COMMISSION DECISION (EU) 2015/1321

of 23 June 2010

on State aid C 38/07 (ex NN 45/07) implemented by France for Arbel Fauvet Rail SA

(notified under document C(2010) 4112)

(Only the French text is authentic)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) ([1]) 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 ([2]),

Whereas:

1. PROCEDURE

1.1. Procedure before the Commission

(1) The Commission received a complaint informing it of certain support measures implemented by France for Arbel Fauvet Rail SA (hereinafter 'AFR'). On 28 January 2006, 25 October 2006, 30 January 2007 and 6 June 2007, France submitted additional information.

(2) By letter dated 12 September 2007, the Commission informed France that it had decided to initiate the formal investigation procedure laid down in Article 108(2) of the TFEU in respect of the measure.

(3) France submitted comments in communications dated 12 October and 18 and 19 December 2007.

(4) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of the European Union* ([3]). The Commission called on interested parties to submit their comments.

(5) The Commission received no comments from interested parties.

(6) On 2 April 2008, the Commission issued a negative ruling on the measures in question ([4]) and ordered recovery (hereinafter 'the original AFR decision').

(7) The original AFR decision was challenged before the Court of First Instance by the Nord-Pas-de-Calais region on 9 July 2008 (Case T-267/08) and by the Communauté d'Agglomération du Douaisis on 17 July 2008 (Case T-279/08). One of the grounds for annulment raised by the applicants was the failure to state reasons with respect to the calculation of the aid element. The applicants also argued that the Commission had committed a manifest error of assessment in mistakenly qualifying AFR as a firm in difficulty.

([1]) From 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108, respectively, of the Treaty on the Functioning of the European Union ('TFEU'). The two sets of provisions are, in substance, identical. For the purposes of this Decision, references to Articles 107 and 108 of the TFEU should be understood as references to Articles 87 and 88 respectively of the EC Treaty, where appropriate.

([2]) OJ C 249, 24.10.2007, p. 17.

([3]) See footnote 2.

([4]) Commission Decision C(2008) 1089 final of 2 April 2008, OJ L 238, 5.9.2008, p. 27.

1.2. **The Biria judgment**

(8) The calculation of the amount of aid in the original AFR decision of 2 April 2008 was based on a method devised in a previous decision of the Commission in the 'Biria Group' case C 38/2005 (hereinafter 'the Biria decision') ([5]).

(9) By proceedings ([6]) brought on 5 April 2007 (Case T-102/07) and 16 April 2007 (Case T-120/07), the Biria decision was challenged before the Court of First Instance by the authority which had granted the aid and by the legal successor to the aid recipients respectively. On 3 March 2010 ([7]), the General Court annulled the Biria decision.

(10) Although the Court confirmed to a large degree the reasoning of the Commission, the decision was, nonetheless, annulled for failure to state adequate reasons on a particular point. The General Court held that the Commission could not confine itself to a mere reference to the Commission notice of 1997 for setting the reference and discount rates ([8]) (hereinafter 'the Commission notice of 1997 on reference rates') in the reasons relating to the risk premiums when calculating the amount of the aid element contained in a loan to a firm in difficulty.

1.3. **Withdrawal**

(11) The original AFR decision made explicit reference to the recital in the Biria decision which prompted its annulment by the General Court. The reasoning in the Biria decision and that in the original AFR decision with respect to the risk premium to be used were based on similar elements.

(12) Consequently, the Commission notes, in the light of the Biria judgment, that the original AFR decision of 2 April 2008 did not provide reasons to the requisite legal standard concerning the level of risk premium to be used. As the decision has yet to become final, there is thus reason to withdraw it and issue a new decision.

2. **AID DESCRIPTION**

2.1. **Beneficiary**

(13) AFR is a manufacturer of railway equipment specialising in goods wagons and tank containers. It is one of the leading manufacturers of railway rolling stock on the European market. The company is located in Douai (Nord) and employed around 265 people in 2008.

(14) In 2005, AFR was fully owned by Arbel SA ([9]). At the time, AFR employed some 330 people.

(15) AFR's business has been running at a loss for several years. The company's economic difficulties worsened from 2001 onwards. This trend gathered momentum between 2002 and 2005. The following table shows some of AFR's key performance indicators for the period before the aid was granted.

	To 31.12.2004	To 31.12.2003	To 31.12.2002	To 31.12.2001
Turnover in EUR	22 700 000	42 700 000	42 000 000	70 000 000
Net loss in EUR	– 11 589 620	– 14 270 634	– 2 083 746	– 10 500 000
Capital and reserves in EUR	– 21 090 000	– 23 000 000	– 8 700 000	– 6 600 000

2.2. **Support measures**

(16) On 4 July 2005 the Nord-Pas-de-Calais regional authorities and the Communauté d'agglomération du Douaisis jointly granted AFR a repayable advance of EUR 1 million each, making a total of EUR 2 million.

([5]) Commission Decision C(2007) 130 final of 24 January 2007, OJ L 183, 13.7.2007, p. 27.
([6]) The two cases were joined by a decision of the President of the Court of 24 November 2008.
([7]) Judgment of the General Court in Joined Cases T-102/07 *Freistaat Sachsen* v *Commission* and T-120/07 *MB Immobilien and MB System* v *Commission*, not yet reported.
([8]) OJ C 273, 9.9.1997, p. 3.
([9]) On 29 June 2007 AFR was taken over by IGF Industries. Its business name was changed to 'IGF Industries — Arbel Fauvet Rail'.

(17) According to the information provided by the French authorities, the terms of the advances were as follows:

— the repayable advance from the regional authorities was granted at an annual interest rate of 4,08 % (equivalent to the Community reference rate applicable at the time) subject to the completion of a financing plan that AFR was drawing up; it was to be repaid in 6-monthly instalments over a 3-year period starting on 1 January 2006,

— the advance from the Communauté d'agglomération du Douaisis was granted at an annual interest rate of 4,08 % (equivalent to the Community reference rate applicable at the time), subject to payment of the advance from the regional authorities, repayable under the same terms, and to supply of proof of the irrevocable merger between AFR and Lormafer, another company controlled by Arbel SA. This advance was also to be repaid in 6-monthly instalments over a 3-year period from 1 January 2006.

3. GROUNDS FOR INITIATING THE FORMAL INVESTIGATION PROCEDURE

(18) In its decision to initiate the formal investigation procedure, the Commission took the view that the repayable advances constituted state aid within the meaning of Article 107(1) of the TFEU. In this connection, it noted that the advances conferred an advantage on AFR in that the firm, given its financial situation, could not have raised funds on such favourable terms on the financial markets.

(19) The Commission also took the view that AFR was a firm in difficulty within the meaning of the 'Community Guidelines on state aid for rescuing and restructuring firms in difficulty' (hereinafter 'the Guidelines') ([10]) and that the compatibility of the state aid it had received needed, therefore, to be assessed in the light of the Guidelines. The Commission was doubtful whether, in the light of the Guidelines, the aid in question was compatible with the internal market.

4. COMMENTS FROM FRANCE

(20) The French authorities claimed that, although AFR was going through a difficult period at the time when the repayable advances were granted and then paid (i.e. July and the second half of 2005), it had maintained the confidence of its customers and bankers.

(21) To support their claims, the French authorities mentioned the following points, which they described as 'signs of confidence' in AFR on the part of customers and banks:

— […] (*) bank had increased the overdraft facility on AFR's current account by EUR 2 million (guaranteed by […]),

— AFR had received EUR 7 million in advance payments from customers (guaranteed by […]), to which a further EUR 4 million in new advance payments was added in January 2006,

— at the same time, the firm held supplier guarantees worth EUR 4 million with […].

(22) The French authorities backed up their comments with documents which show the following:

— the overdraft interest rate was 4,4199 % as at 1 July 2005,

— the outstanding amount of the various guarantees (suppliers, contract guarantees, financial guarantees) provided by […] to AFR was EUR 29 million as at May 2005.

(23) The French authorities also argued that AFR had devised measures 'for a recovery in its orders, business, operating performance and P&L'. The measures, which were described by the French authorities as a 'restructuring plan' were centred on three main areas: (a) a new sales strategy (aimed at achieving better positioning for AFR's products), (b) a reduction in the headcount and (c) a funding and recapitalisation plan. According to the French authorities, the implementation of these measures from 2004 on had brought benefits, leading notably to an increase in turnover (from EUR 22,6 million in 2004 to EUR 45 million in 2005) and an improvement in the bottom line, which remained, however, in the red (net loss down from EUR 11,9 million in 2004 to EUR 8,1 million in 2005).

([10]) OJ C 244, 1.10.2004, p. 2.

(*) All information in […] is confidential.

(24) It should also be noted that in the proceedings filed against the original AFR decision, the applicants mentioned in recital 7 claimed that AFR was not a firm in difficulty at the time when the aid was granted. In this respect, they argue that the Commission made a manifest error of assessment when it did not give sufficient consideration to AFR's 'recovery measures' (referred to in recital 23), the positive effects of which (reflected notably in a series of supply contracts awarded to AFR in 2004 and the first half of 2005) allegedly invalidate the Commission's arguments in support of the finding that AFR was a firm in difficulty.

5. ASSESSMENT OF THE AID IN THE LIGHT OF ARTICLE 107 OF THE TREATY

5.1. Existence of state aid

5.1.1. *State resources*

(25) Article 107(1) of the TFEU stipulates that, save as otherwise provided for in the Treaties, aid granted by a Member State or through state resources which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade among Member States, incompatible with the internal market.

(26) With regard to the repayable advances, the Commission notes the following.

(27) Article 107 of the TFEU does not apply only to aid granted by the national governments of Member States, but also to aid from local and regional authorities such as the Nord-Pas-de-Calais region or the Communauté d'agglomération du Douaisis. The funds of such authorities constitute state resources, and their decisions to grant the advances in question to AFR are attributable to the State.

5.1.2. *Aid favouring certain undertakings*

(28) The advances were granted at a time when AFR was in a difficult financial situation. In its decision to initiate the procedure, the Commission was of the opinion that, given its financial situation as described in recital 15 of this decision, AFR was a firm in difficulty within the meaning of the Guidelines when the aid was granted. It also noted that the advances were granted without any guarantee being lodged for their repayment, whereas the interest rates applied are supposed to reflect the interest rate applicable to loans 'backed by normal security' ([11]). It therefore considers that AFR, given its financial situation, would by no means have been able to obtain funding on such favourable terms on the credit market. The advances in question consequently confer an advantage on AFR.

(29) In this connection, it is worth noting that, basing themselves on the examples given in recital 24, the French authorities stated that AFR still had the confidence of its bankers and customers at the time the aid was granted. The Commission takes these comments to mean that France disputes the idea that AFR was unable to obtain funds on similar terms on the credit market (which amounts to disputing the notion that the repayable advances conferred an advantage on AFR) and *a fortiori* that AFR was a firm in difficulty within the meaning of the Guidelines at the time the repayable advances were granted.

(30) However, France's comments cannot alter the analysis made in the decision to initiate the formal investigation procedure, for the following reasons.

(31) The examples of credit quoted by the French authorities (such as the current account overdraft facility and the advance payments from customers) are not comparable to the repayable advances in question. A current account overdraft is a very short-term credit facility, unlike the repayable advances, which have a maturity of 3 years. These different types of credit are not, therefore, subject to the same risk analyses by creditors, and the fact that a debtor can obtain short-term credit is insufficient in assessing whether it could obtain a longer-term loan, the repayment of which depends on the debtor's ability to survive.

(32) Concerning the advance payments from customers, the Commission notes that they were counter-guaranteed by […], an independent institution, which means that customers and suppliers were not incurring any risks in connection with AFR's financial situation and therefore had no reason to subject the payment of these advances to an analysis of the financial soundness of the firm along the lines of that which would have been carried out by a creditor considering the possibility of providing an unsecured loan.

([11]) Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

(33) In conclusion, France's comments do not lead to the conclusion that AFR would have been able to obtain funds on similar terms on the credit market.

5.1.3. *Firm in difficulty*

(34) With regard to AFR's status as a firm in difficulty within the meaning of the Guidelines, the Commission makes the following observations.

(35) Point 10(a) of the Guidelines states that a firm is in difficulty where more than half of its registered capital has disappeared and more than one quarter of that capital has been lost over the preceding 12 months. This provision reflects the assumption that a company experiencing a massive loss in its registered capital will be unable to stem losses that will almost certainly condemn it to go out of business in the short or medium term. The Commission considers that this assumption logically applies *a fortiori* to a company that has lost all its registered capital and has negative capital and reserves.

(36) As shown by the financial data set out in recital 15 (which were not disputed by France during the formal investigation procedure), AFR had had negative capital and reserves since 2001 and had not, at the time the aid was granted, been able to reverse this trend and move back into a positive situation as regards capital and reserves. Under the circumstances, the Commission considers that AFR was a firm in difficulty within the meaning of point 10(a) of the Guidelines at the time the aid was granted.

(37) In addition, in the Biria judgment, the General Court ruled that a substantial reduction in capital is indeed an indication of difficulties. It thus held that the Commission was right in concluding that an undertaking with negative registered capital was a firm in difficulty, irrespective of the highly specific provisions of the Guidelines.

(38) In the alternative, the Commission notes that, at the time the aid was granted, AFR also fitted the definition of a firm in difficulty given in point 11 of the Guidelines, which states that, even when none of the circumstances set out in point 10 are present, a firm may still be considered to be in difficulty, in particular where the usual signs of a firm being in difficulty are present, such as increasing losses and diminishing turnover. However, point 11 of the Guidelines does stipulate that a firm in difficulty is eligible only where, demonstrably, it cannot recover through its own resources or with the funds it obtains from its owners/shareholders or from market sources. This provision is therefore a reminder that the status of a firm in difficulty must be determined in the light of all the relevant indicators, but with significant weight being given to the firm's ability to recover without state intervention. The Commission further notes that, in accordance with settled case-law ([12]), such 'symptoms' are neither exhaustive nor cumulative and that there is no minimum number of indicators which must exist for the criteria to be fulfilled.

(39) In this regard, the Commission notes (as is clear from the table in recital 15) that, from 2001, AFR experienced a steady decline in turnover and persistent losses. These are signs of a firm in difficulty within the meaning of point 11 of the Guidelines. In its decision to initiate the formal investigation procedure, the Commission had already noted these signs in support of its preliminary conclusion that AFR was a firm in difficulty. Moreover, the negative trend in AFR's financial situation is clear from the fact that, from January 2004 onwards, the firm was unable to pay by the due date taxes and social security contributions totalling EUR 4,3 million and therefore needed to ask the competent authorities for a moratorium and an arrangement to clear the debt.

(40) The principal elements cited by France that might constitute signs to the contrary are the loans granted to AFR (current account overdraft and advance payments) and the fact that AFR had received certain guarantees from […]. The Commission considers that these signs should be taken into account in the assessment, required by point 11 of the Guidelines, of the firm's ability to recover with the funds that it may have been able to obtain from market sources. In this respect, the Commission notes that:

— the fact that AFR had negative capital and reserves suggests that it was unable to overcome its difficulties with its own resources,

([12]) See judgment of the Court of First Instance in Case T-349/03 *Corsica Ferries France* v *Commission* [2005] ECR II-2197, paragraph 191; Commission Decision of 13 May 2003 in Case C 62/2000 Kahla, OJ L 227, 11.9.2003, p. 12, recital 117; and Commission Decision of 14 July 2004 in Case C 5/2003 Mobilcom, OJ L 116, 4.5.2005, p. 55, recitals 148-164; see also aforementioned *Biria* judgment, paragraphs 133-135.

— the French authorities indicated that AFR's shareholder, Arbel SA, despite the support it provided to AFR, was unable on its own to ensure the recovery of its subsidiary,

— with regard to financial market sources, the loans and guarantees cited by France mean at the most that AFR still had some ability to obtain limited amounts of short-term credit. However, given the extent of AFR's difficulties, particularly its need for capital and reserves, the loans cited are not sufficient to conclude that AFR could have resolved its difficulties with funds from market sources. It was, moreover, for this reason that the regional authorities and the Communauté were obliged to step in financially.

(41) As for the recovery measures implemented by AFR from 2004, the Commission observes, first, that the implementation of restructuring measures constitutes a condition for the compatibility of aid in relation to the Guidelines, providing that the measures comply with the Guidelines. They do not, however, necessarily affect the status of firm in difficulty, which is assessed on the financial soundness of the beneficiary at the time when the aid is granted. The assessment is essentially carried out using the most recent accounts established by the undertaking. In the present instance, the data for the 2004 financial year were used, giving rise, for the reasons mentioned above, to the conclusion that AFR was in difficulty at the time when the aid was granted.

(42) The French authorities (and the applicants who filed the challenge to the original decision) have argued that AFR's recovery measures had brought positive results in the months leading up to the granting of the repayable advances. The Commission notes, nonetheless, that the results referred to in support of this argument were limited, haphazard and concerned a relatively short period of time. In addition, the undertaking continued to post a sizeable net loss.

(43) Compared to the evidence attesting to severe difficulties which threatened the survival of the firm in the short or medium term, in particular the fact that AFR had had negative capital and reserves since 2001 (a very significant indicator covering a long period), the trends cited by the French authorities cannot be regarded as serious indications of a recovery in AFR's financial situation.

(44) Accordingly, it must be concluded that, at the time the aid was granted, AFR was in serious financial difficulties that threatened its survival in the short or medium term and that it was not in a position to address those difficulties without help from the public authorities.

(45) The Commission therefore takes the view, in the light of the above observations and, in particular, of the financial results shown in recital 15, that AFR was a firm in difficulty within the meaning of point 10 and, in the alternative, of point 11 of the Guidelines at the time the repayable advances were granted. Given the difficulties experienced by AFR, the Commission considers that AFR would not have been able to obtain funds on such advantageous terms on the credit market. The advances in question thus conferred an advantage on AFR by providing it with finance on more favourable terms than it would have been able to obtain on the credit market.

5.1.4. *Effect on trade and competition*

(46) The repayable advances confer an advantage on AFR in relation to other firms in a similar situation in that they are available only to AFR.

(47) The railway rolling stock manufacturing sector is characterised by the presence of several European operators and by trade within the European Union. Consequently, the advantage conferred on AFR is likely to distort competition and trade between Member States.

5.1.5. *Conclusion*

(48) In the light of the above observations, the Commission considers that the repayable advances granted to AFR constitute state aid within the meaning of Article 107(1) of the TFEU.

5.2. **Amount of the aid**

(49) In the case of aid granted in the form of loans to firms in difficulty, the aid element is made up of the difference between the interest rate actually applied and the interest rate at which the beneficiary company could have obtained the same loan on the open market.

(50) In line with the 1997 notice on reference rates, the Commission calculates reference rates which are supposed to reflect the level of market rates of interest for medium and long-term loans, backed by normal security. The notice also stressed the fact that the reference rate constitutes a floor rate, which can be raised in situations implying a particular risk, for example when a firm is in difficulty or when the normal security required by banks is not forthcoming. In such cases, the rate can be raised by a premium of 400 basis points or more. The 1997 notice on reference rates did not indicate whether different risk premiums could be added together to reflect various risks. Although a combination of different risk premiums cannot be ruled out, the Commission, in its decision, has to provide reasons for the method used in adding them together by way of analysis of common practice on the financial markets ([13]).

(51) In 2004, the auditors Deloitte & Touche GmbH Wirtschaftsprüfungsgesellschaft wrote a report ([14]) for the Commission (hereinafter 'the report'). On the basis of empirical research, the report ascertained the premiums prevailing on the market for various categories of risks relating to undertakings and transactions (backed by variable security). The report clearly demonstrated that the simultaneous combination of different risk factors (borrower solvency, security) resulted in various premiums which had to be added to the base rates.

(52) Following this report, the Commission's approach to calculating the aid element in loans was revised and fine-tuned in its 2008 Communication on the revision of the method for setting the reference and discount rates ([15]) (hereinafter 'the 2008 Communication on reference rates'). This Communication reflected the method advocated by the report and allowed for the addition of various premiums to base rates, depending on both the solvency of the undertaking and the security provided.

(53) And there is reason to note that in determining the aid element of the measures reference must be made to the concept of state aid and that, according to the settled jurisprudence of the Court of Justice, 'the concept of State aid must be applied to an objective situation, which must be appraised on the date on which the Commission takes its decision' ([16]).

(54) Consequently, the Commission takes the view that the appropriate method for determining the aid element is that contained in the 2008 Communication on reference rates and aims to assess the measures in question in the light of that Communication.

(55) The 2008 Communication on reference rates stipulated that a premium ruling out the existence of state aid in the case of a firm in difficulty providing a low level of security would amount to 1 000 basis points.

(56) As was shown in Section 5.1.3, the Commission holds that AFR was a firm in difficulty at the time when the (aid) measures were granted. The Commission observes, moreover, that no security was provided to back the repayable advances and the level of security can thus be viewed as low.

(57) Consequently, the aid element corresponds, in principle, to the difference between the base rate to which a premium of 1 000 basis points is applied and the rate at which the measure was granted. In its original decision, however, the Commission held that the risk premium applicable was 800 basis points. Since that decision was not challenged by the beneficiary, and none of the beneficiary's competitors has challenged the legality of that initial decision, and taking into account all of the circumstances of the present case, the Commission is of the view that there is no reason to increase the risk premium applicable in the present instance.

(58) The Commission concludes that the aid element corresponds to the difference between a risk premium of 800 basis points to the reference interest rate applicable and the rate of interest at which the measure was granted.

([13]) See the *Biria* judgment in Joined Cases T-102/07 and T-120/07 *Freistaat Sachsen and Others* v *Commission*, not yet reported, paragraphs 218-222.

([14]) 'Study by Deloitte & Touche GmbH in relation to the updating of the reference rates of interest applied to State aid control in the EU', October 2004. http://ec.europa.eu/competition/state_aid/studies_reports/full_report.pdf

([15]) OJ C 14, 19.1.2008, p. 6.

([16]) See the judgment of the Court of Justice in Joined Cases C-341/06 P and C-342/06 P *Chronopost and La Poste* v *UFEX and Others* [2008] ECR I-4777, paragraph 95.

5.3. **Compatibility of the aid with the internal market**

(59) Given AFR's financial situation at the time the aid was granted, as illustrated by the table in recital 15 (running at a loss for several years, negative capital and reserves, falling turnover), the Commission considers that AFR was a firm in difficulty within the meaning of the Guidelines at the time the repayable advances were granted. For the reasons set out in recitals 41 to 44, France's comments do not alter this analysis.

(60) It is true that, in 2005, AFR was part of a group controlled by the Arbel SA holding company. Aside from its railways division (made up of AFR and Lormafer), the group included a construction division made up of firms specialising in the manufacture of windows for the construction industry. However, it is clear from the information supplied by the French authorities in the correspondence exchanged before the initiation of the formal investigation procedure that the difficulties encountered by AFR were specific to it within the group as its activity had no connection with the construction division. Moreover, the Commission notes that AFR's difficulties seem to have been too great for the group to overcome, given its mediocre results. It therefore considers that point 13 of the Guidelines is no obstacle to AFR being considered eligible for rescue and restructuring aid, despite its being part of a group.

(61) The compatibility of the aid must therefore be assessed in the light of the Guidelines.

(62) The Commission observes that the compatibility conditions for restructuring aid laid down in the Guidelines are not fulfilled in view of the following.

(63) The French authorities did not present it with a restructuring plan in accordance with points 34 to 37 of the Guidelines. The restructuring measures mentioned in recital 24, presented by the French authorities as a 'restructuring plan' that had been implemented from 2004 on (see recital 24) were not, at the time the measures were granted, part of a viable restructuring plan to which the Member State concerned committed itself (point 35 of the Guidelines). Contrary to what is laid down in the Guidelines, the supposed plan made no mention of a market survey. Such a survey is required to verify the scope for a return to viability and for the internal restructuring measures proposed (point 35 of the Guidelines). Moreover, there is no evidence that a restructuring plan existed in July 2005 which described 'the circumstances that led to the company's difficulties' in order to act as 'a basis for assessing whether the proposed measures [were] appropriate' (point 36 of the Restructuring Guidelines). In addition, the supposed plan did not appear to contain any compensatory measures, as required by point 38 of the Guidelines.

(64) In view of the reasons given in the above recital, the Commission is of the view that it was not informed of any restructuring plan which complied with the Guidelines.

(65) Nor does the aid appear to fulfil the compatibility conditions for rescue aid provided for by the Guidelines, given that the repayable advances were granted for a period of more than 6 months (see point 25 of the Guidelines).

(66) To conclude, the aid in question is not compatible with the internal market.

6. **CONCLUSION**

(67) The Commission finds that France has unlawfully implemented the aid in question in breach of Article 108(3) of the TFEU. As the aid is incompatible with the internal market, France must bring it to an end and recover from the beneficiary the amounts already paid,

HAS ADOPTED THIS DECISION:

Article 1

Commission Decision C(2008)1089 final of 2 April 2008 in case C 38/2007 is hereby withdrawn.

Article 2

The state aid unlawfully implemented by France, in breach of Article 108(3) of the TFEU, for Arbel Fauvet Rail SA is incompatible with the internal market.

Article 3

1. France shall recover the aid referred to in Article 2 from the beneficiary.

2. The sums to be recovered shall bear interest from the date on which they were put at the disposal of the beneficiary until their actual recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Commission Regulation (EC) No 794/2004 ([17]).

4. France shall cancel all outstanding payments of the aid referred to in Article 2 with effect from the date of notification of this Decision.

Article 4

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.

2. France shall ensure that this Decision is implemented within 4 months following the date of its notification.

Article 5

1. Within 2 months following notification of this Decision, France shall submit the following information to the Commission:

(a) the total amount (principal and interest) to be recovered from the beneficiary;

(b) a detailed description of the measures already taken and planned to comply with this decision;

(c) the documents demonstrating that the beneficiary has been ordered to repay the aid.

2. France shall keep the Commission informed of the progress of the national measures taken to implement this Decision until recovery of the aid referred to in Article 1 has been completed. It shall immediately forward to the Commission, at the latter's request, any information on the measures already taken and planned to comply with this Decision, as well as detailed information concerning the amounts of aid and interest already recovered from the beneficiary.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 23 June 2010.

For the Commission
Joaquín ALMUNIA
Vice-President

([17]) Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).