

JUDGMENT OF THE COURT

14 February 1990 \*

In Case C-301/87

**French Republic**, represented by Régis de Gouttes, Deputy Director of the Department of Legal Affairs in the Ministry of Foreign Affairs, Edwige Belliard, Sub-director in the same Department, acting as Agents, and by Catherine Colonna, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 boulevard du Prince-Henri,

applicant,

v

**Commission of the European Communities**, represented by its Principal Legal Advisers, Jacques H. J. Bourgeois and Antonio Abate, and by its Legal Adviser, Thomas F. Cusack, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented by S. J. Hay, acting as Agent, and Richard Plender, QC, with an address for service in Luxembourg at the British Embassy, 14 boulevard Roosevelt,

intervener,

APPLICATION for the annulment of Commission Decision 87/585/EEC of 15 July 1987 on aid granted by the French Government to a producer of textiles, clothing and paper products — Boussac Saint Frères (Official Journal 1987, L 352, p. 42),

\* Language of the case: French

THE COURT

composed of: O. Due, President, C. N. Kakouris and F. A. Schockweiler (President of Chambers), T. Koopmans, G. F. Mancini, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: F. G. Jacobs  
Registrar: J.-G. Giraud

having regard to the Report for the Hearing and further to the hearing on 8 June 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 October 1989,

gives the following

**Judgment**

- 1 By application lodged at the Court Registry on 4 October 1987, the French Republic seeks the annulment, under the first paragraph of Article 173 of the EEC Treaty, of Commission Decision 87/585/EEC of 15 July 1987 on aid granted by the French Government to a producer of textiles, clothing and paper products — Boussac Saint Frères (Official Journal 1987, L 352, p. 52).
  
- 2 It is apparent from the document before the Court that the French authorities granted financial contributions between June 1982 and August 1984 to a French producer of textiles, clothing and paper products, Compagnie Boussac Saint Frères (hereinafter referred to as 'CBSF'). That financial assistance took the form of capital investment which was approved by the Institut de développement industriel (hereinafter referred to as 'IDI') and then transferred to the Société de participation et de restructuration industrielle (hereinafter referred to as 'Sopari'), which itself provided CBSF with new capital, loans at reduced rates of interest and reductions in social security charges made under the aid scheme for the textile and clothing industry.

- 3 In response to repeated requests from the Commission, the French Government, by telex of 22 March 1984 and letter of 23 August 1984, provided it with details of financial assistance which it had granted to CBSF. Following an initial inquiry, the Commission found that it had not been notified in advance of plans to grant the aid and for that reason considered it to be unlawful. It also took the view that all such aid would be incompatible with the common market under Article 92(1) of the EEC Treaty and would fail to satisfy the conditions necessary for it to qualify under one of the exemptions set out in paragraph (3) of that article.
- 4 By a letter of 3 December 1984, the Commission set in motion the procedure provided for by the first subparagraph of Article 93(2) of the EEC Treaty and gave the French Government notice to submit its comments.
- 5 The French Government submitted its comments by letters of 4 February, 4 June and 11 October 1985, 5 February, 19 June and 21 July 1986, and 27 March and 21 May 1987, as well as in the course of three meetings organized with representatives of the Commission on 18 October 1985, 14 May and 4 July 1986.
- 6 On 15 July 1987, the Commission adopted Decision 87/585, which forms the subject of the present action. That decision states that the financial contributions which were granted constituted aid which was incompatible with the common market under Article 92(1) of the Treaty, that such aid was unlawful because it was granted in breach of Article 93(3) of the Treaty, and that it could not be considered to be compatible with the common market under Article 92(3) of the Treaty. Under Article 2 of the decision, part of the aid had to be recovered and the French Government was required to inform the Commission of the measures adopted to that end. The Commission also pointed out, in the recitals in the preamble to its decision, that four other Member States, six federations and one individual firm had submitted comments under the procedure which resulted in the decision.
- 7 Reference is made to the Report for the Hearing for a fuller account of the background to the dispute, the submissions and arguments of the parties and the course of the procedure, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

- 8 The submissions made by the French Government in support of its application are based on infringement of the procedural rules under Article 93 of the Treaty, on the insufficient reasoning on which the contested decision is based, the incorrect application of Article 92 of the Treaty and breach of the general principle of proportionality.

A — *The effects of the failure to notify*

- 9 It is necessary, as a preliminary point, to consider a problem raised by the Commission. It takes the view that, since the Court has already recognized the direct effect of the final sentence of Article 93(3) of the Treaty, a clear, binding provision involving public policy, failure to comply with that provision is in itself sufficient to render that aid unlawful. Such illegality, it contends, makes it unnecessary to examine the matter in detail and entitles the Commission to order recovery of the aid. For that reason, the Commission believes that the Court should refuse to entertain the objections raised by the French Government against that part of the contested decision in which the Commission concludes that the aid in question is incompatible with Article 92 of the Treaty.
- 10 The French Government contends that a possible failure to comply with the procedural rules in Article 93(3) of the Treaty cannot by itself render the financial assistance illegal and justify recovery of the aid. The Commission ought, in any case, to have carried out a detailed examination of the disputed contributions.
- 11 It must be observed that each of these two arguments is liable to give rise to major practical difficulties. On the one hand, the argument put forward by the Commission implies that aid which is compatible with the common market may be declared unlawful because of procedural irregularities. On the other hand, it is not possible to accept the French Government's argument to the effect that the Commission, when faced with aid which has been granted or altered by a Member State in breach of the procedure laid down in Article 93(3) of the Treaty, has only the same rights and obligations as those which it has in the case of aid duly notified at the planning stage. Such an interpretation would in effect encourage the Member State concerned not to comply with Article 93(3) and would deprive that paragraph of its effectiveness.

- 12 In the light of those arguments, it is necessary to examine the problem by analysing the powers and responsibilities which the Commission and the Member States have in cases where aid has been granted or altered.
- 13 In the first place, it should be noted that Articles 92, 93 and 94, which form part of Section 3 of the Treaty entitled 'Aids granted by States', lay down procedures which imply that the Commission is in a position to determine, on the basis of the material at its disposal, whether the disputed financial assistance constitutes aid within the meaning of those articles.
- 14 Secondly, it should be noted that the Council has not as yet adopted any recommendation under Article 94 of the Treaty for the application of Articles 92 and 93 thereof.
- 15 Furthermore, it is necessary to bear in mind the established case-law of the Court. In its judgment of 22 March 1977 in Case 78/76 *Steinike und Weinlig v Germany* [1977] ECR 595, the Court held that the prohibition contained in Article 92(1) of the Treaty is neither absolute nor unconditional, since paragraph (3) in particular of that article confers on the Commission a wide discretion to admit aid by way of derogation from the general prohibition in Article 92(1). The assessment in such cases of whether a State aid is or is not compatible with the common market raises problems which presuppose the examination and appraisal of economic facts and conditions which may be both complex and liable to change rapidly.
- 16 That was the reason for which the Treaty provided in Article 93 for a special procedure under which the Commission would monitor aid schemes and keep them under constant review. With regard to new aid which Member States might be intending to grant, a preliminary procedure was established; if this procedure was not followed, the aid could not be regarded as having been properly granted. By providing under Article 93 for the Commission to monitor and keep under constant review all aid schemes, the Treaty intended that any finding that aid might be incompatible with the common market should, subject to review by the Court, be the outcome of an appropriate procedure for the implementation of which the Commission was responsible.

