

Commission Decision of 10 October 2007 on the State aid implemented by France in connection with the reform of the arrangements for financing the retirement pensions of civil servants working for La Poste (notified under document number C(2007) 4545) (Only the French version is authentic) (Text with EEA relevance) (2008/204/EC)

- Article 1 The cap imposed in 1998 on the repayment by La...
- Article 2 (1) The competitively fair rate ('TEC') calculated each year in...
- Article 3 France shall inform the Commission, within two months of notification...
- Article 4 This Decision is addressed to the French Republic.
Signature

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- (1) OJ C 296, 6.12.2006, p. 6.
- (2) See footnote 1.
- (3) Confidential data.
- (4) OJ L 15, 21.1.1998, p. 14. Directive as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).
- (5) OJ L 176, 5.7.2002, p. 21.
- (6) Proposal for a European Parliament and Council Directive amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (COM(2006) 594 of 18 October 2006).
- (7) Study entitled ‘*The Impact on Universal Service of the Full Market Accomplishment of the Postal Internal Market in 2009 — Annexes — May 2006*’ and carried out on behalf of the Commission.
- (8) Report by the Court of Auditors, ‘*Les pensions des fonctionnaires civils de l’État*’, April 2003.
- (9) According to the Court of Auditors, this implicit rate would also be incomplete as it does not take account of the scheme's management costs.
- (10) The ‘employer's’ contribution payable in 2003 for private-sector employees was 15,46 % for non-executive staff and 15,60 % for executive staff.
- (11) Article 30 of the 1990 Law reads as follows: ‘*The payment and servicing of pensions granted under the Civilian and Military Retirement Pensions Code to civil servants of La Poste [...] shall be effected by the State.*’
- (12) ‘Civil servants assigned to La Poste’ means those civil servants who are either working for La Poste or who have retired from La Poste or from the postal administration.
- (13) Recruitments by La Poste since 1990:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Civil servants	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]
Private-law employees	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (14) Despite the stabilisation in constant euros since 1998.
- (15) Amending Finance Law No 2006-1771 of 30 December 2006.
- (16) Decree No 2007-3 of 1 January 2007 on the arrangements for determining and paying the employer's contribution — in full discharge of liabilities — in respect of civil servants working for La Poste.
- (17) This public body was set up by Decree No 2006-1625 of 19 December 2006.
- (18) For the French authorities, the common risks (including old age, family, sickness, maternity, accidents at work and vocational training) were those covered by social security contributions and tax payments, including under contractual rules, in the postal and banking sectors (the comparison includes the banking top-up, which is an additional contribution paid by banks of up to 4 % of the wage and salary bill). Excluded from it were current contributions to provide employment risk cover and cover against the risk of non-payment of wages in the event of insolvency or winding-up (*Association pour la Gestion du régime de garantie des créances des Salariés* — AGS). Conversely, the exceptional solidarity contribution introduced by Law No 82-939 of 4 November 1982 on the exceptional solidarity contribution for unemployed workers, which was paid only by civil servants, was left out of the comparison. In addition, La Poste itself pays the cash benefits for absence from work due to sickness, maternity, paternity and adoption of the civil servants employed by it, whereas its competitors pay contributions for such benefits. The cash benefits paid by La Poste account for over [...] % of gross index-related salaries (*traitement indiciaire brut*), corresponding to the difference between the contribution rates for private-law employees and those for civil servants. They were not taken into account in the TEC notified initially whereas the contributions paid by competitors were.

