

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 15 July 1987

on aid granted by the French Government to a producer of textiles, clothing and paper products — Boussac Saint Frères

(Only the French text is authentic)

(87/585/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,

Having given notice to the parties concerned to submit their comments as provided for in the said Article 93, and having regard to those comments,

Whereas :

I

Upon repeated requests from the Commission, the French Government belatedly informed the Commission by telex of 22 March 1984 and letter of 23 August 1984 that financial assistance had been granted to the third largest textile, clothing and paper producer in France.

The aids had been granted between June 1982 and August 1984, taking the following forms :

— a participation in the firm's capital amounting to FF 100,1 million by IDI (Institut de Développement Industriel) which later had been transferred to Sopari (Société de Participation et de Restructuration Industrielle), a 99,4 % subsidiary of IDI, which itself is State-owned,

— capital advances (*comptes courants d'actionnaire*) by Sopari amounting to FF 380 million, granted as loans with reduced interest rate and State guarantee.

According to the French Government's initial statements, these financial injections had been considered necessary for the financing of investments which, however, were not quantified nor described as to their substance.

On the basis of the information available to the Commission at the time, additional aids were about to be paid.

Following an initial scrutiny, the Commission considered that the aid, which had already been granted between 1982 and 1984 and which had not been notified to the Commission beforehand, was illegal as the French Government had failed to fulfil its obligations under Article 93 (3) of the EEC Treaty. The Commission also took the view that the interventions by IDI/Sopari in favour of the firm in question were to be considered as rescue aid in view of the company's financial record and situation. As it is the Commission's well-established policy that rescue aid pending a restructuring plan can only be granted for a short period and in the form of credit or loans at market rate, of which all Member States had been informed by letter of 24 January 1979, the aid in question in this case did not meet the conditions set out by the Commission.

The Commission also considered that the aid which had already been paid was granted in contravention of the conditions set by itself when accepting on 21 December 1983 the French sectoral aid scheme in favour of the textile and clothing industry (reduction of social charges).

The Commission took the view that, in the situation the whole of the Community textile and clothing industry was in at the time, all the aid in question, including the aids already granted and also that envisaged, would not promote a development which from the Community point of view would be adequate to counteract their trade-distorting effects and that the aid — by favouring the undertaking in question in a sector where there is a high volume of trade and where competition is very keen — was liable to affect trade between Member States and was, thus, incompatible with the common market.

Therefore, the Commission took the view that all the aid would not meet the conditions which must be fulfilled for one of the exceptions laid down in Article 92 to apply and initiated the procedure provided for in the first subparagraph of Article 93 (2) of the EEC Treaty.

By letter of 3 December 1984, it gave the French Government notice to submit its comments. The other Member States were informed on 4 January 1985 and interested parties on 19 January 1985.

II

The French Government, in submitting its comments under the procedure provided for in Article 93 (2) of the EEC Treaty by letters of 4 February, 4 June, 11 October 1985, 5 February, 19 June and 21 July 1986, 27 March and 21 May 1987, and during several bilateral meetings, namely on 18 October 1985, 14 May and 4 July 1986, and 27 February, 13 and 19 March, and 30 April 1987, pointed to the restructuring efforts undertaken by the company which had led to the closure of several production sites, a considerable reduction in employment, the elimination of several product lines and the transfer of certain production sites to independent producers. The French Government also mentioned a so-called strategic plan which was being pursued by the firm.

By letter of 21 July 1986, confirmed by letter of 27 March 1987, the French Government informed the Commission that, beyond the financial assistance mentioned in its letter of 23 August 1984, additional aids had been granted in the meantime. A total sum of FF 999,9 million had been paid taking the following forms:

- capital injections of FF 333,1 million by Sopari in July 1982, after transfer from IDI, in order to restore and increase the company's capital,
- further capital injections of FF 300 million (FF 110 million in June 1984 and FF 190 million in January 1985) by Sopari for the same purpose and carrying a right to dividends to be paid during the years 1991 to 2005,

- advances by Sopari of FF 36,8 million which were granted in June 1984 and are to be reimbursed from the end of 1986 onwards,
- low-interest loans of FF 100 million (December 1982), FF 60 million (December 1983), FF 35 million (December 1984), and FF 100 million (January 1985),
- a reduction in social charges amounting to FF 35 million granted in June 1983.