- 17 The Court has also held (see the judgment of 9 October 1984 in Joined Cases 91/83 and 127/83 *Heineken Brouwerijen BV v Inspecteurs der Vennootschapsbe-lasting, Amsterdam and Utrecht* [1984] ECR 3435) that the purpose of the first sentence of Article 93(3) of the Treaty is to provide the Commission with the opportunity to review, in sufficient time and in the general interest of the Communities, any plan to grant or alter aid. The final sentence of Article 93(3) of the Treaty constitutes the means of safeguarding the machinery for review laid down by that article, which, in turn, is essential for ensuring the proper functioning of the common market. The prohibition laid down in that article on putting any proposed measures into effect is designed to ensure that a system of aid cannot become operational before the Commission has had a reasonable period in which to study the proposed measures in detail and, if necessary, to initiate the procedure provided for in Article 93(2).
- 18 In order for it to be effective, the system analysed above presupposes that measures may be taken to counteract any infringement of the rules laid down in Article 93(3) of the Treaty and that such measures may, with a view to protecting the legitimate interests of the Member States, form the subject of an action. With regard to this system, there can be no dispute as to the need to introduce conservatory measures in cases where the effect of practices engaged in by certain Member States with regard to aid is to render nugatory the system established by Articles 92 and 93 of the Treaty.
- 19 Once it has established that aid has been granted or altered without notification, the Commission therefore has the power, after giving the Member State in question an opportunity to submit its comments on the matter, to issue an interim decision requiring it to suspend immediately the payment of such aid pending the outcome of the examination of the aid and to provide the Commission, within such period as it may specify, with all such documentation, information and data as are necessary in order that it may examine the compatibility of the aid with the common market.
- 20 The Commission has the same power in cases where it has been notified of aid but the Member State in question, instead of awaiting the outcome of the procedure provided for under Article 93(2) and (3) of the Treaty, has instead proceeded to put the aid into effect, contrary to the prohibition contained in Article 93(3).

- 21 Where a Member State has complied in full with the Commission's order, the Commission is obliged to examine the compatibility of the aid with the common market, in accordance with the procedure laid down in Article 93(2) and (3) of the Treaty.
- 22 If the Member State, notwithstanding the Commission's order, fails to provide the information requested, the Commission is empowered to terminate the procedure and make its decision, on the basis of the information available to it, on the question whether or not the aid is compatible with the common market. If appropriate, such a decision may call for the recovery of the amount of aid which has already been paid.
- 23 It has to be recognized that if the Member State fails to suspend payment of the aid, the Commission is entitled, while carrying out the examination on the substance of the matter, to bring the matter directly before the Court by applying for a declaration that such payment amounts to an infringement of the Treaty. Such a referral is justified in respect of urgency because there has been a decision embodying an order, taken after the Member State in question has been given an opportunity to submit its comments and thus at the conclusion of a preliminary procedure in which it has been enabled to put its case, as in the case of the means of redress provided under the second subparagraph of Article 93(2) of the Treaty. This means of redress is in fact no more than a variant of the action for a declaration of failure to fulfil Treaty obligations, specifically adapted to the special problems which State aid poses for competition within the common market.
- 24 With regard to the present case, it is not disputed that the Commission did examine whether or not the aid was compatible with the common market, even though it did so as a matter of secondary importance. That examination is therefore capable of forming the subject of the present proceedings.

#### B — *Infringement of the procedural rules*

- 25 In this submission, the French Government contends first of all that the Commission infringed the general principle of legal certainty through its failure to act within a reasonable period, bearing in mind the detailed information which the French authorities provided to the Commission in good time. It also believes that its right to a fair hearing was infringed in the present case because the Commission failed to inform it of the observations of interested third parties received pursuant to Article 93(2) of the Treaty.

- 26 With regard to the first complaint, it should be noted that, according to the documents before the Court, the French authorities started to provide the information, which the Commission had requested on numerous occasions, after most of the aid in question had already been paid out. It is therefore not in dispute that the Commission was not informed in sufficient time, within the meaning of Article 93(3) of the Treaty, to enable it to submit its comments on the proposed aid for CBSF. Moreover, the information which the French Government provided to the Commission in March 1984 was far from complete. Thus, it was not until 23 August 1984 that it confirmed, though without providing full particulars, the holding of IDI, and then Sopari, in the capital of CBSF.
- 27 In the light of those circumstances, it was thus reasonable for the Commission to allow itself three months from 23 August 1984 in which to consider the matter and to carry out investigations before issuing the formal notice on 3 December 1984. Furthermore, it should be noted that part of the information sent to the Commission was on several occasions corrected and supplemented by the French Government. It was not until the letters of 27 March and 21 May 1987 that the French Government supplied the Commission with the necessary particulars and sent to it the definitive information on the basis of which the Commission was able to adopt the decision of 15 July 1987.
- 28 While it is true to say that fairly long periods elapsed between, in the first place, the initial letter of 22 March 1984 from the French Government and the formal notice of 3 December 1984 and, secondly, between that formal notice and the decision of 15 July 1987, it was not until 21 May 1987 that the Commission was in possession of all the facts and material necessary for it to examine the compatibility of the aid with the common market. Given those circumstances, it must be held that the Commission's conduct did not infringe the general principle of legal certainty.
- 29 With regard to the second complaint, based on infringement of the right to be heard, it should be stressed that the Court has consistently held (see the judgments of 10 July 1986 in Cases 234/84 and 40/85 *Kingdom of Belgium v Commission* [1986] ECR 2263 and 2321, and the judgment of 11 November 1987 in Case 259/85 *French Republic v Commission* [1987] ECR 4393) that observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question.



30 The Court recognized in those judgments that this principle requires the Member State in question to be placed in a position in which it may effectively make known its views on the observations submitted by interested third parties under Article 93(2) of the Treaty and on which the Commission proposes to base its decision. The Court held that in so far as the Member State had not been afforded the opportunity to comment on such observations, the Commission could not incorporate them in its decision against that State.

31 However, in order for such an infringement of the right to be heard to result in annulment, it is necessary to establish that, had it not been for such an irregularity, the outcome of the procedure might have been different. In that regard, it should be noted that the observations in question, which were lodged with the Court at its request, do not contain any information in addition to that which the Commission already possessed and of which the French Government was aware. Under those circumstances, the fact that the French Government did not have an opportunity to comment on those observations was not likely to influence the outcome of the administrative procedure. This complaint must therefore also be rejected.

*C — The statement of the reasons on which the decision is based*

32 The French Government claims that the statement of the reasons on which the contested decision is based is inadequate inasmuch as it contains no assessment of the real effect of the aid already granted on competition and on trade between Member States, and inasmuch as it appears to be contradictory in view of the closure of production sites. The French Government also criticizes the reasoning of the decision by claiming that it is based on an incorrect assessment of the market share held by CBSF and of the patterns of trade between the Member States. The latter complaint also relates, in substance, to the question whether the financial contributions were compatible with the common market and will for that reason be considered together with the submission based on infringement of Article 92.

33 The first complaint must be rejected. If the Commission were required in its decision to demonstrate the real effect of aid which had already been granted, that would ultimately favour those Member States which grant aid in breach of the duty to notify laid down in Article 93(3) of the Treaty, to the detriment of those which do notify aid at the planning stage. It was therefore not necessary that the reasoning on which the contested decision was based should contain an up-to-date assessment of the effect of aid granted without being notified at the planning stage.

- 34 With regard to the second complaint, the French Government claims in particular that the contested decision is contradictory to the extent to which it takes account of reductions in capacity brought about by the closure of production sites which had a short time previously been transferred to other producers, but fails to take account of reductions in capacity which occurred within CBSF itself.
- 35 It should be noted in this connection that the decision, in the recitals in its preamble, does contain a detailed analysis of the reductions in capacity. Thus, the Commission first of all points out that CBSF's production in the textile and clothing sector was highly diversified and varied and that the alteration in its capacity revealed only approximately a general tendency. The Commission goes on to add that in some subsectors of textiles, such as linen and cotton fabrics, which were of major importance to CBSF, demand had fallen appreciably with the result that firms throughout the Community had had to adapt to this new situation. The Commission also believes that some of the reductions had been brought about by the scrapping of antiquated machinery dating from before the First World War. The Commission further points out that it is necessary to relate the figures of reductions in capacity to the actual turnover of the company (at constant 1982 prices) and that in that case the real reduction appears to have been much smaller. The Commission considers that, bearing in mind the fact that 27 production sites were transferred to other producers who, in part, continued to produce textiles, it was impossible to claim that there had been a real fall in domestic production. Finally, the Commission notes that, shortly after they were transferred, 13 of those sites had to be closed with the permanent cessation of textile production.
- 36 It should be noted that, in view of these detailed findings, the French Government cannot simply claim that the decision is contradictory without relying on arguments other than those already considered by the Commission in the recitals in the preamble to the contested decision. In this regard, the decision is sufficiently clear and substantiated to enable the French Government to identify and evaluate the Commission's reasoning and also to enable the Court to determine whether the decision was well founded. It follows that the complaint directed against the reasons on which the decision is based must be rejected.

D — *The application of Article 92 of the Treaty*

- 37 The French Government takes the view, primarily, that the financial contributions do not constitute aid, that they do not affect trade between Member States and that they neither distort nor threaten to distort competition by favouring certain undertakings. In the alternative, the French Government claims that the aid is compatible with the common market on the basis of Article 92(3)(a) and (c) of the Treaty and that it is consistent with the various guidelines and notices drawn up by the Commission in 1971, 1977 and 1984.
- 38 In support of its main contention, the French Government first points out that the capital contributions, loans at reduced rates of interest and reductions in social security charges which are here at issue do not constitute aid because they were granted to CBSF under conditions of a market economy and were made in conjunction with private investment. The French authorities thus decided to grant financial assistance in association with private investors on the basis of a market analysis and an evaluation of the undertaking which permitted the conclusion that it could, subject to restructuring, become profitable within a reasonable period of time. Such restructuring consisted, in particular, in the elimination of over-capacity, a reduction in manpower, the conversion of non-profitable or excessively vulnerable activities into profitable ones, rationalization of production and improved productivity.
- 39 For the purpose of deciding whether such measures constitute State aid, it is appropriate to apply the criterion, suggested by the Commission in its decision and in any case not disputed by the French Government, which is based on the opportunities open to the undertaking of acquiring the amounts in question on the capital market.
- 40 In the present case, it is apparent from the documents before the Court that, in the first place, the financial situation of the company in 1981 was such that it did not give cause to believe that investments would reach an acceptable level of profitability within a reasonable period, and, secondly, that CBSF would not, in view of its inadequate margin of self-financing, have been in a position to acquire the necessary funds on the capital market. It should also be noted that the first private investments, which in any case were much lower than the contributions of public funds, were only made after the latter had been allocated. The capital contributions which Sopari granted to CBSF following the transfer of IDI therefore do constitute State aid within the meaning of Article 92(1) of the Treaty.

- 41 The same is true of the loans at reduced rates of interest and the reduction in social security charges, because they also enabled CBSF to avoid having to bear costs which would normally have had to be met out of the undertaking's own financial resources, and thereby prevented market forces from having their normal effect.
- 42 The French Government also claims that the financial assistance does not affect trade patterns and neither distorted nor threatened to distort competition between Member States. Thus, the market share held by CBSF is less than 0.5% of the European textile market, which represents approximately ECU 115 thousand million, and CBSF'S exports, rather than increasing, fell between 1982 and 1986 by 33%. The figures given by the Commission relate to sectors of CBSF'S activity which did not receive public aid and also fail to take account of the short-term increase in activity within the linen sector during 1983 and 1984.
- 43 It should be noted that the contested decision contains an analysis of all these factors. The statement of the reasons on which the decision is based includes an examination of the textile and clothing market in France. After finding that the French industry in those sectors accounts for approximately 20% of value added in the common market and plays a very active role in intra-Community trade, since approximately 40% of its total production is exported to other Member States, the decision points out that CBSF is the third largest producer in France of textiles and clothing and that this sector accounts for 56% of its total turnover, which in 1986 came to FF 4 700 million. According to that decision, CBSF is the fifth largest producer in the Community and participates in intra-Community trade by exporting 16% of its textile production to other Member States and a further 9% elsewhere. The Commission also states in its decision that the period which must be examined in order to determine whether the financial assistance is compatible with the common market is that during which the aid was granted. During that period, which ran from July 1982 to the end of 1984, textile exports to other Member States increased by 32% and more than half of CBSF's turnover was achieved in the textiles and clothing sector.
- 44 The Commission also notes, among the reasons for its decision, that the pecuniary assistance intended to restore CBSF's financial position reduced the costs which it would normally have incurred to an extent which placed it at an advantage over its competitors, who must be regarded as having been affected thereby. As it reduced

the price which CBSF would normally have had to pay for its rationalization and modernization, the aid at issue did affect trade between Member States and distorted or threatened to distort competition.

- 45 It should be pointed out that the considerations set out by the Commission, taken as a whole, can support the conclusion which it reached as regards the illegality of the aid. Consequently, the complaints based on the nature of the aid and its incompatibility with the common market, together with those directed against the reasons on which the decision is based, must be rejected.
- 46 The French Government requests the Court, in the alternative, to consider whether the aid may be compatible with the common market under Article 92(3) of the Treaty. It contends that the recovery of CBSF is beyond dispute and that the aid facilitated the development and reconversion of its industrial activities within the meaning of Article 92(3)(c) of the Treaty.
- 47 It goes on to maintain that the aid to CBSF was granted in areas affected by serious underemployment in comparison with the Community average, within the meaning of Article 92(3)(a) of the Treaty.
- 48 In conclusion, the French Government contends that the aid does comply with the numerous conditions laid down, on the one hand, in the guidelines on aid to the textile and clothing industry drawn up by the Commission in 1971 and 1977 and addressed to all the Member States, and, on the other, under the 1984 French aid scheme for the textile and clothing industry.
- 49 The arguments put forward by the applicant cannot be accepted. It should be borne in mind that the Commission enjoys a wide discretion under Article 92(3) of the Treaty and that the exercise of that discretion involves assessments of an economic and social nature which must be made within a Community context.

- 50 In that context, the Commission was entitled, without exceeding the limits of its discretionary power, to form the view that the aid granted to CBSF could not come within the exemption provided for in Article 92(3)(c) of the Treaty in favour of aid designed to facilitate the development of certain economic activities or of certain economic areas, where such aid did not adversely affect trading conditions to an extent contrary to the common interest. The aid lowered CBSF's costs and thereby reduced the competitiveness of other manufacturers within the Community, at the risk of forcing them to withdraw from the market even though they had hitherto been able to continue their activities by virtue of restructuring and improvements in productivity and quality, financed by their own resources.
- 51 With regard to the argument based on the application of Article 92(3)(a) of the Treaty, it should be borne in mind that the Commission is obliged to take account of the economic situation in the areas concerned as compared with that in the Community as a whole. It is clear from the statistics provided by the Commission and the intervener, which were not disputed by the French Government, that the areas containing the production sites of CBSF to which aid was granted were not areas where the standard of living was abnormally low or where there was serious underemployment.
- 52 In support of the argument based on the textile guidelines drawn up by the Commission in 1971 and 1977, the French Government contends that the financial assistance enabled CBSF to be restructured and that this entailed, in the first place, a reduction in production capacity and manpower, secondly, the conversion of non-profitable or vulnerable textile activities to other profitable textile activities and, finally, increased productivity brought about by the use of advanced technology. Thus, the disputed financial assistance did not keep CBSF artificially in business and for that reason it could not be described as rescue aid.
- 53 The Commission takes the view in this regard that CBSF did not undergo any fundamental reorganization such as to enable it to restore its competitiveness through altering its size and its organization. Its viability was not the result of private-sector investments, and for that reason the disputed financial assistance constituted rescue aid which was not provided for in the textile guidelines.

- 54 It should be noted in this regard that the Commission rightly draws attention in its decision to a general fall in Community production in the textile and clothing industry sector brought about by pressure of competition from non-member countries and also to a 40% reduction in the number of persons employed in the sector between 1975 and 1985. The reductions in CBSF were thus due in part to the general market trend in a sector in which demand had fallen sharply. Furthermore, CBSF, instead of restructuring, did no more than scrap antiquated plant and machinery dating from before the First World War and, by investing in high technology, belatedly modernized production plants to keep them operating, without introducing substantive changes such as might have restored a competitiveness lost years previously. The financial assistance complained of was designed to prolong artificially the activity of CBSF at a period when it was in a state of insolvency. It cannot be expected that this undertaking will be in a position to survive on its own in the immediate future without new aid, if account is taken, in particular, of the overcapacity in the sector under consideration.
- 55 Furthermore, it is not disputed that the financial assistance failed in the short term to bring CBSF up to a competitive level sufficient to enable it to succeed on the international textile market.
- 56 The aid granted to CBSF is also in breach of several of the conditions governing the application in 1984 of a French aid scheme for the textile and clothing industry which took the form of a reduction in social security charges. Thus, with regard to the condition that aid could be granted only for purposes of investment and only if the undertaking was in a position to finance at least 50% of the cost of such investment out of its own resources, it is sufficient to point out that the facts presented to the Court, which are not in dispute, show that the aid granted up to 1986 exceeded the investment made by CBSF in the textile sector.
- 57 In the light of the information in the decision concerning the situation of the textile and clothing industry in the Community and in France, intra-Community trade and the alleged restructuring of CBSF, it must be concluded that the Commission did not exceed the limits of its discretion when it formed the view that the aid could not qualify under the exemptions set out in Article 92(3) of the Treaty.

58 It follows that the submission based on the application of Article 92 of the Treaty must be rejected.

*E — The submission based on infringement of the general principle of proportionality*

59 In the view of the French Government, the contested decision infringes the general principle of proportionality, in the first place, because it fails to take account either of the restructuring costs incurred by CBSF or of the fact that CBSF, had it not been for its recovery, would have been put into liquidation, with serious consequences for both creditors and the community as a whole, and, secondly, because the recovery of aid which is sought is disproportionate to the adverse effects on competition.

60 That submission must be rejected. As the Commission has made clear in its decision, the aid granted cannot be regarded as having resulted in a proper restructuring of CBSF. The undertaking limited itself to a modernization of its production plants, without making any fundamental alterations, by replacing machinery which had become totally obsolete and by adapting production techniques and procedures to the technological developments which had taken place many years previously throughout the rest of the Community textile industry. In the light of the information in the decision relating to reductions in manpower and capacity, the Commission was entitled to form the view that the aid did not represent investment for restructuring and to disregard in its decision the costs of the alleged restructuring.

61 As the Commission has pointed out in its decision, out of 27 production sites and 4 730 persons transferred to independent companies, 13 sites, representing a work-force of 3 153 or 66.66% of the total number of jobs transferred, were closed down and textile production there was permanently discontinued. The Commission considered the aid paid to facilitate those 13 transfers as money lost. In seeking recovery, therefore, of only 33% of total aid paid, the Commission did comply with the principle of proportionality.

62 This last submission must therefore also be rejected.



63 As none of the submissions made by the French Government has been upheld, the application must be dismissed in its entirety.

**Costs**

64 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has failed in its submissions, it must be ordered to pay the costs, including those of the intervener.

On those grounds,

**THE COURT**

hereby:

**(1) Dismisses the application;**

**(2) Orders the French Republic to pay the costs.**

Due

Kakouris

Schockweiler

Koopmans

Mancini

Grévisse

Díez de Velasco

Delivered in open court in Luxembourg on 14 February 1990.

J.-G Giraud

Registrar

O. Due

President