

COMMISSION DECISION

of 13 July 2009

concerning the reform of the method by which the RATP pension scheme is financed (State aid C 42/07 (ex N 428/06)) which France is planning to implement in respect of RATP

(notified under document C(2009) 5505)

(only the French text is authentic)

(Text with EEA relevance)

(2009/945/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Having called on interested parties to submit their observations pursuant to the provisions ⁽¹⁾ cited above and having regard to their observations,

Whereas:

observations to France, giving it the opportunity to comment on them and received France's comments by letter dated 3 April 2008.

(6) On 23 April 2008, the French authorities informed the Commission that in the autumn of 2007, the French Government had embarked on the reform of special public-sector pension schemes, and in particular the pension scheme for RATP staff.

(7) On 6 January 2009, the Commission asked the French authorities for additional information and received a reply from them by letter dated 3 March 2009.

1. PROCEDURE

(1) By letter of 29 June 2006, France notified the Commission of the reform of the method by which the RATP pension scheme is financed. It provided the Commission with additional information by letters dated 29 September 2006, 15 December 2006 and 4 April 2007.

(2) By letter of 10 October 2007, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the measure notified (hereinafter 'the decision to initiate the procedure').

(3) The decision to initiate the procedure was published in the *Official Journal of the European Union* on 15 January 2008 ⁽²⁾.

(4) The French authorities sent their observations by letter dated 22 January 2008.

(5) On 19 February 2008, the Commission received observations from one interested party. It forwarded those

2. DESCRIPTION OF THE BENEFICIARY

(8) The Régie Autonome des Transports Parisiens (the Paris public transport operator, or 'RATP') is a French public enterprise which is wholly owned by the French State. It was established by Law No 48-506 of 21 March 1948 on the reorganisation and coordination of passenger transport in the Paris region ⁽³⁾, its aim being to 'operate the public passenger transport networks and lines for which it has been assigned responsibility' ⁽⁴⁾.

(9) Under this Law, RATP's activities are limited to public transport in the Paris region. Under Article 7 of Law No 48-506 of 21 March 1948, RATP is responsible for operating the public transport networks in the City of Paris and the Department of Seine and the lines in Seine-et-Oise and Seine-et-Marne previously granted or leased to the Compagnie du chemin de fer métropolitain or the Société des transports en commun de la région parisienne. This was confirmed by Order No 59-151 of 7 January 1959.

⁽¹⁾ OJ C 9, 15.1.2008, p. 13.

⁽²⁾ See footnote 1.

⁽³⁾ Journal Officiel de la République française, 26 March and 3 April 1948.

⁽⁴⁾ Article 2 of the amended Order No 59-151 of 7 January 1959 on the organisation of passenger transport in the Paris region (Journal Officiel de la République française, 10 January 1959), which amended the 1948 Law referred to above.

(10) However, RATP is able, via its subsidiaries, to provide services outside of the Ile-de-France region⁽⁵⁾. The RATP subsidiaries, which are formed as limited companies, are currently grouped into three main sectors, which employ approximately 2 050 people, 170 of whom are seconded by head office:

- The Transport sector, managed by RATP Développement SA, whose turnover in 2005 was EUR 57 million, including EUR 4,7 million abroad and EUR 3,1 million in the French regions (i.e. outside of Ile-de-France).
- The Engineering sector, managed by RATP International SA, whose consolidated turnover in 2005 was EUR 86 million; nearly 80 % of its activity took place abroad, with most of the remaining activity taking place outside Ile-de-France.
- The Space Utilisation sector, essentially comprising subsidiaries responsible for property development (on RATP-managed premises), the promotion of sales outlets in Metro stations and telecommunication activities. The consolidated turnover in 2005 for this sector was EUR 33 million (only in Ile-de-France).

(11) The RATP group employs a total of approximately 46 050 people, 44 000 of whom are employed by the RATP as staff in posts governed by service regulations, with the remaining 2 050 people employed in RATP subsidiaries.

(12) The working conditions of staff in posts governed by service regulations are established on a regulatory basis in the RATP staff regulations⁽⁶⁾. However, working conditions for the 2 050 people employed by RATP subsidiaries are established on the basis of collective

⁽⁵⁾ This is made possible by legislation, subject to the following conditions: 'Outside of Ile-de-France and abroad, RATP may also, via its subsidiaries, construct, develop and operate public networks and transport lines for travellers, subject to competition rules being complied with on a reciprocal basis. These subsidiaries shall have the status of a limited company. Their financial management will be independent within the framework of the objectives of the group: they may not benefit from aid allocated by the State, the Ile-de-France transport syndicate and other public organisations as regards the operation of and investment in transport in the Ile-de-France region'.

⁽⁶⁾ The RATP staff regulations define the principles for classifying staff and the provisions relating to certain situations, the main ones being:

- termination of employment, which stipulates the rules to be applied in the event of resignation, redundancy or dismissal,
- leave (annual leave, special leave for family reasons, etc.),
- promotion.

Prior to the reform of the special pension scheme, the RATP staff regulations also provided (in Article 51 thereof), the conditions for retirement, with reference to the pensions regulation. The pensions regulation was repealed as of 1 July 2008 (Article 52 of French Decree No 2008-637 of 30 June 2008).

agreements, and therefore the RATP staff regulations do not apply to them.

3. DESCRIPTION OF THE PUBLIC TRANSPORT MARKET IN THE ILE-DE-FRANCE REGION

(13) The Ile-de-France public transport market is currently not open to competition. Licences to operate public transport lines have been allocated on the basis of the procedure provided for in Decree No 59-157 of 7 January 1959 on the organisation of passenger transport in the Ile-de-France region⁽⁷⁾, which divided the public transport market in Ile-de-France between RATP and many private operators which were present in the region at the time.

(14) In addition to RATP, approximately 100 companies provide public transport services in Ile-de-France. These companies are SNCF (the French national rail company) and private operators grouped collectively in the 'OPTILE' association (approximately 95 companies, including three major bus transport operators: Veolia Transport, Keolis and Transdev).

(15) Regulation (EC) No 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road and repealing Council Regulations (EEC) Nos 1191/69 and 1107/70⁽⁸⁾ (hereinafter 'Regulation (EC) No 1370/2007'), provides for the public transport market to be gradually opened up. In accordance with Article 12 of the Regulation, it will come into force on 3 December 2009.

4. PROVISIONS OF THE SPECIAL PENSION SCHEME FOR RATP STAFF BEFORE AND AFTER THE NOTIFIED REFORM

(16) The RATP pension scheme is provided for in Article 31 of Law No 48-506 of 21 March 1948 (referred to above), and supplemented by Decree No 59-1091 of 23 September 1959 on the RATP statutes⁽⁹⁾.

(17) The pension scheme for RATP staff is a special scheme within the meaning of Articles L 711-1 and R 711-1 of the French Social Security Code, and has specific advantages compared to statutory schemes. It is a regulated scheme, i.e. established by the State on the basis of administrative provisions. In addition, changes to its rules, contributions and benefits, amongst other things, are the subject of regulatory provisions.

⁽⁷⁾ *Journal officiel de la République française*, 10 January 1959.

⁽⁸⁾ OJ L 315, 3.12.2007, p. 1.

⁽⁹⁾ *Journal officiel de la République française*, 24 September 1959.

- (18) Until 15 January 2008, the main differences between the special pension scheme for RATP staff and statutory schemes concerned how pension entitlements and the payment of pensions were calculated.
- (19) In this regard, under statutory pension schemes, the pension amount is calculated on the basis of average salary during a person's whole career or part of it. The pension amount also depends on the period of insurance or on age, with overvaluation or undervaluation being applied if the sums established for these two criteria have not been met or have been exceeded. Consequently, under a general scheme, a pension is calculated on the basis of average salary (including bonuses) over a person's best 25 career years (subject to a maximum annual salary), with a rate of 50 % (full rate) being applied to the salary, if the insured person has contributed for at least 40 years.
- (20) However, under the RATP pension scheme, staff in posts governed by service regulations were entitled, in respect of each year of insurance, to 2 % of basic salary (excluding bonuses) received during the last six months of employment, subject to a limit of 37,5 annual payments. This means that an RATP employee, after 37,5 years of employment, would receive a pension corresponding to 75 % of final salary, excluding bonuses, i.e. approximately 64,5 % of final salary, including bonuses.
- (21) The fundamental principles of the reform established by the Law of 21 August 2003⁽¹⁰⁾ for almost all French pension schemes were extended to the RATP special pension scheme by Decrees 2008-48 of 15 January 2008⁽¹¹⁾, 2008-637 of 30 June 2008⁽¹²⁾ and 2008-1514 of 30 December 2008⁽¹³⁾. One of the objectives of this reform was to harmonise special schemes operating on the basis of the statutory rules applying to staff employed in the private sector and civil servants. With regard to the RATP special scheme, the period of contribution necessary in order to obtain a full pension, in particular, has progressively increased and reached 40 annuities in 2012, before subsequently being changed by one quarter on 1 July of each year until reaching the duration required under the general scheme and the public sector scheme (the duration of 41 years applicable in 2012 to the general scheme and public sector scheme should therefore be reached in 2016 under the special scheme).

⁽¹⁰⁾ Law No 2003-775 of 21 August 2003 reforming pension schemes.

⁽¹¹⁾ Decree No 2008-48 of 15 January 2008 regarding the special pension scheme for RATP staff.

⁽¹²⁾ Decree No 2008-637 of 30 June 2008 regulating the pension scheme for RATP staff.

⁽¹³⁾ Decree No 2008-1514 of 30 December 2008 regarding certain special social security schemes and the pension scheme supplementing Social Security for non-statutory employees of the State and public bodies.

5. FINANCING OF THE PENSION SCHEME FOR RATP STAFF BEFORE AND AFTER THE NOTIFIED REFORM

- (22) The pension scheme for RATP staff is a 'pay-as-you-go' pension scheme; contributions made by employees in respect of old-age pensions are immediately used to pay the pensions of retired staff⁽¹⁴⁾.
- (23) Until 31 December 2005, RATP was legally liable for the pension commitments of the special scheme. Under Article 20 of the 1948 Law referred to above, RATP was responsible for ensuring the financial equilibrium of its special pension scheme.
- (24) The RATP pensions department, part of the RATP legal service, was responsible for administering this special pension scheme. The pensions department collected contributions from serving RATP staff and from RATP itself as an employer and paid pensions to beneficiaries of the scheme. The rates of pension contribution (7,85 % of salary and 15,34 % of salary for employees and the employer respectively) were lower than the statutory contribution rate (employee contributions of 12 % and employer contribution of 18 %).
- (25) For many years, the RATP pension scheme has experienced structural shortcomings due to reasons relating to the demographic imbalance between active staff and pensioners, the advantageous nature of the scheme compared to the general scheme, and, until 31 December 2005, the standardised setting of pension contribution rates. These successive shortcomings of the RATP pension scheme have been rectified by measures taken by the State, which took action on the basis of Article 2 of the Order of 7 January 1959 and the Decree of 7 January 1959 referred to above.
- (26) On 29 June 2006, France provided notification of the reform of the method by which RATP finances its pension scheme. According to the French authorities, the reform is part of the changes made to the institutional arrangements for urban transport in Ile-de-France over the last 10 years and also the preparations for opening urban transport up to competition.
- (27) The notified reform has two stages.

⁽¹⁴⁾ A pay-as-you-go pension scheme is financed on the basis of significant solidarity between generations. Its financial equilibrium is dependent on the ratio between the number of contributors and the number of pensioners. The rates by which revenue and the active employed population increase therefore constitute the two main factors in its development.

5.1. CREATION OF THE RATP STAFF PENSION FUND ON
1 JANUARY 2006

(28) Article 1 of Decree No 2005-1635 of 26 December 2005⁽¹⁵⁾ set up, as of 1 January 2006, a pension fund for RATP staff (hereafter the 'CRP-RATP').

(29) The CRP-RATP has the status of a social security body and legal personality, and is legally and financially independent of RATP. In accordance with Article L711-1 of the Social Security Code, it has all the characteristics defined in Article L111-1 of that Code, which states, in particular, that the organisation of social security is to be based on the principle of national solidarity. The CRP-RATP is subject to the Social Security Code rules applicable to all independent pension funds. It is also subject to scrutiny by the relevant State authorities which are represented by commissioners of the Government.

(30) On the date on which it was set up, the CRP-RATP replaced RATP as the only legal debtor for the retirement pensions of staff in posts governed by service regulations.

(31) As a result, since 1 January 2006 the RATP has, in full discharge of its liabilities, made contributions to the CRP-RATP which correspond to the contributions of the active members of this special scheme and its contributions as an employer. From that date, these contributions are at the same level as statutory contributions⁽¹⁶⁾. In addition to these employer pension contributions, the CRP-RATP also receives a payment from the State in order to balance the accounts. This balancing contribution finances both the demographic deficit in the special scheme and also the pension entitlements specific to the scheme. In 2006 and 2007, the State paid balancing subsidies of EUR 390,11 and EUR 414 million.

5.2. THE FINANCIAL AFFILIATION OF BASIC
ENTITLEMENTS UNDER THE RATP SPECIAL SCHEME TO
STATUTORY SCHEMES

(32) Article 18 of Decree 2005-1635 of 26 December 2005, as referred to above, makes it possible for the CRP-RATP to financially affiliate some of the RATP special pension

scheme entitlements to statutory schemes (CNAV⁽¹⁷⁾ and ARGIC⁽¹⁸⁾/ARCCO⁽¹⁹⁾)⁽²⁰⁾, i.e. a technical transfer of CRP-RATP pension transactions to statutory schemes (receiving schemes) is possible.

(33) The affiliation of some pension rights acquired under the RATP special scheme to statutory schemes is intended to place the mechanism of inter-generational and inter-professional solidarity on a considerably widened demographic basis. On a broader level, it also ensures that the financing of compulsory pension schemes, funded on a pay-as-you-go basis, can continue in the long term.

Basic rights acquired at the time of affiliation

(34) In accordance with Article L222-6 of the Social Security Code, a special pension scheme or any other (statutory) pension scheme may be affiliated in respect of some of the benefits provided under special schemes, equivalent to old-age pension benefits provided to employees under the general scheme.

(35) Under a pay-as-you-go pension scheme, previous entitlements acquired under another scheme (and therefore on the basis of other criteria) can be transferred to a receiving scheme by calculating these rights acquired on the basis of the rules governing the receiving scheme as if the beneficiaries (pensioners, employees and persons whose names have been removed from the scheme) had spent all of their working life under the receiving scheme.

⁽¹⁷⁾ CNAV: Caisse Nationale d'Assurance Vieillesse (National Old-Age Pension Fund).

⁽¹⁸⁾ AGIRC: Association générale des institutions de retraite des cadres (General association of pension institutions for managers).

⁽¹⁹⁾ ARRCO: Association pour le régime de retraite complémentaire des salariés (Association for the supplementary retirement scheme for salaried employees).

⁽²⁰⁾ The financial affiliation maintains the special scheme and its rules. Its objective is remove pension commitments from the budgets of the companies concerned by the transaction. Unlike inclusion, under affiliation there is no direct link with statutory schemes and the companies, employees and pensioners from the affiliated group. A 'screen' structure set up between the companies and the employees from the affiliated sector on the one hand and the statutory schemes on the other makes it possible to ensure that the affiliation process only regulates global financial flows, based on 'virtual' transactions. These are virtual, in so far as staff have no legal or administrative connection with the receiving scheme's institutions and also in so far as the regulation of the special scheme continues to be the only one used for establishing their pension entitlements and revaluing paid pensions.

⁽¹⁵⁾ Decree No 2005-1635 of 26 December 2005 regarding the pension fund for RATP staff.

⁽¹⁶⁾ Decree No 2005-1638 of 26 December 2005 setting the rates of contributions payable to the pension fund for RATP staff.

- (36) In this particular case, the French authorities calculated the basic rights, i.e. those corresponding to pension benefits calculated in the light of the rules governing the receiving schemes and which would be transferred to the schemes ⁽²¹⁾. Only these basic rights thus established in this way may be transferred to the receiving schemes.
- (37) Article 222-6 of the Social Security Code also stipulates that affiliation of a special scheme must ensure strict financial neutrality of the transaction for employees covered under the receiving scheme. In other words, under no circumstances may the financial affiliation of a special pension scheme to statutory schemes jeopardise the financial situation of receiving schemes.
- (38) This is the point at which weighing takes place, the purpose of which is to determine what proportion of these previous pension entitlements was actually valid at the time of affiliation, in order to ensure that the principle of financial neutrality referred to above is complied with fully. From a conceptual point of view, weighing compares the ratio of pension costs for the group affiliated and the ratio of pension costs under the receiving scheme ⁽²²⁾. The receiving scheme then determines what proportion should be used for transferring previously reconstituted rights in order to ensure that these ratios would stay the change: on the basis of this rate, pension rights are transferred 'for free' by the receiving scheme.
- (39) If the rate of validation of reconstituted acquired entitlements by the receiving scheme is less than 100 %, the scheme may propose that the affiliated scheme validate 100 % of these rights by paying a contribution to maintain entitlements (cash payment).
- (40) The method of calculating cash payments is intended not to change the projected ex-ante situation of the scheme. If the weighing is projected, the amount of the cash payment will be equal to the updated net value of annual entry rights. The annual entry right is that which, in respect of supplementary rights (i.e. over and above the rights transferred free of charge) transferred by the receiving scheme, equalises annually the ratio of costs between the full scheme and the receiving scheme.
- (41) If the financial situation of a receiving scheme has structural shortcomings, the method of calculation requires that this underlying imbalance not be exacerbated, and not requiring a projected technical equilibrium on the part of the group transferred.
- (42) In this particular case, the demographic structure of RATP was not as good as that of the average French company affiliated to statutory pension schemes. The full affiliation of basic rights under the special pension scheme for RATP staff to the statutory schemes requires cash payments to be paid to receiving schemes, i.e. exceptional and one-off payments and payments in discharge of their liabilities.
- (43) The French authorities have set out the methods by which these cash payments are calculated. They are calculated on the basis of the parameters in force at the time of implementation. These parameters are:
- the rates of contribution and the bases allowing the provision to be made to the reserves anticipated by the complimentary schemes,
 - the level of updating and possibly mortality tables, which will vary depending on economic circumstances.
- (44) The French authorities estimate at this stage that the cash payments to be made will consist of:
- a cash payment to the Caisse nationale d'assurance vieillesse (CNAV) which manages the general social security scheme of approximately [EUR 400 million to EUR 800 million] (*),
 - cash payments to the additional statutory schemes AGIRC-ARRCO, in the form of a share in the underwriting reserves of these schemes, of approximately [EUR 80 million to EUR 300 million].
- (45) The French Government anticipates taking responsibility, on behalf of the CRP-RATP, for payment of these cash payments to statutory schemes in order to ensure that affiliation of the RATP special scheme to these receiving schemes remains financially neutral.

⁽²¹⁾ The entitlements specific to the special scheme or 'special' entitlements correspond to no more than the difference between the pension entitlements acquired under the RATP special scheme and the portion and corresponding to the benefits provided by statutory provisions or basic rights. The 'special' entitlements to the RATP special scheme therefore correspond to the pension rights which are greater than the rights usually provided on a statutory basis. The entitlements specific to the special scheme, or which also will have to be gradually removed in accordance with the reform of special pension schemes (see recital 21 of this Decision) will continue to be the responsibility of the CRP-RATP.

⁽²²⁾ The difference between the cost ratio under the two schemes depends on differences in the level and structure of pay (which has an impact on pension costs) and also demographic differences (for example, a basis of contribution which is proportionally more limited will have an impact on the amount of contributions).

(*) This information is confidential.

Basic rights acquired after affiliation

- (46) Given that these are basic rights acquired after affiliation, RATP and its staff are to pay statutory pension contributions in exchange for the intervention of the general scheme and supplementary schemes.

6. REASONS BEHIND THE ADOPTION OF THE DECISION TO INITIATE THE PROCEDURE

- (47) In its decision to initiate the procedure, the Commission questioned whether the reform notified was compatible with the common market. The Commission mentioned that the purpose of the procedure was to establish whether the reform constituted aid granted to RATP.
- (48) The Commission first discussed the close link between the CRP-RATP being set up and affiliation to statutory schemes, deciding that it was necessary to verify whether or not the affiliation of basic rights constituted State aid in favour of RATP.
- (49) It then questioned the proposal that the financing by the State of specific entitlements under the RATP pension scheme did not constitute State aid and, where necessary, whether or not the scheme was compatible with the single market.
- (50) Finally, the Commission questioned the need for the reform notified and its proportionality with regard to common interest. With regard to whether or not the reform was necessary, it discussed the actual and effective opening up of the public transport market in the Paris region and the removal of factors in the legal and actual situation of RATP which could hinder effective competition. It also questioned whether the reform notified was proportional, essentially on the grounds that it would also affect special pension commitments with regard to employees recruited after the reform was implemented.
- (51) However, in its decision of 10 October 2007, the Commission concluded that the financing by the State of the RATP pension scheme's shortfall for the period 1995-2005 constituted State aid within the meaning of Article 1(b)(iii) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽²³⁾ (see recital 15 of this Decision).
- (52) The Commission also considered that Article 87 the EC Treaty did not apply to the CRP-RATP, since RATP was not a company (recital 67 of this Decision).
- (53) Finally, the Commission decided that the guarantee provided by the French State to beneficiaries under the special scheme directly benefited RATP staff, rather than RATP itself. This guarantee could not therefore be

considered to provide the company with an economic advantage (recital 70 of this Decision).

7. ARGUMENTS MADE BY THE FRENCH AUTHORITIES FOLLOWING THE INITIATING OF THE PROCEDURE

Preliminary remark

- (54) In their letter of 22 January 2008, the French authorities recalled that, from their point of view, the reform in question constituted assistance to individuals, as opposed to RATP and therefore could not be regarded as State aid benefiting RATP. Furthermore, although RATP would be the actual beneficiary of the notified reform, the French authorities consider that trade between Member States is not affected by the reform, nor is competition jeopardised, in so far as RATP's activities are restricted to a single market (the urban public transport market in Ile-de-France) which is not yet open to competition and also in so far as the reform has had no impact on the activities of RATP subsidiaries or the markets in which those are active.

Affiliation of basic entitlements

- (55) According to the French authorities, affiliation of the CRP-RATP to the general scheme does not constitute State aid benefiting RATP, given that the latter has not been advantaged.
- (56) Firstly, the French authorities believe that, as the Commission itself indicated in point 69 of the decision to initiate the procedure, 'the second stage of the reform, i.e. the provision of cash payments and the transfer of the financing of basic rights from the CRP-RATP to CNAV and AGIRC-ARRCO no longer affect RATP's economic situation'.
- (57) The French authorities also feel that RATP's obligations corresponding to basic rights were not costs that would normally have put a strain on its budget within the meaning of Community case law. In their view, the financial resources of French companies are normally burdened by payments in full discharge of liabilities made to statutory pension funds but not by the obligation to pay pensions for current employees and retired persons, as was the case with RATP, whose head office included a department responsible for pensioners until the time of the notified reform. Consequently, since they are accompanied by payments in full discharge of liabilities at the same level as under statutory arrangements, the affiliation of the CRP-RATP to the general scheme and the provision of cash payments by the State to the general scheme has not meant that RATP avoided paying costs that would normally have placed a burden on its financial resources.

⁽²³⁾ OJ L 83, 27.3.1999, p. 1.

(58) Lastly, according to the French authorities, given that the special scheme was imposed by the State when RATP was set up in 1948, it would not be normal for the company to have to meet the cost of the cash payments paid in exchange for affiliation of the CRP-RATP to the general scheme.

Financing of special rights

(59) Firstly, the French authorities believe that the case-law according to which costs resulting from collective agreements constitute, by their nature, a cost which normally places a burden on a company's budgets, and that the company has voluntarily accepted this agreement or that it was extended to this company on the basis of regulations or law⁽²⁴⁾, does not apply in this particular case in so far as the RATP staff pension scheme was not established on the basis of a collective agreement.

(60) Secondly, according to the French authorities, the existence of special rights does not constitute any advantage for RATP. The fact that RATP continues to recruit staff in posts governed by service regulations who enjoy special rights does not prove that the existence of special rights places the organisation at an economic advantage.

(61) Thirdly, the French authorities maintain that the public financing of special rights constitutes the strict compensation for abnormal expenses borne by RATP. In their view, the conclusion that the financing of special pension rights does not constitute State aid is the result of principles which have emerged from Community case law since the Community was established, the *Combust*⁽²⁵⁾ and *Enirisorse*⁽²⁶⁾ rulings being merely the most recent examples of this.

Compatibility of the reform notified with the single market

(62) If the Commission feels that the reform in question contained elements of State aid, the French authorities take the view that the reform is in any case compatible with the common market.

(63) The French authorities maintain their view that the reform notified complies with the theory of stranded costs and is pro-competitive.

(64) The authorities also feel that the new financing of pension rights starting in 2006 is necessary and proportionate in order to ensure competition within the market.

(65) The French authorities believe the reform notified is necessary in order to prepare for the Ile-de-France urban transport sector opening up to competition, as provided for in Regulation (EC) No 1370/2007. It will prevent distortions of competition between public and private operators and also ensure the permanent removal of the barrier to entry formed by the means of financing pensions within RATP.

(66) As regards the proportionate nature of the reform, in their letter dated 23 April 2008 the French authorities informed the Commission of the reform of the RATP special pension scheme instigated by the French government, a reform which brings the RATP special pension scheme into line with statutory rules.

8. OBSERVATIONS OF INTERESTED PARTIES FOLLOWING THE OPENING OF THE PROCEDURE

(67) In a letter dated 13 February 2008 the RATP branch of the SUD trade union expressed its opposition to the plans notified by the French authorities, stating that the sole objective of the latter was to transform RATP into a large international group driven by the desire to make profit. In its letter the RATP branch of the SUD trade union drew the Commission's attention to the fact that, in its view, the staff of RATP did not have the status of employees under private law subject to the Labour Code.

(68) The RATP branch of the SUD trade union also claimed that the reform of the RATP retirement scheme should have been developed by a joint committee since the scheme is subject to collective bargaining between the social partners.

9. COMMENTS OF FRANCE ON THE OBSERVATIONS OF THE INTERESTED PARTIES

(69) With regard to the legal regime applicable to RATP staff, the French authorities state in their letter of 3 April 2008 that the provisions of the labour code are intended to apply to RATP staff in posts governed by service regulations, except if the labour code or case law expressly states that these provisions should not apply to such staff. According to France, the existence of such exceptions is not sufficient to consider RATP staff as being subject to contracts of employment under public law.

(70) France also indicates that Decree No 60-1362 of 19 December 1960, which delegates competence to the RATP joint committee for matters relating to the status of personnel, does not refer to the retirement scheme. According to the French authorities, the RATP pension scheme is not the result of collective bargaining; it was imposed on RATP by the State by means of administrative procedures.

⁽²⁴⁾ Court of Justice judgment in Case C-251/97 *France v Commission* [1999] ECR I-6639.

⁽²⁵⁾ Court of First Instance judgment in Case T-157/01, *Danske Busvognmaend v Commission* [2004] ECR II-917.

⁽²⁶⁾ Court of Justice judgment in Case C-237/04, *Enirisorse SpA v SotaCRP-RATPbo SpA* [2006] ECR I-2843.

10. SCOPE OF THE PRESENT DECISION

- (71) The present decision relates to the compatibility of the new pension financing scheme with Community regulations on State aid.
- (72) The opening of the procedure on 10 October 2007 and, in particular, the comments of the French authorities have enabled the Commission to clarify the terms of implementation of the reform notified and, subsequently, to identify three measures which may include State aid components.
- (73) Firstly, on 1 January 2006 the CRP-RATP became the sole legal debtor for the retirement pensions of staff in posts governed by service regulations; prior to then, RATP had been the debtor.
- (74) Secondly, since 1 January 2006, the State has been paying a subsidy to the CRP-RATP in order to balance its accounts. This public subsidy covers the demographic deficit and the additional cost of the RATP special scheme.
- (75) Thirdly, the reform notified provides for the possibility for the CRP-RATP to affiliate the basic pension rights of the special scheme to statutory schemes. The State undertakes to make balancing payments in order to comply with the principle of the strict financial neutrality of the affiliation in place of the CRP-RATP.

11. ASSESSMENT OF THE FIRST MEASURE: CREATION OF THE CRP-RATP

- (76) The Commission observes that, on 1 January 2006, the CRP-RATP became the sole legal debtor for the retirement pensions of staff in posts governed by service regulations; prior to then, RATP had been the debtor. The Commission observes that, simultaneously, the contribution paid by RATP to the CRP-RATP for pensions became a contribution in full discharge of its obligations.
- (77) The Commission notes that, under the system in place before 1 January 2006, RATP was legally liable for the pension commitments under the special scheme. In this respect, the financing system for the special scheme for RATP staff differed from the provisions under statutory law: RATP was the guarantor of the financial equilibrium of the scheme in question; the 'employer' contribution paid by RATP to the special scheme did not constitute full discharge of its obligations.
- (78) Consequently, the Commission concludes that the main effect of the provisions foreseen by the reform notified
- has been to transform the 'employer' contribution paid by RATP for the pensions of its staff into a contribution discharging it from its obligations, thus relieving it of its historical obligation to ensure the financial equilibrium of the special scheme. In other words, the reform notified has transferred responsibility for the financial equilibrium of the special scheme in question from RATP to the CRP-RATP and, ultimately, the State.
- (79) The Commission further observes that, in the absence of the reform notified, the obligation to ensure the financial equilibrium of the regime which had been incumbent upon RATP would have given rise to the entering of a commitment in respect of the State, which would have been provisioned in the accounts upon the transition to the IFRS standards (International Financial Reporting Standards), applicable at RATP since 30 June 2007⁽²⁷⁾.
- (80) The Commission would like to emphasise at this stage that the question raised by the creation of the CRP-RATP is identical to the question which arose in conjunction with the reform of the financing arrangements for the pensions of civil servants working for La Poste⁽²⁸⁾. Consequently, the Commission will assess whether the measure under assessment includes State aid components by means of the same procedure as was adopted for the aforementioned decision.

11.1. EXISTENCE OF STATE AID

- (81) Article 87(1) of the EC Treaty provides: 'Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.
- (82) The classification of a national measure as State aid as provided for in Article 87(1) of the EC Treaty requires the following cumulative conditions to be fulfilled, namely: (1) the measure in question confers a selective economic advantage; (2) that advantage is financed via State resources; (3) that advantage distorts or threatens to distort competition and, lastly, (4) that advantage has an effect on trade between Member States.
- (83) The reasons for considering that the measure in question meets these cumulative conditions and thus constitutes State aid in favour of RATP within the meaning of Article 87(1) of the EC Treaty need to be explained.

⁽²⁷⁾ According to the information report presented by Mr Bertrand Auban, Senator, on behalf of the French national committee for finance, budgetary monitoring and economic accounts on 9 July 2008, these pension commitments are assessed at EUR 21 billion.

⁽²⁸⁾ Commission Decision 2008/204/EC 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 (OJ L 63, 7.3.2008, p. 16).

11.1.1. EXISTENCE OF A SELECTIVE ECONOMIC ADVANTAGE IN FAVOUR OF RATP

- (84) In order to assess whether the measure under assessment incorporates State aid components, it must be established whether this measure confers an economic advantage on RATP by enabling it to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, thereby preventing market forces from having their normal effect ⁽²⁹⁾.
- (85) In that context, it is settled case law that a normal burden is a normal charge inherent in the day-to-day management or usual activities of an enterprise ⁽³⁰⁾. The Court also held that an aid consists of a mitigation of the charges which are normally included in the budget of an undertaking, taking account of the nature or general scheme of the system of charges in question, whereas a special charge is, on the contrary, an additional charge over and above those normal charges ⁽³¹⁾.
- (86) In the light of the case-law of the Court, and in line with past practice ⁽³²⁾ the Commission considers that in order to determine whether a charge is 'normal' or 'special' a reference framework or comparison must be defined, with the objective of identifying companies which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.
- (87) In this respect, it has to be recalled that, for application of Article 87(1) of the EC Treaty, the only question to be determined is whether, under a particular statutory scheme, a State measure is such as to favour 'certain undertakings or the production of certain goods' within the meaning of Article 87(1) of the EC Treaty in comparison with other undertakings which are in a legal and factual situation that is comparable in the light of the objective pursued by the measure in question.
- (88) More precisely, the Court indicates that the choice of the reference framework follows a two-step approach: firstly, the determination of the system of charges which is the

object of the measure under assessment and, secondly, determination of the general scheme applicable to the system of charges in question.

- (89) On the assumption that an appropriate external comparison can be identified, by reference to which the existence of 'abnormal' charges could be defined, the measure under assessment would not constitute State aid within the meaning of Article 87(1) of the EC Treaty. If this is not the case, the measure under assessment would constitute State aid within the meaning of that provision.

11.1.1.1. *Absence of an external comparison in the present case*

- (90) Applying this methodology to the case in question, the Commission considers that the system of charges concerned by the measure under assessment comprises social contributions paid by an employer into a mandatory pension scheme for employees.
- (91) From a theoretical standpoint the Commission distinguishes between two potential reference frameworks:
- provisions relating to mandatory old-age pensions insurance applicable to statutory pension schemes, i.e. the social security scheme managed by CNAV and the complementary schemes managed by AGIRC and ARRCO,
 - provisions relating to mandatory old-age pensions applicable to other public enterprises.
- (92) With reference to the first potential basis for comparison, namely statutory pension schemes, the Commission notes that, since 1 January 2006, RATP has been paying a social contribution, the level of which is identical to the social contribution paid by companies affiliated to the pension funds responsible for statutory schemes. The Commission observes however that, at 1 January 2006, the benefits paid to RATP beneficiaries by the special scheme managed by the CRP-RATP are in excess of the benefits paid to employees affiliated to statutory schemes.

- (93) Moreover, the Commission finds that the members of the statutory schemes are employees under private law contracts whereas the conditions of RATP employees are governed by service regulations. In this respect, it should be noted that the status of RATP staff diverges from statutory law in several respects (see footnote 6).

⁽²⁹⁾ Case C-301/87 *France v Commission* [1990] ECR I-307, paragraph 41.

⁽³⁰⁾ See in this effect Case T-55/99 *Spain v Commission* [2000] ECR II-3207, paragraph 82.

⁽³¹⁾ Case C-390/98, *H.J. Banks & Co Ltd v The Coal Authority and Secretary of State for Trade and Industry* [2001] ECR I-6117, paragraph 33.

⁽³²⁾ See in this context Decision 2008/204/EC mentioned above and the Commission Decision of 10 October 2007 regarding the reform of the financing arrangements for retirement pensions in the banking sector in Greece (OJ C 308, 19.12.2007, p. 9).

- (94) In the light of the considerations set out above and its practice in previous decisions⁽³³⁾, the Commission considers that the provisions applicable to statutory schemes for mandatory old-age pensions cannot provide a basis for comparison in the analysis conducted by the Commission to determine the existence of an economic advantage within the meaning of Article 87(1) of the EC Treaty.
- (95) With regard to the second possible basis for comparison, namely public enterprises, the Commission has not been able to identify a set of economic operators constituting a homogenous group which could provide a basis for comparison. The situation of RATP in France is therefore very particular from the legal and factual point of view in more than one respect⁽³⁴⁾.
- (96) In conclusion, the Commission considers that there is no external basis for comparison which could be used to define a 'normal' contribution supported by undertakings in a legal and factual situation comparable to that of RATP in the light of the objective pursued by the measure in question.
- (97) The *Enirisorse*⁽³⁵⁾ case, cited by France, does not change the Commission's conclusions as to the existence of an advantage in favour of RATP. In this case the Court based its conclusion on a comparison of the contested measure with a 'normal situation' which the Court had been able to define; a similar comparable situation does not exist in the present case.
- (98) In the absence of an appropriate external comparison, the Commission considers that, in order to determine the existence of an advantage within the meaning of Article 87(1) of the EC Treaty, the reference framework for assessing the existence of the advantage is the situation of RATP itself prior to the implementation of the measure.
- 11.1.1.2. Existence of an economic advantage**
- (99) As indicated above, under the system in place before 1 January 2006, RATP was legally liable for the pension commitments under the special scheme. In this capacity, RATP was the guarantor of the financial equilibrium of the scheme in question, the 'employer' contribution paid by RATP to the special scheme did not constitute full discharge of its obligations.
- (100) The Commission has observed that the main effect of the provisions foreseen by the reform notified is to transform the 'employer' contribution paid by RATP for the pensions of its staff into a contribution discharging it from its obligations.
- (101) The Commission therefore concludes that the measures under assessment relieve RATP of charges it would otherwise have had to bear under the provisions of the aforementioned 1948 law.
- (102) In the context of an analysis of the normal or abnormal nature of the retirement pension charges for RATP itself, the Commission considers that the obligations a company itself bears under employment legislation or collective agreements with trade unions to provide redundancy benefits and/or early retirement pensions are part of the normal costs of a business which a firm has to meet from its own resources⁽³⁶⁾.
- (103) By extension, the Commission considers that the charges incumbent on RATP under the 1948 law are normal charges. Consequently, since the measure under assessment enables RATP to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, the Commission considers that this measure confers an economic advantage within the meaning of Article 87(1) of the EC Treaty. This advantage is selective since it concerns a single beneficiary only.
- (104) The Commission has further observed that in the absence of the reform notified the obligation to ensure the financial equilibrium of the special regime which had been incumbent upon RATP would have given rise to the entering of a commitment in respect of the State on the RATP balance sheet, which would have been provisioned in the accounts on the adoption of the IFRS standards (International Financial Reporting Standards), which have been applicable at RATP since 30 June 2007.
- (105) This confirms that the creation of the CRP-RATP relieves RATP of charges that it would normally have had to bear.
- 11.1.1.3. Inapplicability of the *Combust* ruling to the present case**
- (106) The French authorities refer at length to the *Combust*⁽³⁷⁾ judgment, in which the Court of First Instance considered as 'abnormal' charges the charges resulting from a reform whereby the special status of the staff of an undertaking is transformed into a statutory status, therefore identical to that of its competitors in terms of the management of

⁽³³⁾ See in this context the decisions referred to in the footnote 6.

⁽³⁴⁾ See in particular parts 2 and 3 of this decision.

⁽³⁵⁾ Case C-34/01 *Enirisorse SpA v Ministero delle Finanze* [2003] ECR I-14243.

⁽³⁶⁾ See paragraph 63 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ C 244, 1.10.2004, p. 2).

⁽³⁷⁾ Case T-157/01, *Danske Busvognmænd v Commission*, ECR II-917.

staff. The Court stated that: 'the measure in question had been introduced to replace the privileged and costly status of the officials employed by Combust with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combust. The intention was thus to free Combust from a structural disadvantage it had in relation to its private-sector competitors. Article 87(1) EC is aimed merely at prohibiting advantages for certain undertakings and the concept of aid covers only measures which lighten the burdens normally assumed in an undertaking's budget and which are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions. [...]. Moreover, instead of paying the DKK 100 million directly to the officials employed by Combust, the Danish Government could have obtained the same result by reassigning those officials within the public administration, without paying any particular bonus, which would have enabled Combust to employ immediately employees on a contract basis falling under private law.'

(107) As a general principle it must be borne in mind that the *Combust* ruling has not been confirmed by the Court of Justice. Some of the Court's rulings contradict the theory that compensation for a structural disadvantage exempts a measure from being qualified as aid. In this regard, the Court has constantly held that the existence of aid is to be assessed in relation to the effects and not in relation to the causes or objectives of State intervention⁽³⁸⁾. The Court has also held that the concept of aid includes advantages granted by public authorities which, in various forms, reduce the charges which are normally included in the budget of an undertaking⁽³⁹⁾. The Court has also clearly stated that the costs linked to remuneration of employees naturally place a burden on the budgets of undertakings, irrespective of whether or not those costs stem from legal obligations or collective agreements⁽⁴⁰⁾. In this context, the Court has considered that the fact that State measures aim to compensate for additional costs cannot constitute grounds for disqualifying them from the definition of aid⁽⁴¹⁾. In this context, the French authorities cite the application of the principle laid down by the Court of First Instance in the *Combust* judgment, claiming that the reform notified simply relieves RATP of an 'abnormal' charge.

(108) In this respect, the Commission emphasises that a number of important factual aspects distinguish the *Combust* case from the present case:

⁽³⁸⁾ Case 173/73 *Italy v Commission* [1974] ECR 709, paragraph 13; Case 310/85 *Deufil v Commission* [1987] ECR 901, paragraph 8; Case C-241/94 *France v Commission* ECR I-4551, paragraph 20.

⁽³⁹⁾ C-387/92 *Banco Exterior* [1994] ECR I-877, paragraph 13; aforementioned judgment in Case C-241/94, paragraph 34.

⁽⁴⁰⁾ Case C-5/01 *Belgium v Commission* [2002] ECR I-1191, paragraph 39.

⁽⁴¹⁾ Case 30/59 *Gezamenlijke Steenkolenmijnen in Limburg v High Authority* [1961] ECR 3, paragraphs 29 and 30; aforementioned judgment in Case C-173/73, paragraphs 12 and 13; aforementioned judgment in Case C-241/94, paragraphs 29 and 35; Case C-251/97 *France v Commission* [1999] ECR I-6639, paragraphs 40, 46 and 47.

— the compensation payments are paid directly to the civil servants employed by Combust whereas the measure which is the object of the present decision concerns the 'employer contributions' of RATP,

— the State measure in question in the *Combust* case had been introduced to replace the privileged and costly status of the officials employed by Combust with the status of employees on a contract basis comparable to that of employees of other bus transport undertakings competing with Combust. In contrast, the status and rights of RATP staff remain unchanged as a result of the measure under assessment. This status and these rights are different to those of staff employed under private law contracts by undertakings affiliated to statutory pension schemes,

— the competitive context in which Combust was operating was different to that in which RATP operates. The public limited company Combust A/S had to manage its transport services on a commercial basis and operate on the market under competitive conditions comparable to those of private bus companies. In this context, following invitations to tender, the public transport management companies transferred responsibility for the provision of bus services to private and public companies. According to the regulations governing invitations to tender, contracts are awarded to 'the most economically advantageous bid', irrespective of whether or not the tenderer is a private or public undertaking. RATP, however, operates in a large non-liberalised sector which will only be opened up to competition very gradually by Regulation (EC) No 130/2007; the economic constraints at play in this sector are therefore very different.

(109) The Commission considers that the factual differences between the *Combust* case and the present case are sufficient to justify a different reasoning in each case.

11.1.2. INVOLVEMENT OF STATE RESOURCES

(110) The Commission considers that the measure examined involves State resources in favour of RATP in that the ultimate responsibility for the financial equilibrium of the special pension scheme for RATP employees is no longer incumbent upon RATP, but on the State. With effect of the date of implementation of the reform, the State has ensured the financial equilibrium of the CRP-RATP by means of the payment of a balancing subsidy to the social security body which, in the absence of the reform, would have had to be assumed by RATP.

(111) Consequently, the Commission considers that the measure constitutes State aid within the meaning of Article 87(1) of the EC Treaty.

11.1.3. DISTORTION OF COMPETITION AND ADVERSE EFFECT ON TRADE

- (112) As indicated above, RATP, the beneficiary of the measure under assessment, is the parent company of a group of undertakings, the RATP group, which operate in the transport and associated services sectors. All of these operators are active in the Community markets of the above-mentioned sectors.
- (113) It should be recalled that, in principle, aid which is intended to release an undertaking from costs which it would normally have had to bear in its day-to-day management or normal activities distorts the conditions of competition⁽⁴²⁾. It has been ruled that any grant of aid to an undertaking exercising its activities in the Community market is liable to cause distortion of competition and affect trade between Member States⁽⁴³⁾. Moreover, the Court of Justice considered that a public subsidy granted to an undertaking which provides only local or regional transport services and does not provide any transport services outside its State of origin may nonetheless have an effect on trade between Member States within the meaning of Article 87(1) of the EC Treaty. Where a Member State grants a public subsidy to an undertaking, the supply of transport services by that undertaking may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of providing their transport services in the market in that Member State⁽⁴⁴⁾.
- (114) In the present case, the RATP group is in a privileged position both in relation to its domestic competitors⁽⁴⁵⁾ and its competitors in other Member States which cannot benefit from the measure under assessment.
- (115) In this respect, it should be mentioned that Regulation (EC) No 1370/2007 provides for the progressive opening up of the markets concerned to competition and the opening up of a given sector to competition implies that State aid to an undertaking belonging to that sector is likely to have an effect on intra-Community trade and distort competition in the market in question.

⁽⁴²⁾ See Case C-156/98 *Germany v Commission* [2000] ECR I-6857, paragraph 30, and the case law cited therein.

⁽⁴³⁾ See, for example, Case 730/79 *Philip Morris v Commission* ECR 2671, paragraphs 11 and 12; and Case T-214/95 *Vlaams Gewest v Commission* [1998] ECR II-717, paragraphs 48-50.

⁽⁴⁴⁾ Case T-222/04 *Alitalia v Commission* [2009], paragraph 45.

⁽⁴⁵⁾ It is not necessary for the recipient undertaking itself to take part in intra-Community trade. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of entering the market in that Member State. Moreover, the strengthening of an undertaking which, until then, did not take part in intra-Community trade may enable it to enter the market of another Member State (see to this effect, in particular, Case C-310/99 *Italy v Commission* [2002] ECR I-2289, paragraph 84).

- (116) Consequently, the Commission considers that the measure in question does affect trade between Member States and distort competition between the relevant operators.

11.2. UNLAWFULNESS OF THE AID

- (117) Pursuant to Article 88(3) of the EC Treaty, Member States must notify any plans to grant or alter aid. They may not put the proposed measures into effect until the procedure has resulted in a final decision.
- (118) In the present case, the French authorities notified the reform of the method by which RATP finances its pension scheme by means of a letter dated 29 June 2006. In their letter, the French authorities stated that the arrangements did not appear to constitute State aid notifiable to the Commission in advance under Article 88(3) of the EC Treaty.
- (119) However, the Commission observes that the State aid under assessment was implemented by France with effect from 1 January 2006, i.e. before the Commission had adopted a final decision. On this basis, the Commission concludes that France has acted unlawfully in implementing the aid in question contrary to Article 88(3) of the EC Treaty.

11.3. COMPATIBILITY OF THE AID WITH THE COMMON MARKET

- (120) In so far as the measure under assessment constitutes State aid within the meaning of Article 87(1) of the EC Treaty, its compatibility with the common market must be assessed in the light of the exceptions provided for by that Treaty.
- (121) In this respect, the Commission considers that the most appropriate legal basis is Article 87(3)(c) of the EC Treaty, according to which aid to facilitate the development of certain economic activities may be considered to be compatible with the common market, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (122) Given the nature and the effects of the reform, the Commission considers that the compatibility of the aid under assessment must be assessed in relation to the creation of a level playing field in terms of mandatory social contributions between RATP and its current, potential and future competitors on the urban public transport market in the Ile-de-France region.

Level of contributions paid by RATP in relation to its competitors under the reformed system

- (123) In order to analyse the effects of the aid and assess the extent of distortion of competition, the Commission must first examine the level of contributions borne by RATP in relation to its competitors under the reformed system. Thereafter, the Commission will examine the situation as it would have been if RATP had not benefited from the aid in question. Lastly, the positive and negative effects of the aid will be analysed, before assessing overall compatibility with the Treaty.
- (124) Firstly, the Commission notes that, prior to 1 January 2006, the financing of the RATP special pension scheme differed from the financing of statutory pension schemes in two respects: the fact that RATP's contributions did not constitute full discharge of its obligations and the level of the 'employer' contribution.
- (125) The Commission considers that the aid under assessment has resolved the first area of divergence between the RATP special scheme and the statutory schemes. Prior to 1 January 2006, the contributions paid by RATP were not in full discharge of its obligations; RATP was responsible under law for ensuring the financial equilibrium of the retirement pension scheme of its staff. The reform notified has introduced the payment of a contribution in full discharge of RATP's obligations, a feature which characterises the contributions paid by employers subject to statutory law to funds which manage pay-as-you-go pension schemes. With regard to the second area of divergence, the Commission observes that the reform notified has resulted in a harmonisation of the level of mandatory old-age pension charges borne by RATP and companies subject to statutory law in the field of retirement benefits.

The situation without the provision of aid

- (126) In the absence of the reform notified, RATP would have had to provision pension commitments for its staff in posts governed by service regulations for the financial years after 2006. This provision would have been a direct result of the fact that the 'employer' contributions for the retirement pensions of RATP staff were not in full discharge of their obligations.
- (127) In addition, RATP's contributions to the old-age pension scheme to ensure the financial equilibrium of that scheme would not have been aligned with the level paid by their potential competitors.
- (128) In the absence of the reform notified, RATP would therefore have had to assume an additional annual

expense of several hundred million euro in relation to the reformed scheme.

- (129) As a result, RATP's pension expenses would have put it at a disadvantage in the context of a liberalised market, which would have had a significant impact on its activities.

Positive effects of the aid

- (130) It follows from the above that, considering Regulation (EC) No 1370/2007 which provides for the progressive opening up of the urban public transport market, the pension scheme applicable to RATP under the 1948 law comprises a number of specific characteristics which, in isolation, give rise to a distortion of competition to the detriment of RATP and the group to which it belongs. The main effect of the aid under assessment is to align the contributions of RATP with those borne by its competitors and by competitors in the RATP group, thus removing the specific distortion of competition affecting RATP and the RATP group.
- (131) Furthermore, the reform will gradually enable RATP to operate as a private investor facing normal commercial constraints. Indeed, this is one of the objectives of the reform in question.
- (132) The Commission also considers that the measure under assessment is suited to the Community objective intended. No other mechanism could have addressed this matter in a more effective manner. Public service compensation could certainly have been awarded, but such an approach would not have been suitable or sustainable in the long term given the structural nature of the problem.
- (133) As regards the proportionality of measures, the Commission considers that the aid granted has been limited to the strict minimum. Since 1 January 2006, the pension charges paid by RATP have been identical to those paid by companies whose employees are affiliated to statutory schemes.
- (134) Lastly, the Commission considers that the measure under assessment serves to ensure the longevity of a retirement pension scheme, the financing of which was no longer viable. The Commission also considers that the reform in progress of the retirement benefits provided by the special scheme⁽⁴⁶⁾ constitutes a decisive additional element in this context. Consequently, the Commission considers that these measures are perfectly compatible with the general drive to reform Member States' pension systems advocated by both the Council and the Commission⁽⁴⁷⁾.

⁽⁴⁶⁾ See recital 21 of the present decision.

⁽⁴⁷⁾ See to this effect the joint Council and Commission report on adequate and sustainable pensions (CS/7165/03), 18 March 2003.

Negative effects of the aid

- (135) In a static analysis, the Commission considers firstly that the distortions of competition in the urban public transport market in the Ile-de-France region resulting from the measure under assessment are by definition and with immediate effect very limited in the sense that, given the history of RATP and its activities, it is evident that the pension commitments under the reform relate to actions historically implemented in a non-liberalised market where the level of competition has been very low to date. Secondly, with regard to the markets on which the RATP group operates in the form of the subsidiaries of the RATP company, the Commission considers that the measure under assessment only has a very marginal impact. Indeed, these markets will only be affected indirectly by the measure under assessment since, in addition to the strict legal, accounting and financial separation between the parent company and its subsidiaries, the reform notified does not concern staff employed by those subsidiaries.
- (136) In a dynamic analysis, doubtlessly more appropriate, considering Regulation (EC) No 1370/2007, the Commission considers that, although the measure under assessment may theoretically enable RATP to maintain a dominant position, the risk is low. This conclusion results from the fact that the measure is limited to bringing the contributions paid by RATP into line with those paid by its competitors and from the fact that, following the reform of the special pension scheme in 2008, the RATP pension scheme does not create any form of incentive in the company's favour.

General assessment of compatibility

- (137) In the light of the above, the Commission concludes that the negative effects of the aid granted to RATP will be moderate. The reform notified is limited to what is strictly necessary for the creation of a level playing field with regard to mandatory old-age pension contributions, puts an end to a distortion of competition which would have put RATP at a disadvantage and, consequently, does not adversely affect trading conditions to an extent contrary to the common interest.
- (138) Accordingly, the aid in question is compatible with the common market, subject to the full implementation of the reform of the RATP special pension scheme to bring the scheme into line with the statutory regulations governing the basic schemes for private sector employees and civil servants.
- (139) The Commission considers that the above conclusion is not called into question by the solution reached in its Decision 2005/145/EC in the EDF case⁽⁴⁸⁾.

⁽⁴⁸⁾ OJ L 49, 22.2.2005, p. 9.

- (140) In this respect, it has to be recalled that, in that decision, the Commission authorised State aid relieving the companies of a given sector of specific pension obligations which were in excess of those resulting from the general pension scheme and which had been defined during the monopoly period. In that case, the Commission also took the view that the partial mitigation of the costs arising from the mechanism for financing the specific pension rights acquired before the date of the reform constituted State aid within the meaning of Article 87(1) of the EC Treaty that could be declared compatible with the common market. The Commission considered in its compatibility assessment that the situation of EDF was not dissimilar in nature to that of stranded costs in the energy field. It involved aid aimed at facilitating the transition to a competitive energy sector. The Commission considered that it was appropriate to consider the aid granted to EDF as compensation for stranded costs⁽⁴⁹⁾ and stated that it would adopt this approach in its analyses of similar cases.
- (141) In the light of the above, the Commission considers that, in the present case, the State aid relieves RATP of pension obligations which were in excess of those arising from the statutory pension scheme and which had been defined before the market was liberalised. In parallel, the Commission adds that the reform of the special pension schemes implemented at RATP since the beginning of 2008 aligns the special scheme of RATP staff with the statutory regulations governing the basic schemes for private sector employees and civil servants.

11.4. CONCLUSION

- (142) In conclusion, the Commission considers that the measure under assessment constitutes State aid within the meaning of Article 87(1) of the EC Treaty. This aid is illegal but compatible with the common market according to Article 87(3)(c) of the EC Treaty.

12. ASSESSMENT OF THE SECOND AND THIRD MEASURES

- (143) As indicated above, with effect from 1 January 2006, the reform notified provides for the payment by the State of a subsidy to the CRP-RATP to enable it to balance its accounts.
- (144) In addition, the reform notified provides for the possibility for the CRP-RATP to affiliate the basic pension rights of the special scheme to statutory schemes. In order to respect the general principle of financial neutrality, such affiliation provides for cash payments to the receiving schemes to be borne by the State in place of the CRP-RATP.

⁽⁴⁹⁾ Commission communication relating to the methodology for analysing State aid linked to stranded costs, (Commission letter SG (2001) D/290869 of 6.8.2001).

- (145) It must be established whether these measures constitute State aid within the meaning of Article 87(1) of the EC Treaty.
- (146) In this respect, it has to be recalled that Article 87 of the EC Treaty applies only to undertakings within the meaning of Community competition law. The Court has consistently held that, where the area of social protection is based on solidarity, it does not constitute an economic activity within the meaning of the Treaty (see paragraph 67 of the decision to initiate the procedure of 10 October 2007)⁽⁵⁰⁾.
- (147) In the light of this case law, the Commission considers that neither the CRP-RATP nor the pension funds serving current and retired RATP employees, i.e. CNAV and AGIRC-ARRCO, are undertakings within the meaning of Community competition law for the following reasons.
- (148) In the present case, the Commission observes firstly that RATP staff are subject to mandatory social protection including an independent old-age pension scheme which pursues a social objective. It is intended to provide cover for all the persons to whom it applies against the risks of old age, regardless of their financial status and their state of health at the time of affiliation.
- (149) The Commission further considers that this scheme embodies the principle of solidarity in as much as the contributions paid by active workers finance the pensions of retired workers.
- (150) The Commission also notes that the management of the scheme in question is entrusted under law to the CRP-RATP, the operation of which is subject to State supervision. In this capacity, it collects the contributions receivable from RATP employees and from RATP itself and is responsible for the calculation and payment of pensions. The Commission observes that, in accordance with Article L711-1 of the Social Security Code, the CRP-RATP has all the characteristics defined in Article L 111-1 of the said Code, which states, in particular, that the organisation of social security is to be founded on the basis of national solidarity.
- (151) The Commission observes finally that, in the execution of its remit, the CRP-RATP applies the law and cannot influence the amount of the contributions, the use of assets or the fixing of the level of benefits. The benefits

paid are statutory benefits which bear no relation to the amount of the contributions.

- (152) In so far as the CRP-RATP does not constitute an undertaking within the meaning of Community competition law, the Commission considers that the payment by the State of a balancing subsidy to the CRP-RATP and the funding by the State of cash payments in place of the CRP-RATP do not constitute State aid within the meaning of Article 87(1) of the EC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The creation of the pension fund for RATP staff (CRP-RATP) constitutes State aid in accordance with Article 87(1) of the Treaty, granted illegally by France contrary to Article 88(3) of the Treaty.

This State aid is compatible with the common market under Article 87(3)(c) of the Treaty, subject to the full implementation of the reform of the RATP special pension scheme, the objective of which is to bring the scheme into line with the statutory regulations governing the basic schemes of private sector employees and civil servants.

Implementation of the aid is accordingly authorised.

Article 2

The payment by the State of a balancing subsidy to the CRP-RATP and the financing by the State of cash payments in place of the CRP-RATP for the affiliation of the basic rights of the special scheme to the statutory schemes do not constitute State aid within the meaning of Article 87(1) of the EC Treaty.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 13 July 2009.

For the Commission
Antonio TAJANI
Vice-President

⁽⁵⁰⁾ The Court ruled as follows in Joined Cases C-159 and C-160/91, *Poucet and Pistre*: 'Sickness funds, and the organizations involved in the management of the public social security system, fulfil an exclusively social function. That activity is based on the principle of national solidarity and is entirely non-profit-making. The benefits paid are statutory benefits bearing no relation to the amount of the contributions. Accordingly, that activity is not an economic activity and, therefore, the organisations to which it is entrusted are not undertakings within the meaning of Articles 81 and 82 of the Treaty.'