It was also pointed out that several investment projects in the paper sector undertaken at the production sites Roanne and Saint-Ouen benefited from a regional planning premium (*prime d'aménagement du territoire — PAT*) amounting to FF 30 million.

In contrast to its initial statements of 22 March 1984 and 23 August 1984, the French Government indicated under the procedure that, apart from the interventions which were required to restore the finances of the firm (FF 633,1 million) and which are to be characterized as normal, market economy behaviour not falling under Article 92 (1) of the EEC Treaty, the other interventions were not granted for specific purposes but in general to rationalize the company as far as its textile business is concerned. This effort to rationalize included textile investments, dismissal and early retirement of workers, retraining of workers, closure and transfer of production sites.

Four other Member States, six federations and one individual firm commented under the procedure.

III

The interventions by Sopari in favour of the firm in question took place at the explicit request of, and were subsequently specifically and directly compensated by, the French Government by way of reimbursement. Where it is apparent that a public authority which injects capital by acquiring a holding in a company is not merely providing equity capital under normal market economy conditions, the case has to be assessed in the light of Article 92. This position has again been made clear in the Commission's letter of 17 September 1984 to Member States. From the Commission approach to public holdings in company capital, which was annexed to this letter, it is obvious that the injections in issue here are State aid. The aid granted to the company in question prevented forces at work in the market economy from having their normal consequences — the disappearance of this uncompetitive firm — kept this firm in business artificially and encumbered the structure of Community industries facing adaptation difficulties. Capital was contributed in circumstances that would not be acceptable to a private investor operating under normal market economy conditions as, in the present case, the financial position of the company, and

particularly the volume of its debts (FF 3 682 million in 1981), was such that a normal return in dividends or capital gains could not be expected within a reasonable time for the capital invested and, because of its inadequate cash-flow resulting from long-term operating losses and for other reasons, namely old machinery, over-manning, market and company overcapacity, the company was not able to raise the funds needed on the capital market.

It was only after FF 633,1 million in capital injection and the other abovementioned aid had been granted that a private investor was prepared to step in. The fact that this investor took over the company for a symbolic sum of FF 1 demonstrates the aid character *ex post*.

Furthermore, the French Government itself had at least implicitly recognized the aid character of all interventions by calculating, in the letter dated 21 July 1986 as submitted under the procedure, a net grant equivalent for all interventions except the reduction in social charges.

Finally, it should be noted that the Court of Justice clarified the application of Article 92 (1) to the acquisition of public holdings (see judgment of 14 November 1984 in case 323/82, Intermills, and judgements of 10 July 1986 in case 234/84, Meura, and case 40/85, Boch). In order to determine if a contribution to capital is State aid, the Court held that it is necessary to see whether the company in question could have obtained the finance on the private capital market. Where the evidence suggests that the beneficiary of the aid could not have survived without public funds because it could not have raised the capital required on the open market from a private investor, it is right to conclude that the payment constitutes State aid.

In the case in question here, and on the basis of the facts outlined above, it is unlikely that the company concerned could have obtained sufficient capital to ensure its survival on the private capital market, as no private company, basing its decision on the foreseeable possibility of profit, and disregarding any social considerations or considerations of regional or sectoral policy, would have made such a capital subscription. In consequence, the interventions of FF 633,1 million constitute State aid within the meaning of Article 92 (1).

Equally, the low-interest advances and loans and the reduction in social security charges are State aid under Article 92 (1) because they also enabled the recipient to be relieved, from public funds, of costs which it normally would have had to bear.

Therefore, all this aid had to be notified to the Commission as provided for by Article 93 (3). Since the French Government failed to notify the aids in question in this

case in advance, the Commission was unable to state its views on the measures before they were implemented. Thus, the aid is illegal in relation to Community law from the time that it came into operation. The situation produced by this failure to fulfil obligations is particularly serious since the aid has already been paid to the recipient. Furthermore, as confirmed by the French Government, FF 290 million had been granted even after the Commission had initiated the formal examination and procedure under Article 93 (2) on 21 November 1984. Here, all the aid is regarded as being illegal under Community law. In this respect it has to be recalled that, in view of the imperative character of the rules of procedure as laid down in Article 93 (3) which also are of importance as regards public order, the direct effect of which the Court of Justice has recognized in its ruling of 19 June 1973 in case 77/72, the illegality of the aids at issue here cannot be remedied *a posteriori*.

The illegal character of all aid at issue here results from the failure to respect the rules of procedure as laid down in Article 93 (3). At the same time, this aid is incompatible with the common market under Article 92 of the EEC Treaty.

Moreover, in cases of aid incompatible with the common market the Commission making use of a possibility given it by the Court of Justice in its judgment of 12 July 1973 in Case 70/72 confirmed in the judgment of 24 February 1987 in Case 310/85, can require Member States to recover aid granted illegally from recipients.

IV

In the textile, clothing and paper sectors there is trade between Member States — as sufficiently documented by statistical evidence — and competition is very keen. The French textile, clothing and paper industry as such, producing about 20 % of value added in these sectors in the Community, participates very actively in intra-Community trade by exporting up to 40 % of its total production output to other Member States. The company in question in this case is the third largest producer of textiles and clothing in France with a 1986 turnover of FF 4 700 million, of which 56 % is in textiles/clothing and highly diversified interests in many different textile product groups. It is also the fifth largest textile firm in the Community. The company participates actively in intra-Community trade by exporting 16 % of its textile production to other Member States and a further 9 % elsewhere. In the period between 1982 and the end of 1984, that is when the aid was granted, textile exports to other Member States increased by 32 %.

The aid in issue in the present case distorts competition because it calculably improved the recipient's financial position and its return on investment and reduced other costs, thereby giving him a competitive advantage over other manufacturers who have completed or intend to complete similar actions at their own expense. Moreover, parts of the aids restored the finances of the company which, under normal circumstances, would have disappeared in 1981. The distortion of competition is appreciable. Financial assistance amounting to FF 999,9 million, without taking into account regional planning premiums (PAT) of FF 30 million, destined to restore the firm's finances, to cover rationalization costs including certain textile investments reduced the costs this company faced by such a margin as to give the assisted firm a very considerable advantage over its unaided competitors.

When State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. In this case the aid, which enabled the company in question to survive after having been put into receivership in 1981 and also reduced considerably rationalization and modernization costs which the firm would normally have to bear itself, is liable to affect trade and distort or threaten to distort competition between Member States by favouring the said enterprise within the meaning of Article 92 (1) of the Treaty. Article 92 (1) lays down the principle that aid having the features there described is incompatible with the common market.

The exceptions from the principle of incompatibility as set out in Article 92 (2) are not applicable in this case because of the character of the aid which was not intended for such purposes.

Article 92 (3) sets out which aid may be considered to be compatible with the common market. Compatibility with the Treaty must be determined in the context of the Community and not of a single Member State. In order to safeguard the proper functioning of the common market, and taking into account the principles of Article 3 (f) of the Treaty, the exceptions from the principle of Article 92 (1) as set out in Article 92 (3) must be construed narrowly when an aid scheme or any individual award is scrutinized.

To apply the exceptions to cases not contributing to one of the objectives set out in Article 92 (3), or where an aid is not necessary to that end, would be to give unfair advantages to certain industries or undertakings, the financial positions of which would merely be bolstered, and could allow trading conditions between Member States to be affected and competition to be distorted

without any justification on grounds of Community interest as set out in Article 92 (3).

The French Government has been unable to give, or the Commission to discover, any justification for a finding that the aid falls within one of the categories of exceptions in Article 92 (3).

V

In the period during which the company benefited from the above aids, the majority of its interests was in the textile and clothing field and the French Government described the company as 'the number one textile group in France'. In fact, the company is the third largest textile group in France and the fifth largest in the Community. Therefore, and because the French Government informed the Commission that investments in the paper sector did not benefit from the aid except for a PAT of FF 30 million granted under a regional aid scheme approved by the Commission, the remaining financial assistance of FF 999,9 million is subject in full to the conditions for aid to the textile and clothing industry, as defined in the Community guidelines for aid to this sector of 1971 and 1977 and communicated to Member States by letters of 30 July 1971 and 4 February 1977.

These guidelines contain a number of criteria worked out by the Commission with the aid of national experts in order to guide the governments of the Member States on interventions they may possibly wish to make in this sector. In the 1971 guidelines the Commission points out that aid in the textile and clothing sector, which is marked by a very high degree of competition at Community level, involve a risk of causing distortion of competition which is unacceptable to competitors who do not benefit from such measures. This applies in particular to aid for modernization and rationalization, which generally have very marked repercussions on competitiveness. Subsequent developments confirmed the Commission's concern so that it specified the guidelines in 1977, most particularly with regard to rationalization and modernization investment aid.

The Community textile and clothing industry has undergone an extremely rapid progress of change over the last 10 years. Production has declined under the pressure of outside competition both on traditional export markets and on the Community market. One million jobs, representing nearly 40 % of total employment in these industries, have been lost between 1975 and 1985. Both the severity and length of the crisis have forced undertakings in this sector to make great efforts to restructure and to modernize their production plants. As a result, the industry has been able to adapt and to re-establish progressively its competitiveness and profitability. The important role played by the Community guidelines for aid to this sector in restoring a certain balance and in

maintaining or re-establishing a true market economy has been widely recognized. As, however, the industry remains very vulnerable, not least because it continues to be subject to extremely strong international competition, the Commission takes the view that uncoordinated State intervention would conflict with the Community interest, particularly by putting at serious risk the past and, indeed, present efforts undertaken by the Community textile and clothing producers to adapt to changing market conditions. Therefore, the Commission continues to attach the greatest value to the taking into account by Member States of the abovementioned guidelines.

The aid in issue here does not meet several of the conditions set out in the guidelines. Firstly, these guidelines contain no provision for the granting of aid for the purpose of maintaining a company in business. On the contrary, the rescue of ailing textile companies has always been rightly regarded as not bringing about any lasting improvement in the industry either at national or at Community level, but would instead affect conditions of competition in the common market without facilitating an improvement in the industry's competitive position which is a prerequisite for its recovery and success on the international textile market.

Secondly, the guidelines require aid to textiles to apply for a short period only. This condition is not fulfilled in the case at issue here as aid was granted from July 1982 to January 1985. Furthermore, under the guidelines the aim of aid must be to provide the beneficiary in the short term with a level of competitiveness sufficient to ensure success on the international textile market. The firm at issue, however, continued to suffer substantial losses, which from July 1982 until the end of 1986 alone amounted to FF 1 161 million, so that this condition equally is not fulfilled.

Thirdly, under the guidelines there must be a direct connection between the grant of the aid and the operations benefiting from it. In this case, however, the French Government informed the Commission that parts of the financial interventions were generally intended to restore the finances of the firm in question whereas the remaining aid was granted to serve the purpose of rationalizing the company without being directed to any specific project.

In such a situation a further condition set in the guidelines also is not met. As there is no direct link between the aid and individual operations, an appraisal of the impact of the aid on the benefiting operations is difficult.

Finally, the guidelines require that aid must not affect competition and trade more than is absolutely necessary.

In this respect, it has to be pointed out that in the three-year period during which the aid was granted, that is July 1982 to January 1985, the firm increased its textile exports to other Member States by 32 %, which is a clear indication that trade did not remain unaffected by the aid. A later downturn of export, fully in line with a generally poorer export performance by the French textile industry as such in 1985 and 1986, cannot change this assessment.

In view of the foregoing considerations, it is concluded that all the aid in question was granted in contravention of the Community guidelines on aid to the textile and clothing industry.

VI

On 21 December 1983, the Commission decided to withdraw its objections to the implementation of a sectoral aid scheme in favour of the textile and clothing industry in France through relief of social security costs. By letter of 3 January 1984, it informed the French Government that following the modifications proposed by the latter the measures could be regarded as compatible with the common market. Aid granted to an individual undertaking within the context of this sectoral aid scheme could benefit from the exception in Article 92 (3) (c) only if all the conditions of this scheme as accepted by the Commission were fulfilled. Of particular importance for the case in question here are the following conditions linked to the reduction in social charges scheme :

- Companies with a ratio of less than 1 : 2 between own capital and long- and short-term debts are not considered viable and may not benefit from aid under the programme nor from any other aid, be it general, regional or specific.

This condition was not fulfilled by the firm in question, which in 1981 had filed for bankruptcy with long- and short-term debts exceeding FF 3 682 million and with a capital fully utilized to cover losses. In 1985 it was still in a situation of financial crisis.

Therefore, the company should have benefit neither of the aid under the textile and clothing aid scheme nor of any other aid.

- The maximum aid intensity per firm, taking into account aid granted under the textile and clothing scheme and any other general, regional or specific scheme, may not exceed 25 % in net grant equivalent in relation to the investments undertaken.

In the present case, however, FF 999,9 million were granted for the benefit of textile and clothing investments totalling FF 675 million in the period 1981 to 1986.

The grant equivalent in this case stands at 121,25 %. The net grant equivalent, which, however, is meaningless because of the continued losses of the firm during the years under consideration, would amount to 66,69 %. Thus, both figures exceed considerably the maximum fixed at 25 %.

Therefore, the company was granted aid in contravention of the conditions linked to the textile aid scheme.

- Aid may only be granted for investment purposes and if companies are able to raise at least 50 % of the investment costs from own resources.

In this case the company received FF 999,9 million and undertook textile investments of FF 675 million until 1986, so that the required ratio is not reached. Aid even surpassed investments by 48 %.

Therefore, the company was granted the aid in contravention of the conditions linked to the aid scheme.

- Aid may only be granted for genuine restructuring investment.

In this case, however, it has to be concluded from information concerning the investments undertaken by the firm, provided by the French Government under the procedure, that a simple modernization of production facilities for the purpose of keeping them in business without affecting any fundamental change was financed. The investments concerned the replacement of totally out-of-date equipment in order to regain competitiveness which had been lost many years before. Even several examples given by the French Government for investments with an alleged high technological content demonstrate no more than a very belated adaptation to changes in production techniques and processes which have taken place elsewhere in the Community textile industry some five to ten years earlier.

Consequently, such investments cannot be described as genuine restructuring and they therefore should have been carried out using the financial resources of the company without State aid.

Furthermore, the Commission has always considered that, particularly in the textiles and clothing sector, investment made by an enterprise for the purpose of keeping it in business or maintaining its level of business without effecting any basic change does not qualify for assistance.

Besides pointing to investment efforts by the firm, the French Government also underlines in its comments under the procedure the importance of reductions in the number of jobs offered as part of the rationalization process.

While it is correct that very considerable reductions were undertaken by way of dismissals, early retirement and transfer of workers to other, independent, producers continuing production at manufacturing sites equally transferred to them, it must not be forgotten that such reductions were necessary for its survival as the company had been very considerably overstaffed in virtually all its departments. This was confirmed by the French Government on several occasions. In addition, while not increasing capacity in investing in textile machinery as claimed by France, quite considerable reductions in personnel are a direct result of the installation of up-to-date equipment.

In relation to workforce reductions, it must also be kept in mind that over the past 10 years the textile and clothing industry in the Community, under the auspices of a Community aid discipline, has carried out a major restructuring effort with the loss of over one million jobs, which represents a heavy social and regional burden of adjustment. In addition, these reductions had to be financed by the industry itself as the Community guidelines do not provide for state aid for this purpose. The severity and length of the textile crisis in the Community have forced other undertakings themselves to make great efforts to adjust without the use of state aid, despite the financial difficulties from which so many of them suffered and despite the difficulties which they had in reducing their workforce as demanded by the essential restructuring measures.

In this case, however, the aid at issue enabled the firm to grant comparatively generous severance pay to its workers which had the effect of a more far-reaching rationalization and productivity increase than elsewhere and than would have been possible had the company been required to finance the settlements itself.

Finally, the French Government claims that a considerable reduction in capacity has taken place. In this respect it has to be pointed out that, firstly, the notion of capacity has little meaning when looking at the textile and clothing industry with its extremely large range of different articles. This view has always been held by the Commission and national experts. The same holds true for the firm at issue here where, in view of its vast range of products, capacity changes can at best broadly indicate an underlying trend.

Secondly, certain reductions are solely due to recent market developments as in some subsectors of textiles, e.g. linen and cotton fabric, which are of great importance for the firm in question here, demand has fallen considerably so that firms throughout the Community have had to adapt to this new situation.

Thirdly, certain other reductions result from the scrapping of totally out-of-date machinery partly dating from before the First World War, which in recent years had not been used for production purposes anyway.

Fourthly, when relating the capacity reduction figures to actual turnover of the firm (at constant 1982 prices), the real reduction is much less spectacular. Taking into account that a large number of production sites (27 sites with a total employment of 4 730 workers) was transferred to other producers continuing textile production, practically no real internal decrease in output can be claimed. However, even if a certain real decrease in production remains at the company in issue here, it must be kept in mind that, following a marked slowing-down of the increase in consumption of textiles in the Community (and even at times a decrease) combined with an increase in the rate of exports from developing countries to the Community, activity in the textile industry in Europe today is some 15 % below 1973 levels. Compared to this development, the evolution of production in the firm in question here is by no means spectacular so that it cannot be claimed that the company made any particular efforts in terms of restructuring.

Moreover, it should be noted that the firm recently officially announced considerable capacity increases particularly in linen for September 1987. Such action jeopardizes the alleged capacity reductions referred to above and makes the information concerning such reductions as communicated by the French Government even more doubtful.

In view of all the foregoing considerations, it is concluded that the aid was granted to the firm in contravention of the conditions linked to the textile and clothing industry aid scheme in force in France at the time. This is the case irrespective of the French Government's comment under the procedure according to which certain aid had been granted in order to restore the finances of the firm. As aid other than under the reduction of social charges scheme was also covered by the Commission's decision concerning the reduction of social charges aid scheme, this other aid cannot be exempted from the conditions linked to this scheme.

It must be added that FF 35 million were explicitly paid to the firm in June 1983 under the reduction in social charges scheme. This means that the aid was granted under a scheme in respect of which the Commission had

taken a final negative Decision 83/245/EEC⁽¹⁾, notified to the French Government by letter of 21 January 1983.

That Decision required France, from the date of notification, no longer to grant any aid under the scheme in question, and, within a period of one month, to abolish the scheme. However, it is common ground for which this case is again conclusive evidence that France continued to pay the aid for which the scheme provided, and that the French Government took no steps to abolish the aid scheme within the period prescribed by the Decision. This has been recognized in full by the Court of Justice in its judgment of 15 November 1983 in case 52/83.

VII

In respect of aid paid in order to restore the finances of the company, it has to be pointed out that the Commission had informed the Member States by letter of 24 January 1979 of the conditions under which rescue aid could be regarded as compatible with the common market. Rescue aid which may merely be granted to keep a firm in business while the causes of its difficulties are discovered and a remedy is worked out, must observe *inter alia* the following conditions:

- It must consist of cash aid in the form of loan guarantees or loans bearing normal commercial interest rates.

None of the aid received by the company in question in this case meets this condition.

- It must be paid only for the time needed (generally not exceeding six months) to draw up the necessary and feasible recovery measures.

In this case, the rescue aid which took the form of an injection of capital was not granted for a short period and neither a duration nor a selling-price were fixed in advance. The aid was granted without any conditions to be met by the firm. The only aim was to keep the bankrupt company in business and the aid has not been recovered: it was granted without the necessary and feasible recovery measures being drawn up.

- It must not have any adverse effects on the industrial situation in other Member States.

In this case, however, the company in question participates very actively in intra-Community trade. The margins by which the aid has reduced the firm's costs are, as documented above, very substantial. The aid

⁽¹⁾ OJ No L 137, 26. 5. 1983, p. 24.

enabled it to increase its exports to other Member States between 1982 and the end of 1984 by 32 % which, in view of the fact that the firm was at the time (1984) the third largest textile producer in France and the fifth largest in the Community, corroborates the presumption that competition has been distorted.

- It must be notified to the Commission in advance in significant individual cases.

As the case of this company — in view of the scale of the aid and in view of the size of the firm — is clearly significant, the French Government did not fulfil its obligation under Article 93 (3) to notify the aid in sufficient time to enable the Commission to submit its comments and, if necessary, initiate in respect of it the administrative procedure provided for in Article 93 (2) of the EEC Treaty. It should be recalled that a considerable part of the aid was paid to the firm after the opening of this procedure.

Finally, it is clear from the judgments of the Court of Justice in cases 234/84 and 40/85, already referred to above, that rescue aid will not qualify for one of the exceptions under Article 92 where it does not help a firm to recover, i.e. where the firm cannot be expected to be operating on a viable basis without further assistance in a reasonable time, particularly where there is excess production capacity in the industry concerned in the Community. In this case considerable further assistance was granted.

In view of all the above arguments, it has to be concluded that the financial injections did not meet several conditions linked to rescue aids, as set out in the Commission's letter of 24 January 1979 to Member States and as defined by the Court of Justice in the abovementioned judgments.

VIII

In view of all the foregoing considerations in respect of the aid, it must be observed that it artificially lowered the costs the textiles, clothing and paper producer in issue in the present case would normally have to bear. It gave unfair advantages to this undertaking and its financial position was bolstered compared to other firms in the sectors concerned which, during recent years, had to rationalize and modernize their production without financial assistance to this end.

With regard to the exemption provided for in subparagraph 3 (c) of Article 92 of the Treaty in favour of 'aid to facilitate the development of certain economic activities', it must be observed that the aid, while facilitating the development of the firm in issue, affected at the same time trading conditions to an extent contrary to the common interest. It artificially kept the firm in business in a sector where there is a high level of trade in the Community and competition is very keen. It lowered the costs of the undertaking in question, weakened the

competitive position of other producers in the Community and therefore had the effect of further increasing the pressure on these firms and depressing market prices, leading to difficulties for, or even withdrawal from the market of producers that have hitherto survived owing to restructuring, productivity and quality improvements undertaken from their own resources. Thus, the aid to the undertaking in question, which was artificially saved from bankruptcy and whose market position is no longer solely determined by its own efficiency, merits and powers, cannot be considered as contributing to a development which, from the Community point of view, would be adequate to counteract the trade-distorting effects of the aids.

With regard to the exemptions provided for in Article 92 (3) (a) and (c) relating to aids intended to promote or facilitate the development of certain areas, it must be observed that the standard of living in the areas concerned is not abnormally low nor is there serious underemployment within the meaning of the exemption specified in subparagraph (a). Furthermore, the exemption set out in subparagraph (a) has not been put forward by the French Government. Because the aid applied to an individual firm in given economic sectors irrespective of its location, it was not intended nor suited for the development of certain areas as provided for in the exemption specified in subparagraph (c). Aid granted to the firm in the form of a regional planning premium (PAT) for the purpose of developing certain areas is not concerned by this Decision.

As regards the exemptions provided for in Article 92 (3) (b), it is evident that the aid in question was not intended to promote the execution of an important project of common European interest, nor to remedy a serious disturbance in the French economy. Specific aid in favour of only one textile, clothing and paper company is not suited to remedying the kind of situation described in Article 92 (3) (b).

In view of all the foregoing considerations, the aid in question is illegal because the French Government did not fulfil its obligations under Article 93 (3) of the Treaty. Moreover, it does not meet the conditions for one of the exceptions in Article 92 (2) and (3) of the Treaty to apply.

IX

As pointed out above, the Commission can in such cases require Member States to recover illegally granted aid from recipients.

In the case at issue here, the amount of aid awarded to the company was a large amount in relation to the investment undertaken and to the size of the firm, and it even exceeds the amount of other national aid scheme proposals rejected by the Commission on the grounds of potential distortion of competition, such as the French parafiscal levies scheme for the textile and clothing industry

(final negative Decision 85/380/EEC ⁽¹⁾), the textile and clothing industry aid scheme put forward by the United Kingdom (final negative Decision 85/305/EEC ⁽²⁾) and the 1984 Belgian textile and clothing industry aid scheme (final negative Decision 84/564/EEC ⁽³⁾).

Furthermore, the seriousness and scale of the breach of Community legislation in this case requires appropriate measures.

Therefore, having found no justification for the aid at issue here, repayment of the benefits received by the company is required. On the basis of the conditions attached to the aid, i.e. dates of granting, and, where applicable, interest rates charged, periods of reimbursement, dividends, etc., as communicated by the French Government to the Commission, the real economic benefit of the aid amounts to:

- FF 333,1 million for the capital injections of 1982,
- FF 207,16 million for the capital injections made later,
- FF 7,04 million for the advances,
- FF 103,56 million for the various low-interest loans,
- FF 35,0 million for the reduction in social charges.

The total economic benefit therefore stands at FF 685,86 million.

Under the procedure, by letter dated 21 May 1987, the French Government claims that there is no ground for imposing any additional recovery in excess of the substantial amounts, approximately FF 1 000 million which already remain to be reimbursed to Sopari and the French authorities.

In this respect, it firstly has to be pointed out that, when bankruptcy proceedings were initiated against the firm in 1981, public-sector claims amounting to FF 450 million constituted a considerable portion of the company's liabilities. The judicial settlement (*concordat*) reached in 1985 contained the obligation for a reimbursement of 84,4 % of these claims, that is FF 380 million. Reimbursement of such other previous debts is totally independent from the State aid in question here and the Commission cannot take such debts into account.

Secondly, concerning the low-interest loans granted to the firm between 1982 and 1985, it is obvious that the principal amount of FF 336,8 million (including the advances

of FF 36,8 million) will have to be reimbursed. Finally, the right to dividends linked to the grant of a capital injection by Sopari will collect FF 300 million between 1991 and 2005. Both these facts have naturally been taken fully into account when calculating the grant equivalent and the economic benefit of the aid.

X

Within the rationalization programme 27 production sites with a total workforce of 4 730 were transferred to independent companies for the purpose of maintaining the jobs involved and continuing textile production. These independent firms were only prepared to take over the plants provided they received financial assistance per job maintained to be paid by the company wishing to dispose of these sites and workers. In order to rationalize production and increase productivity, the firm at issue paid a total amount of FF 521 million for this purpose. The average payment for each worker was very high and amounted to approximately FF 110 000. Although not granted directly to this end, aid benefited this operation, as declared by the French Government under the procedure.

It must be observed that the aid artificially lowered costs the company in question would normally have to bear itself. Such payments have been made on a large scale, out of their own resources, by the firm's Community competitors in recent years, and are a necessary and normal commercial cost of rationalizing. When the French State took on such obligations, additional funds were then freed in the company for investment and other purposes. Thus, the aid also affected trading conditions to an extent contrary to the common interest and, therefore, should be recovered.

However, shortly after take-over, 13 sites with a total workforce of 3 153, that is 66,66 % of the total number of jobs transferred, had to close and textile production was stopped for good. The amount of FF 347,3 million paid to Boussac Saint Frères to facilitate these transfers did confer a benefit on the company by relieving it of costs it would otherwise have had to bear. However, as these sites are no longer in production, the aid can be considered to have been abolished. Therefore there is no need to recover this aid, amounting to FF 347,3 million i.e. 66,66 % of the total amount paid for transfers, and the amount can be deducted from the aid of FF 685,86 million received by the company.

As a result, from the total amount of aids illegally granted, carrying economic benefits of FF 685,86 million, the sum of FF 338,56 million must be withdrawn by recovery,

⁽¹⁾ OJ No L 217, 14. 8. 1985, p. 20.

⁽²⁾ OJ No L 155, 14. 6. 1985, p. 55.

⁽³⁾ OJ No L 312, 30. 11. 1984, p. 27.

HAS ADOPTED THIS DECISION:

Article 1

The capital injections of FF 633,1 million provided by Sopari, after transfer from IDI, loans of FF 331,8 million at reduced interest rates and reductions in social security charges of FF 35 million granted under the respective textile and clothing aid scheme, all awarded to Boussac Saint-Frères, a major producer of textiles, clothing and paper products, during the period between 1982 and 1985, and of which the French Government belatedly informed the Commission by telex of 22 March and letter of 23 August 1984, and under the procedure of Article 93 (2) by letters of 4 February, 4 June, and 11 October 1985, 5 February, 19 June and 21 July 1986, 27 March and 21 May 1987, are illegal as they were provided in violation of the provisions of Article 93 (3) of the EEC Treaty. Moreover, they are incompatible with the common market within the meaning of Article 92 of the Treaty.

Article 2

Of the said amounts which carry economic benefits amounting to FF 685,86 million, a total sum of FF 338,56 million shall be withdrawn by recovery.

Article 3

The French Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply herewith.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 15 July 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission
