2007 states that Articles 87, 88 and 89 of the Treaty apply to the production of and trade in poultrymeat.

([10]) See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic* v *Commission of the European Communities* [1988] ECR 4067.

([11]) Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV* v *Commission of the European Communities* [1980] ECR 2671.

([12]) In 2005 some 2,9 million tonnes of poultrymeat were the subject of intra-Community trade. (*Source*: Eurostat).

2. **Compatibility with the common market under Article 87(3)(c) of the Treaty**

(56) Article 87(3)(c) of the Treaty provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(57) For this exception to be applicable, it is necessary to comply with the relevant provisions governing the granting of aid.

Rescue aid

(58) The Commission examined the rescue aid for the company 'Les Volailles du Périgord' in the light of the guidelines applicable on the date of notification, i.e. the Community guidelines for State aid in the agriculture sector ([13]) and the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([14]).

(59) By letter C(2007) 3564 of 19 July 2007 the Commission decided to consider the aid compatible with the common market under Article 87(3)(c) of the Treaty.

(60) According to point 25(a) of the abovementioned guidelines, rescue aid must consist of liquidity support in the form of loan guarantees or loans granted at an interest rate at least comparable to those observed for loans to healthy firms and in particular the reference rates adopted by the Commission. Any loan must be reimbursed and any guarantee must come to an end within a period of not more than six months after the disbursement of the first instalment to the firm.

(61) The aid approved was to take the form of a repayable advance at an annual interest rate equal to the Commission reference rate applicable at the time the advance was paid (4,62 % from 1 July 2007).

(62) The French authorities indicated that the loan would be reimbursed within six months of the first payment of the amounts lent to the company. In accordance with the provisions of point 25 (c) of the guidelines, they undertook to submit to the Commission a restructuring plan, a liquidation plan or proof that the advance has been reimbursed in full, not later than six months after the rescue aid measure was authorised by the Commission.

([13]) OJ C 28, 1.2.2000, p. 2.

([14]) See footnote 1.

(63) As France had failed to forward the documents required, the Commission initiated by letter C(2008) 3540 Final of 16 July 2008 the formal investigation procedure within the meaning of Article 88(2) of the Treaty and of Regulation (EC) No 659/1999 concerning the implementation of rescue aid. In this letter the Commission noted that the rescue aid was probably unlawfully extended beyond the six months' time limit and expressed doubts as to whether the measure is compatible with the common market.

(64) France sent a restructuring plan by e-mail on 18 September 2008. Additional information was submitted by e-mail on 12 February 2009. The French authorities pointed out that while the company 'Les Volailles du Périgord' had been delayed in lodging an application for restructuring aid, the restructuring plan was implemented starting in January 2008 (see recital 22). The Commission regrets that France did not keep its commitment to submit the required documents within six months.

(65) According to point 29 of the guidelines, the approval of rescue aid does not necessarily mean that aid under a restructuring plan will subsequently be approved, as such aid will have to be assessed on its own merits.

(66) Therefore it must be examined whether restructuring aid to the company 'Les Volailles du Périgord' in the form of transformed rescue aid of EUR 1 million is compatible with the common market.

Restructuring aid

(67) The restructuring plan of 'Les Volailles du Périgord', for the partial financing of which this aid is requested, was implemented from January 2008 onwards. At that time the Community guidelines for State aid in the agricultural and forestry sector 2007 to 2013 ([15]) were applicable. Point 145 of these agricultural guidelines refers to the guidelines for examining aid for rescuing and restructuring firms in difficulty.

(68) Section 3.2 of the guidelines defines the rules concerning restructuring aid.

Eligibility of the firm

(69) According to point 33 of the guidelines, only firms that are in difficulty within the meaning of points 9 to 13 are eligible for restructuring aid. Section 2.1 of the guidelines defines this concept.

([15]) OJ C 319, 27.12.2006, p. 1.

(70) Point 10 lists the criteria that a company must fulfil in order to be automatically considered to be in difficulty (disappearance of more than half of the share capital or shareholders' equity, fulfilment of the criteria under domestic law for being the subject of collective insolvency proceedings). However, point 11 lays down that even when none of the conditions in point 10 are fulfilled, a company may still be considered to be in difficulty, in particular where the usual signs of a firm being in difficulty are present, for example increasing losses, growing stock inventories or mounting debt.

(71) The company 'Les Volailles du Périgord', which is structurally loss-making but on the road to recovery, was hit hard by the bird flu crisis. The net turnover contracted by approximately EUR 5 million in the financial year 2005/2006 compared to the previous year, and liquidity continued to weaken due to the losses and the growing stocks of frozen poultry. The bank overdraft, with which the company was still able to finance itself in the first half of 2007, was only granted pending payment of the rescue aid. Had this aid not been paid, the bank overdraft would have become due and led to a declaration of cessation of payments and filing for bankruptcy (see recital 10). The Commission therefore found that the company could be considered to be in difficulty within the meaning of point 11 of the guidelines ([16]).

(72) Part of the rescue aid of EUR 1 million was disbursed in August 2007 and part in September 2007 (see recital 18). The first restructuring measures were taken starting in January 2008 (see same recital 18). The slightly positive result of the financial year 2007/2008 reflects the measures already taken after the disbursement of the rescue aid (see recital 20). Shareholders' equity and liquidity remained negative to the amount of some EUR 2,5 million and EUR 1,3 million, respectively, at the close of the financial year in question. According to the median business plan, shareholders' equity and liquidity will become positive again, both reaching a level of some EUR 800 000 at the end of the restructuring period in 2009/2010 (see recital 45). Given that the business plan includes the restructuring aid of EUR 1 million, the Commission recognises that the company will be unable to implement its restructuring plan and become profitable again without help. Such a situation would prevent it from regaining a healthy financial structure allowing it to finance its operations on its own. The Commission therefore finds that in the beginning of the restructuring period in January 2008 and without the present aid (in other words, if the rescue aid is reimbursed) the company 'Les Volailles du Périgord' could still be considered to be in difficulty within the meaning of the guidelines.

([16]) See paragraph 29 of Commission letter C(2007) 3564 of 19 July 2007 authorising rescue aid for the company 'Les Volailles du Périgord'.

Return to long-term viability

(73) According to points 34 to 37 of the guidelines, the granting of the aid must be conditional on the implementation of a restructuring plan making it possible to restore the long-term viability of the firm within a reasonable timescale. The improvement of viability must be brought about mainly by internal measures and cannot be based on external factors over which the company has no influence (changes in prices or demand, etc.). The restructuring plan must take into account current and forecast trends in supply and demand. It is necessary to include optimistic, pessimistic and median hypotheses. The restructuring plan must provide for a turnaround that will enable the company, after completing its restructuring, to cover all its costs, including depreciation and financial charges. The expected return on capital of the restructured company should be enough to enable it to compete in the marketplace on its own merits. Where the firm's difficulties stem from flaws in its corporate governance system, appropriate changes will have to be made.

(74) The French authorities submitted to the Commission a restructuring plan for the company covering three financial years, namely 2007/2008 to 2009/2010. This restructuring plan has been implemented since January 2008. It is based on a business plan that expresses the median hypothesis and includes the actual results of the financial years 2006/2007 and 2007/2008 (see recital 41). A market study, carried out by the company 'Xerfi' in July 2008, was enclosed with the restructuring plan (see recital 24).

(75) The restructuring plan aims to improve the value of production by concentrating on more profitable activities. In all, according to the median hypothesis, the company will reduce the volume of its operations by 23 % and its turnover by 8 % during the restructuring period (see recitals 43 and 44). According to the French authorities, the restructuring plan will allow the company to again be able to obtain financing from market sources. In the median business plan, the accounting result will rise to about 1,7 % of the turnover in 2009/2010. The annual self-financing capacity should reach about EUR 1,2 million and it should be possible to increase the working capital by some EUR 3,4 million during the same period. The financial structure of the company should improve considerably. It is estimated that shareholders' equity will become positive starting in the financial year 2008/2009 and, despite an increase in long- and medium-term liabilities in the same year (financing through leasing), the company's repayment ability will not exceed 2,48 at the end of the restructuring period. Liquidity should also be positive starting in the financial year 2008/2009 (see recitals 46 and 47).

(76) Furthermore, business plans with a best-case and worst-case scenario have also been submitted to the Commission (see recital 49). According to the business plan with the optimistic scenario, profitability will improve markedly during the period in question. This would affect the financial situation by restoring the working capital, which would recover its balance. The assumption in the pessimistic scenario is that profitability will weaken and the results will be EUR 1 million lower than in the median hypothesis. Although liquidity would improve during the period in question, it would not be restored and would remain negative in 2009/2010 (see recital 51).

(77) A new CEO was appointed in the first half of 2008 to improve and strengthen the management of the company. Another objective of the restructuring plan is to hire an administrative controller and a salesman to reinforce the new direction of the company.

(78) The Commission finds that the duration of the restructuring plan, three financial years (2007/2008-2009/2010), is the minimum required in order for the company to reorient its marketing strategy, implement the planned restructuring measures and, after the turnaround, permanently stabilise its economic and financial situation.

(79) Consequently, the Commission considers that the present restructuring plan for 'Les Volailles du Périgord' is likely to restore the long-term viability of the firm within a reasonable timescale.

No undue distortion of competition

(80) According to points 38 to 42 of the guidelines, there should be no undue distortion of competition. According to point 38, compensatory measures must be taken in order to ensure that the adverse effects on trading conditions are minimised. According to point 40, the measures must be in proportion to the distortive effects of the aid and, in particular, to the size and the relative importance of the firm on its market or markets. They should take place in particular in the market(s) where the firm will have a significant market position after restructuring. Closure of loss-making activities which would at any rate be necessary to restore viability will not be considered reduction of capacity or market presence.

(81) According to the information provided, the company 'Les Volailles du Périgord' operates throughout the country and holds a share of approximately 1 % of the domestic market (see recital 23). Therefore it can be assumed that the company's share of the market at Community level is even less significant. In its business plan, however, the company undertook to reduce the volume of its operations by 23 % and its turnover by 8 % (median hypothesis) during the restructuring period (see recitals 43 and 44). The reductions will target hard discount outlets (– 60 % in volumes) and butcheries (– 45 % in volumes). The French authorities have confirmed that the operations that will be reduced in connection with the restructuring plan were not loss-making. However, these operations generated a lower average net margin than that made possible with products for supermarkets, specialised rotisseries and out-of-home dining (EUR 0,4/kg vs. EUR 0,6/kg).

(82) According to the French authorities, the company's share of the domestic market will decrease to 0,8 % during the restructuring period due to the reduction of activities. Having regard to the very low importance of the company on the European chicken and turkey market and to the fact that the reduction in production is not caused by a need to cease loss-making activities, the Commission finds that the countervailing measures proposed are adequate.

Limitation of aid to a minimum

(83) Under points 43 to 45 of the guidelines, the aid must be limited to the minimum necessary. According to point 43, beneficiaries of the restructuring aid will be expected to make a significant contribution to the restructuring plan from their own resources, including the sale of assets that are not essential to the firm's survival, or from external financing at market conditions. Such contribution must be real, i.e., actual, excluding all future expected profits such as cash flow. According to point 44, this real contribution must usually total at least 40 % in the case of medium-sized companies. Point 45 lays down that the amount of the aid must be such as to avoid providing the company with excess cash and that the aid must not serve in any way whatsoever to finance new investments that are not essential for restoring the company's viability.

(84) According to the information submitted by the French authorities, the costs of the restructuring, EUR 5 165 150, will be covered by the present aid of EUR 1 million as well as by the leasing contract to the amount of EUR 3 165 150 and by EUR 900 000 in capital injected by shareholders (see recital 38). The company is therefore contributing about 81 % of the total costs of the restructuring. With fewer than 250 employees and an annual turnover not exceeding EUR 50 million, 'Les Volailles du Périgord' meets the definition of a medium-sized company, for which a real contribution of at least 40 % is required according to the guidelines. Therefore the real contribution of the company meets and even exceeds the requirements of the guidelines. According to the French authorities, the company does not have excess cash at its disposal. They pointed out that the company's liquidity remained negative by about EUR 1,5 million on 30 June 2008. In this context, the Commission finds that authorising the present aid will not provide additional liquidity to the company but will rather constitute a transformation of the rescue aid already paid in August and September 2007. The French authorities have demonstrated that the planned investments (see recitals 32 to 34) are essential for restoring the company's viability. In view of the foregoing, the Commission finds that the present aid is limited to the minimum necessary, in accordance with points 43 to 45 of the guidelines.

Other provisions

(85) According to point 47 of the guidelines, the company must fully implement the restructuring plan. The Commission will regard any failure to implement the plan as misuse of the aid, without prejudice to Article 23 of Regulation (EC) No 659/1999 and to the possibility of an action before the Court of Justice in accordance with the second subparagraph of Article 88(2) of the Treaty.

(86) Under point 49 of the guidelines, the Commission must be put in a position to make certain that the restructuring plan is being implemented properly, through regular detailed reports communicated by the Member State concerned. According to point 51 of the guidelines, in the case of small- or medium-sized enterprises, transmission each year of a copy of the recipient firm's balance sheet and profit and loss account will normally be sufficient. Once restructuring aid has been authorised, the restructuring plan may only be changed (during the restructuring period) if the changes comply with point 52 of the guidelines and if they have been authorised by the Commission. The French authorities have undertaken to comply with those conditions.

(87) According to point 70 of the guidelines, any other aid granted to the company during the restructuring period, including aid granted in compliance with an authorised scheme, must be notified individually to the Commission.

(88) The French authorities have confirmed that the company has not received restructuring aid in the past, in compliance with the 'one time, last time' rule defined in section 3.3 of the guidelines.

(89) Section 5 of the guidelines defines the specific provisions applicable to restructuring aid in the agricultural sector. However, these provisions apply only to the primary production of agricultural products. The company 'Les Volailles du Périgord' engages in the slaughter, cutting and packing of poultry, which belongs to the sector of processing and marketing of agricultural products. Therefore the provisions applied specifically to the agricultural sector are not applicable in this particular case.

(90) Given that the present aid will be granted in compliance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty and in view of the above considerations, the Commission concludes that the measure does not affect trading conditions to an extent contrary to the common interest. It may therefore benefit from the derogation set by Article 87(3)(c) of the Treaty.

VI. **CONCLUSION**

(91) The Commission regrets that France implemented the restructuring aid for the company 'Les Volailles du Périgord' in breach of Article 88(3) of the Treaty.

(92) The State aid implemented by France in the form of rescue aid for the company 'Les Volailles du Périgord' transformed into restructuring aid in breach of Article 88(3) of the Treaty is, nonetheless, compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of EUR 1 million granted by transforming the rescue aid for the company 'Les Volailles du Périgord' into restructuring aid and implemented illegally by France in breach of Article 88(3) of the Treaty is compatible with the common market.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 13 July 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission