COMMISSION

COMMISSION DECISION

of 21 January 1998

granting conditional approval to aid which France has decided to grant to Société française de production

(notified under document number C(1998) 230)

(Only the French text is authentic)

(Text with EEA relevance)

(98/466/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having given the interested parties notice, in accordance with the abovementioned Articles, to submit their observations [1],

Whereas:

1. **INTRODUCTION**

This Decision follows on from the Commission Decision of 12 February 1997 [2] to initiate proceedings under Article 93(2) of the Treaty. The proceedings and this Decision concern aid of FRF 2 500 million (ECU 379 million) [3], comprising industrial restructuring aid of FRF 1 200 million (ECU 182 million) and financial restructuring aid of FRF 1 300 million (ECU 197 million) which France intends to grant to Société française de production (SFP). At the time of the initiation of proceedings, and pending implementation of the restructuring plan submitted, the Commission had authorised rescue aid of FRF 350 million to ensure the short-term survival of SFP.

SFP is a supplier of technical services to the audiovisual sector, especially producers of television programmes. When the national radio and television broadcasting company ORTF was split into several companies in 1974, television production was taken over by the newly established company SFP, while broadcasting became the responsibility of several other organisations. SFP, however, continued to enjoy a protected position on the French audiovisual market. At the moment, SFP is wholly controlled by the French State.

In 1986 audiovisual production was opened up to competition in France. SFP, which was poorly prepared for the new competitive environment, lost turnover and got into financial difficulties. In the meantime, the workforce was cut back sharply, from 2 515 in 1985 to 996 at the end of 1997. The losses made since 1986 have been offset by the State and the other public shareholders. In four separate operations since then, the French authorities have granted aid to SFP totalling FRF 2 370 million. Of that amount, the Commission approved aid totalling FRF 1 260 million by decisions of 27 February and 25 March 1992. It took a negative decision (97/238/EC [4]) (to which reference should be made for further details) in respect of the balance of FRF 1 110 million, chiefly owing to the lack of any restructuring plan. The French authorities gave the Commission an undertaking that they would recover the aid, currently amounting to FRF 1 300 including interest, as soon as possible.

The total aid granted to date to SFP, including the industrial restructuring aid covered by this Decision, amounts to FRF 3 570 million (FRF 2 370 million plus FRF 1 200 million) or ECU 541 million.

[1] OJ C 126, 23. 4. 1997, p. 4.
[2] See footnote 1.
[3] ECU 1 = FRF 6,6.
[4] OJ L 95, 10. 4. 1997, p. 19.

When the current proceedings were initiated, France had intended to privatise SFP by selling it to the private undertakings Images Télévision Internationale and Générale d'Image (ITI/GI). The buyers would then undertake the restructuring of which the aid referred to above formed part. In April 1997 it became clear that the sale would not take place. On 24 November 1997, the French authorities submitted to the Commission a restructuring plan which was similar to the preceding plan drawn up by the prospective purchasers of SFP except that privatisation was no longer envisaged.

2. RESTRUCTURING PLAN

2.1. Components of the plan

The plan presented on 24 November 1997 consists both in reducing SFP's operating costs and improving its commercial operation. It covers the period from 1 January 1998 to the end of 2000. The implications as regards turnover, results and permanent and casual staff are set out in the table below.

(in FRF million)

	1997	
Turnover	501	[. . .] (*)
Other yields	134	
Total yields	635	
Total costs	820	
Result	−185	
Number of permanent staff	996	
Number of temporary technical staff	123	
Total workforce	1 119	

(*) In the published text of the Decision, some information has been omitted pursuant to the provisions concerning non-disclosure of business secrets.

Financial equilibrium should be attained in 2000 with a positive result of FRF 28 million, which amounts to a 14 % return on equity. The equity to total balance ratio should be 32 %.

[...]

The proposed plan entails some restructuring of the two largest items, i.e. external charges and labour costs. The reorganisation of the SFP should reduce external charges through better purchasing policy, optimum stock management and lower operating costs through simpler structures. Staff costs account for most of SFP's operating costs. A return to equilibrium necessarily entails a reduction in those costs, according to both the bidders for SFP and the French authorities, the latter having produced an even more rigorous plan in this respect than the operators. The permanent workforce would be downsized to some 450, entailing some 566 redundancies and 20 new recruits. The 566 redundancies will be achieved by several means:

— departure of persons aged 55 years and 2 months and over by 31 December 1998 at the latest (469 persons). SFP will suggest to certain persons aged between 51 and 55 years and two months at 31 December 1998, depending on the requirements of the firm, either that they carry out a personal project or that they obtain dispensation from work with a guaranteed income. A group of 252 persons would be affected,

— voluntary departures with incentives, in particular as support for personal projects (55 persons),

— transfer to the status of workers in casual employment in show business (20 persons),

— retirement (12 persons),

— transfer to the public audiovisual sector (10 persons, which corresponds to the annual average recorded between 1994 and 1996).

The predicted permanent workforce trend is as follows: 996 (January 1998), 965 (July 1998), 435 (January 1999), 450 (July 1999) and 450 (January 2000).

This trend should be seen in relation to a limited increase in the number of casual technical workers, from 123 in 1997 to 270 at the end of 2000.

The compulsory placing of orders with SFP by the public television channels has been abolished for several years. SFP now has to compete with other audiovisual firms on the market and is thus unable to guarantee turnover by that system. Despite the situation and the cut in workforce, turnover would be kept at a virtually constant level in the period 1997-2000 by measures to improve the efficiency of the organisation:

— stronger commercial function (a single commercial function, operating in conjunction with its markets, should be set up; special personalised links between the commercial directors of SFP and their customers is necessary; response times will be improved by simplifying procedures),

— simplification of structures, adapted to the new smaller size of the firm (combining of scheduling and programming, computerisation of planning, systematic search for the most economical organisation),

— simpler work organisation with more incentives by modulating working time and reorganising SFP's benefits system.

The improved efficiency should allow the permanent workforce to increase productivity from 12 % to 25 %, depending on the activity concerned. In so far as the audiovisual market is growing, chiefly owing to an increase in the number of television channels and in domestic programme productions by a large number of channels, the fact that SFP's turnover has virtually levelled-off means a reduction in market share.

The aid package of FRF 2 500 million contains both an amount to cover industrial restructuring costs and an amount for financial restructuring. It has been verified that the latter amount corresponds to fresh liquidity made available as a result of the settlement of past debt [...].

2.2. Comparison with the ITI/GI plan

A comparison with the ITI/GI plan originally submitted to the Commission and described in the decision initiating proceedings shows how similar the two plans are. Both are based on the same amount of aid for industrial restructuring (FRF 1 200 million) and the same amount for financial restructuring (FRF 1 300 million). The key financial data in the table above and those in the IOTI/GI plan as outlined in the decision initiating proceedings have the same import:

— ITI/GI had attached several conditions to their plan. The most important condition, where a difference exists and is thus worth examining, concerns the reduction in permanent employees and the jettisoning of collective bargaining. The current plan provides for an even larger cut in the workforce (566 persons) than the initial plan (460 persons). Although there will no longer be any collective bargaining, an equivalent system with similar effects replaces it: modulated working time and a reorganisation of SFP's benefits system,

— the ITI/GI plan provided for turnover of FRF 600 million in 1999 and a similar amount, FRF 606 million, is given in the most recent plan notified, taking account of the difference in the definitions of 'turnover' in both plans,

— although costs in the first plan were FRF 590 million in 1999, the costs presented above are slightly lower, i.e. FRF 578 million.

3. OBSERVATIONS RECEIVED

The French authorities did not submit any observations when proceedings were initiated. However, they answered the Commission's letter of 2 December 1997 (by letter of 5 December 1997) with answers to the questions concerning the plan of 24 November 1997. Further questions were asked by letter dated 23 December 1997, a reply being received on 8 January 1998.

The complainant, having already lodged a complaint with the Commission by letter dated 7 April 1994 concerning aid to SFP, informed the Commission of its views on the initiation of proceedings by letter dated 20 May 1997, stating that ITI and GI had withdrawn their offer on 31 March 1997, that France had then announced the suspension of the privatisation procedure and that there was therefore no need to submit observations to the Commission on the published plan.

By letter of 19 December 1997, the complainant, referring to articles published in the press concerning the reorganisation plan submitted on 24 November 1997 to the Commission, demanded the right to make known its views on the current plan through an extension of the Article 93(2) proceedings.

It should be noted that the SFP Works Council and the trade unions had approached the Commission, although they did not submit any observations within the period specified which could be forwarded to the French authorities for their views.

4. PROCEEDINGS

The fact that the current restructuring plan is no longer officially based on the plan drawn up by the private companies ITI/GI as part of their bid for SFP but provides at present for restructuring under the aegis of the public authorities is not a factor likely to affect the aid as described above. It can be concluded that, on the whole, the new plan is similar, if not more rigorous, than the original plan.

Since the privatisation referred to in the proceedings initiated on 12 February 1997 was not crucial to the final decision on the firm's viability, it must be concluded, having regard to Article 222 of the Treaty, that there are no new facts in comparison with those proceedings, and an extension of proceedings is not necessary and that the final basis for the conclusion of the proceedings will not be affected by the change in the circumstances of the plan.

5. ASSESSMENT

The financing described in point 1 and the conditions on which it was granted to SFP as described in point 2, must be assessed in the light of Article 92(1) of the Treaty in order to determine whether they constitute aid. The State resources that are to be paid to the firm are not profitable investments as they will never generate a return for the firm commensurate with the size of the funds allocated. This would not be acceptable to a private investor operating under normal market economy conditions (1).

Under Article 92(1), financial contributions constitute State aid in so far as they are granted by a State or through State resources. It is for the Commission to determine whether the proposed aid distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods and whether it affects trade between Member States.

Those conditions are met in the present case by the two parts of the State measure: the financial contribution of FRF 1 200 million for industrial restructuring and the financial restructuring of FRF 1 300 million forming part of a clearance of debt.

The aid is likely to improve SFP's ability to market its services both in France and in other Member States or EEA countries; it is likely to make it harder for foreign audiovisual companies to market their services in France.

The aid distorts or is liable to distort competition between Member States. There is a European market for audiovisual products where technical service providers are in competition. Competition for the supply of integrated audiovisual products is as strong as for simply supplying recording teams or studios. The market consists of a few integrated producers, such as SFP, which offer all the technical facilities, and a vast number of specialised businesses offering only a few specific services. It should thus be noted that SFP is itself already present on foreign markets and that the restructuring plan provides for the continuation of that presence. The Commission also notes that the complainant operates both in France and in other Member States. It must be noted that the complainant, who lodged a complaint in the Article 93(2) proceedings, presented objections on several occasions as a result of the publication of the initiation of proceedings and of information in the press.

It should also be borne in mind that a European market for television and cinema productions exists; it comprises co-productions by European producers and the distribution of audiovisual products in countries other than the country of production. This aspect is particularly relevant in the case of the French market, where the French Government pursues an active policy of distributing French products to other countries.

Accordingly, the aid in question must be regarded as aid under Article 92(1) of the Treaty.

6. COMPATIBILITY OF THE AID

Having established that the financial contributions in question constitute State aid under Article 92(1) of the Treaty, the Commission must examine whether the aid can be considered compatible with the common market in accordance with Article 92(2) and (3).

The derogations provided for in Article 92(2) and Article 92(3)(a) and (b) are not relevant in the present case as the aid is not intended to favour the development of disadvantaged regions or to remedy a serious disturbance in the economy of a Member State.

Aid to promote culture and heritage conservation under Article 92(3)(d) can qualify for exemption under that provision. The aid in question, however, is intended to ensure the survival of SFP and the French Government has not provided any details to suggest that their aim was to promote culture and heritage conservation within the meaning of that provision. The only possible derogation is that contained in Article 92(3)(c) concerning aid to facilitate the development of certain activities.

In order further to define the conditions for the application of the derogation under Article 92(3)(c) to aid for firms in difficulty, the Commission has adopted guidelines on State aid for rescuing and restructuring firms in difficulty (2), which stipulate a number of criteria which the aid must fulfil and distinguish between rescue aid and restructuring aid.

The guidelines lay down the following criteria for restructuring aid:

(1) 'Government capital injections', *Bulletin EC* 9-1984 (see points 3.2 and 3.3 for the criteria distinguishing between capital contributions involving aid and those not involving aid.

(2) OJ C 368, 23. 12. 1994, p. 12.

— the aid must be linked to a viable restructuring/recovery programme submitted in all relevant detail to the Commission and capable of restoring the long-term viability of the firm within a reasonable time-scale,

— the proposed measures must distort competition as little as possible and must be in line with the common interest. There must be an effect on the recipient's market position which offsets to a reasonable extent the distortive effect of the aid on competition,

— the aid must be limited to the strict minimum needed and must be in proportion to the restructuring costs and benefits,

— the firm must fully implement the restructuring plan and observe any conditions imposed,

— the implementation of the plan and compliance with the conditions will be monitored by requiring the submission of detailed annual reports to the Commission.

6.1. **Viability**

The key components of the restructuring plan are a reduction in production costs, in particular lower staff costs, achievement of a more realistic projected turnover and the granting of aid. The planned targets of achieving financial equilibrium by 2000, with a positive result of FRF 28 million, a return on capital of 14 % and a ratio of equity to total balance sheet of 32 % are all factors that can be regarded as reasonable. The likelihood that equilibrium will actually be achieved and will be lasting (thus ensuring long-term viability) depends on the definitive and lasting nature of each measure and on the cohesion between the measures. An analysis of the considerable overall reduction in costs between 1997 and 2000 of some FRF 220 million (or 28 % of 1997 costs) shows that the reduction affects various categories of charges. The largest cut is in staff costs, which will be reduced by FRF 130 million between 1997 and 2000. The target should be achieved both by reducing permanent staff from 996 to 450 persons by 2000 and by partially replacing them by more casual workers (from 123 in 1997 to 270 in 2000), their costs being lower than those of permanent staff. The reductions will constitute lasting savings and will thus automatically make a definitive contribution to improving future results.

Further evidence that the measures proposed are long-term and cohesive is the staff costs to turnover ratio which, on completion of the plan and including an extra 270 casual staff, is standard for the sector (i.e. between 50 % and 55 % for comparable companies providing technical services, e.g. the French firm VCF).

According to the French authorities' plan, the overall reduction in permanent and casual staff and the change in the ratio between the two categories provided for in the schedule are essential to the viability of the firm, as confirmed by an analysis of the consequences of not having such restructuring measures in the past. What is more, the firm's recovery will be based on internal measures and not on anticipated increases in turnover, since total yields should fall by some FRF 30 million by 2000 (i.e. 5 % of the 1997 yield); this estimate must be considered realistic if the turnover to total employment ratio is comparable to the average ratio for the sector. The ratio at SFP, taking account of casual staff, is expected to rise to FRF 731 000 in 2000. A Dutch company which provides similar integrated services and has a reputation for efficiency enjoys a similar ratio of some FRF 740 000. If the comparison with SFP is limited to video operations only, SFP forecasts a turnover per employee of some FRF 1 million, which is similar to that of its competitors (VCF).

In order to bring its turnover to total employment ratios up to the level of its competitors, the firm will take internal action rather than increase the prices of services, which would be difficult to implement. The fact that the present plan is similar to that of private bidders, who are acknowledged specialists in the audiovisual sector and who projected viability using the same amount of aid, significantly backs up the analysis that the present plan is effectively capable of restoring viability.

The aid of FRF 2 500 million should help to implement the cost reduction measures and improve the quality of turnover by increasing productivity. The aid comprises both an industrial component and a financial component aimed at recapitalising the firm, suffering from its past liabilities.

The aid in question covers the firm's minimum requirements as regards the financial and organisational restructuring (notably the reduction in staff costs) and thus contributes to the improvement in SFP's results that is needed to bring it back to viability. Without financial restructuring, SFP would have very negative equity which, without accompanying State assistance, would lead to its bankruptcy and thus prevent the completion of the industrial restructuring plan.

In view of the foregoing, the Commission considers that the aid package constitutes a whole, comprising both capital injections and the settlement of past debt. The two aid components are all the more inseparably linked in that neither makes sense without the other and without them the firm would not recover. This assessment of the various aid measures as a whole was upheld by the Court of Justice of the European Communities in Case 323/82 Intermills v. Commission [1].

6.2. Avoidance of distortion

In recent years SFP has experienced a sharp fall in turnover owing to its inability to produce at competitive prices. The restructuring plan effectively provides for a lower turnover. In view of both this and the growth of the market, SFP will lose market share. This is an important counterpart to the aid. The reduction in capacity provided for in the restructuring plan is also a major counterpart. The cost price for SFP's services should, according to the plan, cover all costs incurred, evidence that SFP will no longer be able to avoid the market conditions in which its competitors are obliged to operate.

The Commission also considers that SFP's difficulties are due to the specificity of its commercial aims on the market. SFP formed an integral part of the public audiovisual sector. At the time, it had inherited a cumbersome economic structure which did not facilitate competitiveness and it had access to public resources. Similar situations, where purely public providers supply their services exclusively to the public broadcasters and do not compete on the market, still exist in most of the Member States and, indeed, in France for providers other than SFP. It must therefore be concluded that the restructuring of SFP is necessary to its viability, but that it is at the same time a complex process where some degree of distortion of competition cannot be avoided.

6.3. Limitation of the aid

The aid is used to attain specific objectives and is in strict proportion to the financial requirements of the objectives. It is not, therefore, excessive. Further evidence of this is the fact that the expected result is simply the achievement of financial equilibrium. The improvement in results is not such as to distort competition continuously. From that standpoint, therefore, the aid is not contrary to the common interest.

It is not possible to reduce the aid of FRF 2 500 million as it would have the direct effect of diminishing the forecast results and thus preventing SFP from attaining its aim of viability.

6.4. Implementation of the plan and observance of conditions

Although it is necessary to implement all the measures in the plan, it should be borne in mind that the French authorities regard the core of the plan as the reduction in staff costs. The Commission considers that their view is borne out by past experience, which has shown that the difficulties of aligning staff costs on the level of activity were clearly the basic cause of the (continuing) problems affecting the firm. The Commission therefore concludes that specific guarantees should be provided for. In order to ensure that this time the restructuring plan is carried out in full, it is essential that the French authorities do not grant the aid until all the elements of the plan, including the reduction in staff costs, have been definitively implemented.

The aid should be paid in keeping with the timetable of the plan so that none is granted until SFP has actually disbursed the funds for the purposes envisaged.

Although the aid is not deemed excessive in this Decision under any of the headings under which it is assessed as restructuring aid, the Commission must acknowledge that the same firm has received aid since 1986 which overall represents very substantial sums, two of which were approved as restructuring aid. It must be understood that the aid concerned by this Decision is the last aid measure, save in the event of unforeseeable exceptional circumstances taking place outside the firm, which can be granted to SFP or its activities (for a recent application of this principle, reference should be made to the conditional favourable Commission Decision of 1 October 1997 in the Thomson SA/Thomson multimedia case [2]).

The French authorities must not favour SFP, either directly or indirectly through public television channels, in particular by compelling such channels to place orders with SFP.

6.5. Detailed reports

According to the Commission's long-established policy with regard to restructuring plans and, in particular, having regard to the amount of the aid and the importance of implementing the plan correctly, such implementation must be monitored by the Commission through the submission by the French authorities of biannual reports.

(1) [1984] ECR, p. 3809, paragraph 39.

(2) OJ L 67, 7. 3. 1998, p. 31.

7. **CONCLUSION**

The aid contained in the SFP restructuring plan of 24 November 1997 in the form of industrial restructuring aid totalling FRF 1 200 million and financial restructuring aid of FRF 1 300 million constitutes aid within the meaning of Article 92(1) of the EC Treaty and Article 61(1) of the EEA Agreement.

The aid may be regarded as compatible with the common market under Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement, subject to compliance by the French authorities with the conditions set out in this Decision,

HAS ADOPTED THIS DECISION:

Article 1

The aid by France contained in the restructuring plan of 24 November 1997 for Société française de production in the form of industrial restructuring aid of FRF 1 200 million (ECU 182 million) and financial restructuring aid of FRF 1 300 million (ECU 197 million) is compatible with the common market under Article 92(3)(c) of the EC Treaty and Article 61(3)(c) of the EEA Agreement, provided that France complies with the conditions set out in Article 2.

Article 2

1. Prior to any aid payments, France shall give the Commission an undertaking that the restructuring plan, including the reductions in staff and the timetable for such reductions, has been definitively confirmed.

2. Aid shall be paid only as and when the plan is implemented.

3. The aid in question shall be the last possible aid for SFP; no further aid may be granted in future, save in exceptional, unforeseeable circumstances occurring outside the firm.

4. The French authorities shall submit to the Commission a detailed report on the implementation of the plan every six months from 1 January 1998 to the end of 2000.

5. The French authorities shall not favour SFP either directly or indirectly through public television channels, in particular by obliging such channels to place orders with SFP.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 21 January 1998.

For the Commission

Karel VAN MIERT

Member of the Commission