

COMMISSION

COMMISSION DECISION

of 12 January 1983

on an aid scheme in favour of the textile and clothing industry in France

(Only the French text is authentic)

(83/245/EEC)

THE COMMISSION OF THE EUROPEAN
COMMUNITIES,

Having regard to the Treaty establishing the European
Economic Community, and in particular the first
subparagraph of Article 93 (2) thereof,

After giving notice, in accordance with that Article, to
the parties concerned to submit their comments, and
having regard to these comments,

Whereas :

I

On 19 February 1982 the French Government notified
to the Commission a draft Order introducing an aid
scheme for the textile and clothing industry, under
which the French State would take over part of the
burden of social security contributions paid by
employers in the industry. The rules for implementing
this scheme, promised by the French Government,
were in fact notified on 16 April 1982.

However, by Order No 204 of 1 March 1982 the
abovementioned aid scheme entered into force, and
the implementing rules were introduced on 16 April
1982 by Decree No 82340, which was published in
the *Journal Officiel de la République française* on 17
April 1982. By this action the French Government
failed to fulfil its obligations under Article 93 (3).

The aid scheme provides for the State to take over
responsibility for part of the social security contribu-
tions, payable by employers in the textile and clothing
industry, corresponding to 10 % of the total amount
of remuneration, subject to the ceiling, used as the

basis for calculating the said contributions, where the
firms in question undertake to maintain the level of
employment and to attain a certain minimum level of
investment. This relief is increased to 12 % where the
firm in question also undertakes to create new jobs.

Firms whose difficulties are liable to affect the
economic and social balance of a region may obtain
relief of 8 % without being required to meet the same
conditions relating to employment and investment,
provided that they present a modernization and adap-
tation plan which protects jobs and is approved by the
competent administrative authority.

This relief from social security contributions is subject
to the requirement that a 12-month contract, renew-
able for a further 12 months, be concluded between
the State and the employer concerned.

Following an initial scrutiny, the Commission con-
sidered that the scheme was not compatible with the
common market and accordingly decided to initiate
the procedure provided for in the first subparagraph of
Article 93 (2) of the EEC Treaty. By letter dated 14
May 1982 it therefore gave notice to the French
Government to submit its comments.

II

Following the Commission's initiation of the Article
93 (2) procedure, the French Government submitted
its comments by letter dated 16 July 1982.

In that letter the French Government stressed the
difficulties which the textile and clothing industry in
France was facing in terms of job losses, output and
import penetration, and the likelihood that such diffi-

culties would increase when Spain and Portugal joined the Community. It claims that the introduction of new aids is justified by the high level of social security contributions paid by employers in France in comparison with the other Community Member States. It lays particular emphasis on the fact that the scheme in question is a special measure designed to stimulate investment and maintain employment. It does not share the Commission's view that it is an operating aid.

Within the context of the same procedure, five Member States submitted their comments, pointing out that the French aids could be cumulated with existing aids and took account neither of the need for genuine restructuring nor of the Community interest, and were, by their intensity and form, liable to transfer difficulties to other Member States without even promoting structural reform of the French industry.

Also within the context of the Article 93 procedure, three industry federations expressed the view that the French measures, which aimed to increase investment and employment across the board, would inevitably lead to an artificial increase in production capacity, adversely affecting firms in other Member States whose difficulties were at least as great as those of the textile and clothing industry in France.

III

A scheme by which the State takes over responsibility for social security contributions payable by firms, when it concerns particular economic sectors only, is equivalent to an industry aid, since it reduces the costs which such firms would normally have to bear. It is well known that such aids to the textile and clothing industry, which is in a difficult situation throughout the Community and in which competition between Member States is very keen, are liable to affect trade between Member States and distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty by favouring French undertakings or their production.

Article 92 (1) of the EEC Treaty lays down the principle that aids meeting the criteria it describes are incompatible with the common market. The exemptions from this incompatibility allowed for by Article 92 (3), which are the only ones which could apply to

this case, specify objectives which are in the interest of the Community and not merely of particular sectors of the national economy. These exemptions must be interpreted strictly when any regional or industry aid scheme or any individual case of application of a general aid scheme is scrutinized and, in particular, they may be granted only if the Commission is able to establish that, without the aids, the free play of market forces alone would not be sufficient to ensure that recipient firms contributed to the realization of one of the objectives specified in these provisions.

To allow these exemptions for aids which do not offer a compensating benefit of this kind would be tantamount to giving an undue advantage to certain Member States, thus allowing trading conditions between Member States to be affected and distorting competition, without any justification on grounds of the Community interest.

In applying the above principles to the scrutiny of aid schemes, the Commission must satisfy itself that the recipient firms are providing a compensating benefit justifying the grant of aid, in the sense that the aid is necessary to promote the realization of one of the objectives set out in Article 92 (3) of the EEC Treaty. Where this cannot be demonstrated, it is clear that the aid does not contribute to attaining the objectives of the exemptions, but serves to improve the financial situation of the firms in question.

In this case the aid scheme does not demonstrate the existence of such compensating benefit on the part of the recipient firms.

The French Government has not been able to give, nor the Commission to detect, any justification for finding that the aid in question qualifies for one of the exemptions provided for in Article 92 (3) of the EEC Treaty.

With regard to the exemptions provided for in Article 92 (3) (a) and (c) of the EEC Treaty relating to aids intended to promote or facilitate the development of certain areas, it must be observed that the standard of living in France is not abnormally low nor is there serious under-employment within the meaning of the exemption specified in point (a); and because of its scope, namely all the firms in a given economic sector, irrespective of where they are located, the aid scheme is not intended for the development of certain areas as provided for in the exemption under point (c).

As regards the exemptions provided for in Article 92 (3) (b) of the EEC Treaty, it is evident that the scheme in question is not intended to promote the execution of an important project of common European interest, or to remedy a serious disturbance in the French economy; moreover, nothing in the socio-economic data available on France provides grounds for concluding that there exists a serious disturbance in its economy, such as is referred to in Article 92 (3) (b).

Furthermore, a scheme under which the State takes over responsibility for social security contributions payable by firms in a particular sector of industry is equivalent to a purely protective operating aid to the firms concerned. As a general rule the Commission has always been opposed to operating aids, since they do not normally of themselves fulfil the conditions to qualify for exemption under Article 92 (3) (c), in that they are not likely to facilitate the 'development' of the economic activity in question, as stipulated in that provision. The fact that the aid is equivalent to an operating aid is clearly evident since the reduction in social security contributions applies to all employees and not merely to those in newly-created jobs.

These aid measures could cease to be regarded as equivalent to an operating aid and qualify for a derogation from the principle that aids are incompatible with the common market only if, given the rules and criteria adopted for granting the aid, the Commission were able to detect some consideration moving from the recipient firms, in other words if the relief from social security contributions granted by the State were linked to some special effort to be made by the firm, which accorded with the Community interest.

In the Community approaches to aids to the textile and clothing industry, worked out in consultation with the Member States in 1971 and 1977, the Commission has specified the objectives to be pursued in the Community interest. These guidelines are aimed primarily at ensuring a selective rationalization of firms in the industry, a standstill in production capacity in branches of the industry already in structural surplus, the encouragement of conversion both outside and inside the industry, and a progressive reduction in aids. They exclude any assistance of a purely protective nature which would merely transfer one Member State's difficulties to another.

The French aid scheme to the textile and clothing industry, under which the State takes over responsibility for social security contributions payable by firms,

applies to all firms in the industry which implement a modernization and adaptation programme. The aid is granted, on the basis of contracts between the employers and the State, on the sole condition that the firm undertakes to maintain or increase its level of employment and investment. No further consideration is required of the firms, either in terms of restructuring or in terms of capacity cuts in branches of the industry which are already in surplus at Community level or in which the French industry is particularly strong. The scheme does not allow for any selectivity either in the nature of the investment, which may therefore simply involve replacing existing machinery and plant, or in the choice of recipients by reference to their long-term financial viability. There is no direct relationship between the number of jobs maintained or created and the amount of the aid, since it concerns the total workforce irrespective of the number of jobs maintained or created. Finally, there is no provision for the aid to be progressively reduced during the period for which it is granted and for which it can, moreover, be cumulated with existing industry and general aids. It is therefore evident that the aid scheme in question does not conform to the objectives defined in the Community approaches to aids to the textile and clothing industry and that the conditions imposed on the firms in return for the aid are insufficient.

Consequently, the aids in question, in view of their form and the absence of any valid compensatory justification in the Community interest, and in an industry in which, moreover, competition within the Community is very keen, are liable to affect trade to an extent contrary to the common interest. Accordingly, there is no factor which could justify the Commission in exempting the aid scheme from the rule that aids are incompatible with the common market, by exempting it under Article 92 (3) (c) of the EEC Treaty.

The arguments put forward by the French Government in submitting its comments are not such as could change this position. While it is true that the situation of the textile and clothing industry in France has deteriorated in recent years, this is common to all the textile and clothing industries in the Community, and the difficulties encountered by firms in other Member States are at least equal to if not greater than those encountered by French firms. This is true both of the deficit on intra-Community trade and the rate of penetration of imports relative to consumption, as well as of job losses in the industry. Although the social security contributions payable by employers in France are high, French wages in the textile and clothing industry are among the lowest in the

Community, with the result that with regard to total wage costs French firms are currently at an advantage over most firms in the other Member States. In any event, although the general conditions in which firms operate vary from one Community country to another, a Member State cannot isolate a particular factor in these general conditions and provide aid to offset the additional costs thereby resulting for its firms in comparison with their competitors in other Member States.

In view of the foregoing, the French aid scheme for the textile and clothing industry, introduced by Order No 204 of 1 March 1982 and Decree No 82340 of 16 April 1982, is incompatible with the common market under Article 92 of the EEC Treaty and must accordingly be abolished. The French Government must not therefore conclude any contract as provided for in the abovementioned provisions and must terminate any contracts already concluded with firms in breach of Article 93 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic shall, within one month of notification of this Decision, abolish the aid scheme in

favour of the textile and clothing industry under which the State takes over responsibility for part of the social security contributions payable by employers in the industry, introduced by Order No 204 of 1 March 1982, the implementing rules for which were laid down by Decree No 82340 of 16 April 1982.

Furthermore, the French Republic shall cease to grant aid under the scheme in question from the date of notification of this Decision.

Article 2

The French Republic shall notify the Commission of the provisions which it has adopted to comply with this Decision no later than the expiry of the period fixed in the first paragraph of Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 12 January 1983.

For the Commission

Frans ANDRIESEN

Member of the Commission