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- (19) The gross index-related salary is the main component of civil servants' compensation and depends on their index, which is based on their seniority in the service. The components of civil servants' compensation are laid down by Article 20 of Law No 83-634 of 13 July 1983 on the rights and obligations of civil servants.
- (20) This category, which has no legal personality, manages all the human and material resources corresponding to the services provided for in the agreements between La Poste and La Banque Postale (e.g. conditions under which la Banque Postale has recourse to the staff of La Poste for its commercial activities).
- (21) It should be noted that the rate applicable to the 'banking' sector will not be further reduced once it is equal to the 'banking sector' TEC (estimated at [...] % on the basis of the 2005 figures).
- (22) See Article 150 of the Amending Finance Law 2006.
- (23) Case T-157-01 *Danske Busvognmænd v Commission* [2004] ECR II-917.
- (24) Combust, an undertaking charged by the State with the task of managing public bus transport operations in Denmark, employed officials who maintained their employment relationship with the State while being at the disposal of Combust under a secondment scheme. Since the officials were working for Combust, it had to compensate the State for the remuneration and pensions it paid to them. In September 1998 the State concluded with Combust an agreement governing the conditions for a change of status from civil servant to employee under contract for the civil servants working for Combust. That agreement consisted essentially in giving civil servants the choice, as of 1 April 1999, between working on a contract basis for Combust or being assigned to another suitable post within the Danish State Railways (DSB). In return for their waiving the rights deriving from their civil servant status upon transfer to employment on a contract basis for Combust, the civil servants concerned demanded a single payment totalling an estimated amount of DKK 100 million. The payment was made to the officials concerned in 1998.
- (25) Commission Decision 2005/145/EC of 16 December 2003 on the State aid granted by France to EDF and to the electricity and gas industries (OJ L 49, 22.2.2005, p. 9).
- (26) Among the advantages for La Poste, the comments mention the absence of unemployment-insurance contributions for the civil servants, a lower gross remuneration for them compared with private-sector employees, the stability enjoyed by civil servants during periods of growth, the possibilities of early retirement or re-assignment for them during periods of recession, the more favourable retirement conditions for them and the exclusive rights enjoyed by La Poste.
- (27) According to the judgment in *Deggendorf* (Joined Cases T-244/93 and T-486/93 *Textilwerke Deggendorf* [1995] ECR II-2265), this last point would mean that no new aid could be authorised until such time as La Poste had repaid the unlawful aid received previously.
- (28) OJ L 83, 27.3.1999, p. 1. Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).
- (29) OJ C 244, 1.10.2004, p. 2.
- (30) Case C-237/04 *Enirisorse v Sotacarbo* [2006] ECR I-2843, paragraphs 46-51.
- (31) These estimates present methodological limitations due to the nature of the exercise.
- (32) Notably as a result of higher salaries.
- (33) The figures for the period 1998-2004 have been calculated by retropolation on the basis of the 2005 figures. The wage and salary bills for civil servants, including gross index-related salaries, are those recorded for the year for which the TEC is calculated. The breakdown by activity as between executive and non-executive staff has been calculated in proportion to the wage and salary bill for civil servants and the index-related salaries. The contributions are those applicable on 1 January of the year for which the TEC is calculated. The Commission considers the methodology applied to be both consistent and prudent.
- (34) The normal annual actuarial cost corresponds to the rights acquired in the year under consideration in return for the activity performed during the financial year.
- (35) Case T-67/94 *Ladbroke v Commission* [1998] ECR II-1, paragraph 109.
- (36) OJ L 178, 8.7.1988, p. 5.
- (37) OJ L 386, 30.12.1989, p. 1. Directive repealed by European Parliament and Council Directive 2000/12/EC (OJ L 126, 26.5.2000, p. 1). Directive 2000/12/EC has itself been replaced by European

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Parliament and Council Directive 2006/48/EC of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (OJ L 177, 30.6.2006, p. 1).

- (38) *Les comptes et la gestion de La Poste (1991-2002)*, October 2003.
- (39) The La Poste Group Financial Report 2005 thus refers to ‘the prospect of a total opening up to competition in 2009’ as one element in the development plan for each sector.
- (40) ‘The EU postal sector is currently undergoing significant changes including gradual market opening, the rapid growth and falling costs of substitutive electronic media ...’ (Commission staff working document, Accompanying document to the proposal for a Directive of the European Parliament and the Council amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services — Executive Summary of the Impact Assessment (SEC(2006) 1292 of 18 October 2006).
- (41) Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41.
- (42) Case 390/98 *H.J. Banks & Co. Ltd v The Coal Authority and Secretary of State for Trade and Industry* [2001] ECR I-6117.
- (43) Case C-143/99 *Adria-Wien Pipeline GmbH and Wietersdorfer & Peggauer Zementwerke* [2001] ECR I-8365, paragraph 41.
- (44) This is also a response to an observation by [...] to the effect that, if the charge relating to the employment of civil servants is to be assessed as an ‘abnormal’ charge, all the advantages and disadvantages associated with the employment of those civil servants need to be taken into account. The Commission would also make the point here that, in practice, this would be impossible.
- (45) In France a distinction in principle is made within public establishments between administrative public establishments (EPAs), which perform the traditional tasks of the administration, and industrial and commercial public establishments (EPICs), which engage in activities of an economic nature. A number of public establishments have not been classified by the law as either EPAs or EPICs. Such is the case with La Poste. However, the Court of Cassation, in its ruling of 18 January 2001 (second civil chamber), accepted the principle whereby La Poste is treated as an EPIC. See Commission recommendation of 4 October 2006 proposing the adoption of appropriate measures regarding the State's unlimited guarantee in favour of La Post (Case E 15/2005).
- (46) The tariffs applicable are fixed according to principles laid down by Directive 97/67/EC. In particular, Article 12 of the Directive stipulates that prices must be geared to costs and that Member States may decide that a uniform tariff should be applied throughout their national territory.
- (47) Letter SG(95) D/9783 of 25 July 1995.
- (48) See paragraph 48 of the ruling.
- (49) See paragraph 63 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty.
- (50) Such a conclusion would not perhaps have been drawn if an exogenous comparator could have been identified. However, this has not been possible in connection with the examination of any selective advantage within the meaning of Article 87(1) of the Treaty.
- (51) See *Combus*, referred to above, paragraph 57.
- (52) Case 173/73, *Italy v Commission* [1974] ECR 709, paragraph 13; Case C-310/85 *Deufil v Commission* [1987] ECR 901, paragraph 8; Case C-241/94 *France v Commission* [1996] ECR I-4551, paragraph 20.
- (53) Case C-387/92 *Banco Exterior* [1994] ECR I-877, paragraph 13; Case C-241/94, referred to above, paragraph 34.
- (54) Case C-5/01 *Belgique v Commission* [2002] ECR I-1191, point 39.
- (55) Case 30/59 *Gezamenlijke Steenkolenmijnen in Limburg v Haute Autorité* [1961] ECR 3, points 29 and 30; Case C-173/73, referred to above, points 12 and 13; Case C-241/94, referred to above, points 29 and 35; Case C-251/97 *France v Commission* [1999] ECR I-6639, points 40, 46 and 47.
- (56) This is an essential difference from the Commission Decision of 28 March 2003 in Case N 483/2000 — *Netherlands, Sale Ingeniebureau Zuid-Holland* (OJ C 5, 8.1.2002, p. 2), referred to in the decision to initiate the procedure and in which the financial compensation paid by the Dutch

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- authorities was paid to the employees who lost their status as provincial civil servants and their entitlement to the associated employment conditions.
- (57) The two banks concerned are Crédit agricole and BNP-Paribas.
- (58) France also puts forward general arguments regarding the different nature of the activities of La Banque Postale as compared with the large all-purpose banks (which also conduct investment and financing activities and have a greater presence at the upper end of the retail banking sector). However, these factors are not quantified by France and, as a result, no unequivocal conclusion can be drawn from the arguments put forward.
- (59) Two undertakings, La Poste and France Télécom, applied the retirement arrangements laid down by the 1990 Law. The arrangements applicable to France Télécom were amended in 1996-1997. As a result, only La Poste applied the arrangements set out in the 1990 Law.
- (60) Case C-126/01 *GEMO S.A.* [2003] ECR I-13769, paragraph 33.
- (61) See Joined Cases T-298/97, T-312/97, T-313/97, T-315/97, T-600/97 to 607/97, T-1/98, T-3/98 to T-6/98 and T-23/98 *Alzetta Mauro v Commission* [2000] ECR II-2319, paragraph 147.
- (62) Since La Poste has no discretion in the matter and given the overall comparable nature of the benefits paid under the general scheme and those under the arrangements for civil servants (in particular, Law No 2003-775 of 21 August 2003 on the reform of retirement pensions provides for the period of insurance required in the civil service in order to receive a full retirement pension to be aligned on the general scheme), the Commission considers that comparison of the benefits offered by the scheme in question is irrelevant. Moreover, such a comparison is not possible since it would take into account indirect and uncertain factors such as comparison of the advantages and disadvantages of employing civil servants as opposed to employees under private law. Be that as it may, the real issue in terms of competition is to analyse what affects the accounts of La Poste relative to its competitors, viz. the contributions payable.
- (63) What is more, since 1998 La Poste has paid aggregate contributions higher than those that would have resulted from the adjusted TEC.
- (64) See in this connection Annex 2 ('*Comparison of the wage contributions for civil servants and for ordinary-law employees*') and Annex 3 ('*Comparison of the employer's contributions La Poste/private-law employer*') in the decision to initiate the procedure.
- (65) Even though the implementing decrees have not yet been adopted, Law No 2007-148 of 2 February 2007 on the modernisation of the civil service is designed to remove certain regulatory obstacles resulting from the statutory assignment rules and to lay down for La Poste arrangements similar to those applicable to France Télécom. France is of the opinion that the conditions laid down by the Law should ensure that any movements of civil servants working for La Poste to a public administration are 'limited in number'.
- (66) The Commission Decision of 21 December 2005 on the measures involved in setting up and operating La Banque Postale (letter C(2005) 5412) endorsed the system for assigning La Poste's costs to La Banque Postale in the analytical accounts.
- (67) In 2005, for example, the difference between the amount payable under the 1990 Law and the adjusted TEC as reconstituted is [...]. For 2010 Standard & Poor's estimates the saving for La Poste at EUR 700 million.
- (68) The State aid rules governing public service compensation prohibits over-compensation. It is also pointed out that the maintenance of reserved services appears justified on the grounds of ensuring the operation of the universal service under financially balanced conditions (see recital 16 to Directive 97/67/EC).
- (69) See, for example, the rating given by Standard & Poor's in April 2007 to La Poste.
- (70) In 1998 liberalisation in the mail sector was limited to letters weighing more than 350 g and costing less than five times the public tariff applicable to an item of correspondence in the first weight step of the fastest standard category (where such category exists). In 2003 the weight limit was reduced to 100 g and the price to less than three times the public tariff and then in 2006 to 50 g and the price to less than two and a half times the public tariff.
- (71) Similarly, in the Commission Decision in Case N 405/2005, *Greece — Financial contribution to voluntary early retirement scheme of OTE* (OJ C 151, 29.6.2006, p. 2), the Commission took

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- the view that the implementation of the scheme (VRS) was a necessary stage in the continuing privatisation of the undertaking.
- (72) See, for example, recitals 5 and 6 to the proposal for a European Parliament and Council Directive amending Directive 97/67/EC concerning the full accomplishment of the internal market of Community postal services (COM(2006) 594, 18.10.2006).
- (73) France is unable to provide an accurate figure because, for example, staff who acquire pension rights have careers which see them move from the reserved sector to a liberalised sector and analytical accounting is not designed to follow the activity of staff on the basis of a civil servants/employees breakdown but to keep separate accounts for reserved and non-reserved sectors.
- (74) Commission Decision of 10 May 2007 on the special rights to distribute *livret A* or *livret bleu* (C(2007) 2110) gives France nine months in which to discontinue this distribution system.
- (75) Even if the 2006 results show an improvement, La Poste's financial situation is not flourishing. During the period 1991-2005 the profit-turnover ratio averaged only 0,5 %. In the reserved sector it was 6,8 % in the period 2000-2004 although the Commission has accepted as a normal level of profitability a much higher ratio in the *Post Office Limited* case, where distribution activities overlap in part with the activities of La Poste. Moreover, no private investor would have built a network similar to the postal network, which is not financially viable and is maintained only because of the SGEI assigned to La Poste and the public-service compensation paid by the State (Standard & Poor's points out here that the network operated by La Poste makes annual losses of EUR 350 million despite compensation of EUR 130 million in the form of tax exemptions).
- (76) [OJ L 243, 11.9.2002, p. 1.](#)

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