

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 27 July 1994

on measures adopted by the French Government concerning pigmeat

(Only the French text is authentic)

(94/725/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by Regulation (EEC) No 1249/89⁽²⁾, and in particular Article 21 thereof,

Whereas the Parties concerned have been given formal notice to submit their comments in accordance with the first subparagraph of Article 93 (2) of the Treaty and having regard to those comments;

Whereas :

I

1. By letter of 29 October 1993, the Office of the French Permanent Representative to the European Communities notified the Commission, in response to the latter's request for notification of 14 September 1993, of measures to assist pig farmers in the form of a partial defrayal of interest payable on bank loans. The French authorities forwarded certain additional information to the Commission by letters of 24 January and 1 February 1994 in response to the latter's request of 16 December 1993.

⁽¹⁾ OJ No L 282, 1. 11. 1975, p. 1.

⁽²⁾ OJ No L 129, 11. 5. 1989, p. 12.

By letter of 23 February 1994, the Commission notified the French Government of its decision to initiate the procedure provided for in Article 93 (2) of the Treaty with regard to that measure on the grounds that the information provided by the French authorities up to then did not show that the ceilings on aid authorized in practice by the Commission for such aid had been observed.

2. The measure in question involves a reduction of 1 to 3 % in annual repayments payable for 1993 on bank loans for immovable property, whether or not benefiting from interest-rate subsidies, taken out by specialized pig farmers between 1990 and 1992. The objective of the measure is to offset the financial costs generated by loans at high rates of interest, given the fall in interest rates in 1993, thereby allowing viable holdings facing short-term financial difficulties to cope with the very severe crisis affecting pigfarming. The French Government has set aside FF 30 million to finance the measure.

II

1. Under the abovementioned procedure, the Commission gave notice to the French Government to submit its comments, which reached the Commission by letters of 29 March and 17 June 1994.

In a communication published in the *Official Journal of the European Communities*⁽³⁾, the Commission notified the Governments of the other Member States

⁽³⁾ OJ No C 107, 15. 4. 1994, p. 4.

and the other interested parties of its decision referred to above and gave them formal notice to submit their comments. It received comments from the Governments of two Member States by letters of 11 and 16 May 1994 and from other interested parties by letters of 4 and 10 May 1994. The French authorities were notified of these comments by letter of 18 July 1994.

2. The French authorities claim first that the measures to which the procedure provided for in Article 93 (2) of the EC Treaty relates from part of a set of measures adopted by the French authorities to assist pig farmers affected by the serious, lasting crisis in the industry (entailing a financial contribution to Stabiporc, the industry's mutual assistance fund, reactivated at the end of the first half of 1993, and entitlement to extended low-interest loans introduced for producers of other agricultural products at the end of 1993).

The French authorities also claim that the measure mainly involved loans not qualifying for interest-rate subsidies and only a few subsidized loans (loans for young farmers to set up in farming and special modernization loans) and that they took the steps necessary to ensure that the Community limits applicable to aid to investments on agricultural holdings were complied with. They also forwarded a letter on 1 June 1994 to the body responsible for payment to ensure that those rates were observed.

3. The comments from the Governments of the other Member States and the other interested parties criticized the measures adopted by the French Government on three main grounds :

— first, the crisis affecting pigmeat production (falling prices, adjustments needed to adapt to market demand) has the same consequences for producers in other Member States but the latter have not benefited from comparable measures and are thus all the more at a disadvantage,

— furthermore, the French measures are illegal since they were implemented without prior notice having been given and before a Commission decision had been taken with regard to them, as required by Article 93 of the Treaty,

— lastly, the aid may have an effect contrary to that anticipated (maintaining and even increasing French production) having regard, on the one hand, to cyclical market forces (the fall in prices should normally result in adaptation of production) and on the other hand, to the Commission's attempts to control the market in pigmeat through the common agricultural policy.

III

1. The Commission is aware of the crisis affecting pigmeat production in the Community since 1993. The increase in capacity in this industry since 1990 has led to overproduction, which became apparent at the end of 1992 and intensified in 1993, and to a corresponding fall in prices. In the European Community, the ratio between the market price for pigmeat and the cost price expressed as a percentage thus fell from around 117 % in January 1992 to 85 % in February 1994 (Eurostat figures).

The European Community also quickly took certain measures to relieve the market, in particular by setting exceptionally high refunds for exports to Russia.

2. Despite the crisis, France's position on a Community market has grown steadily stronger during the last two years, with an increase in production of twice the Community average ; it thus rose from around 13 % of Community production in 1990 to almost 14,5 % in 1993 (figures from the Institut Technique du Porc, Paris).

IV

1. Pursuant to Article 92 (1) of the Treaty, aid granted by Member States 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 is incompatible with the common market in so far as it affects trade between Member States.

The measure in question, involving aid granted by a State for the production of certain products in an industry in crisis which producers in the various Member States competing fiercely with each other, as described in points II.3 and III.1, meets all the conditions to be deemed aid within the meaning of Article 92 (1). The French Government has not, moreover, disputed this point.

2. There are, nevertheless, exceptions to the principle of incompatibility set out in Article 92 (1) of the Treaty.

The derogations provided for in Article 92 (2) are not applicable in the case in point, in view of the type and effects of the aid measure concerned. Moreover, the French Government did not invoke that derogation.

The derogations provided for in Article 92 (3) (a) and (c) concerning aid to promote or facilitate the development of certain regions do not apply, in view of the geographical scope of the aid measure, which covers the entire territory of France. The French Government did not invoke that derogation either.

The derogation provided for in Article 92 (3) (b), is clearly not applicable to the aid measure in question as the latter is not intended to promote the execution of a project of common European interest (quite the contrary, if credence is to be given to the comments from other parties concerned, as summarized in point II.3), or to remedy a serious disturbance in the French economy, as the crisis in question is confined to a clearly defined sector of the economy.

As regards the derogation provided for in Article 92 (3) (c) concerning aid to facilitate the development of certain economic activities, the Commission may consider that certain instances of sectoral aid are compatible with the common market if two conditions are satisfied, namely that the aid is intended to facilitate the development of the sector from the Community viewpoint and that it must not adversely affect trading conditions to an extent contrary to the common interest.

To ensure that the common market continues to function properly and to achieve the objectives set out in Article 3 (f) of the Treaty, the derogations must be interpreted restrictively to preclude setting at an advantage industries or undertakings in certain Member States whose financial position is reinforced artificially, affecting trade between Member States and distorting competition, without any justification based on the common interest as referred to in Article 92 (3).

V

1. As the Commission pointed out when it initiated the procedure provided for in Article 93 (2) of the Treaty, the measure constitutes debt relief for the benefit of a certain category of producers and the Commission can regard it as compatible with the common market only under the following conditions :
 - (a) the defrayals must relate to loans taken out to finance investments already made ;
 - (b) the total subsidy equivalent of any existing aid plus the new aid may not exceed the rates generally allowed by the Commission, i.e. 35 % for investments in primary production (75 % in less-favoured areas within the meaning of Council Directive 75/268/EEC), 55 % for investments in processing and marketing not excluded by the sectoral selection criteria for projects conforming to the sectoral programmes or the general criteria under Council Regulation (EEC) No 866/90 (75 % in Objective 1 areas), and 35 % for other projects (50 % in Objective 1 areas) ;

(c) the defrayals must be in response to adjustments to the rates of new loans to take account of changes in interest rates or must relate to holdings offering viability guarantees, in particular where the financial burdens resulting from existing borrowings are such that the holdings are at risk, with the possibility ultimately of bankruptcy.

2. On the basis of information already provided by the French authorities, the Commission expressed no doubt with regard to fulfilment of the conditions set out in points (a) and (c) above but did express reservations regarding fulfilment of the condition in point (b) in respect of the ceilings on aid as it did not have the necessary information to calculate the subsidy equivalent of the measure, in particular in the event of receipt in combination with other types of aid (loans or subsidies).

VI

1. The French authorities' comments call for certain remarks and imply certain conclusions.
2. First, the guarantee provided by the French authorities regarding compliance with the Community limits on aid to investments in agricultural holdings as regards the combined receipt of various loans is insufficient. Contrary to the observations of the French authorities, the measure under examination does not constitute aid to investments but debt relief which may be received in combination with various aids to investments. The ceilings on aid to be complied with may thus differ from those which the French authorities have undertaken to observe.

In addition, the very vague letter sent on 1 June 1994 to the body responsible for payment of the aid in question cannot be taken into consideration with regard to aid granted in haste in 1993.

Only the calculation of the total subsidy equivalent of the various aids which may be granted in combination may thus demonstrate compliance with the ceilings referred to in point V.1 (b).

3. The new information now provided by the French authorities makes it possible to ascertain the total aid which may be received in combination with the measure in question and to calculate the total subsidy equivalent.

It emerges from the letters from the French authorities of 29 March and 17 June 1994 that the only other aid which the potential recipients of the aid measure in question could have received at the time are setting-up loans to young farmers and special modernization

loans. As those two aid measures cannot cover the same investments, the maximum subsidy equivalent in the case of combined receipt in respect of a given investment could be calculated as follows :

- new aid alone : approximately 2,85 %,
- with a setting-up loan :
 - in lowland areas : approximately 27,2 % (24,33 + 2,85),
 - in less-favoured areas : approximately 36,65 % (33,8 + 2,85),
- with a modernization loan :

- in lowland areas : approximately 28,85 % (26 + 2,85),
- in less-favoured areas : approximately 32,85 % (30 + 2,85).

However, the young farmers who qualified for a setting-up loan also qualified for a setting-up grant in accordance with Article 10 of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures ⁽¹⁾, the latter must thus be taken into account when the total aid is calculated. Between 1990 and 1992, the setting-up grant could amount to a maximum of FF 100 800 to 178 200 in mountain and hill areas, FF 67 200 to 110 800 in less-favoured areas and FF 52 000 to 78 000 in lowland areas. The calculation of the total subsidy equivalent of the setting-up aid (grant, loan and deferral of interest) using extreme examples of investments is summarized in the following table :

Subsidy equivalent in the event of receipt in combination with setting-up aid

	Investment of FF 300 000		Investment of FF 2 million	
	Lowland area	Less-favoured area	Lowland area	Less-favoured area
Setting-up grant ^(*)	17,3 % to 28,5 %	22,4 % to 54 %	2,6 % to 4,3 %	3,4 % to 8,9 %
Total aid which may be received in combination	44,5 % to 55,7 %	59 % to 90,7 %	29,3 % to 31,5 %	40 % to 45,6 %

^(*) Calculated on the basis of the range applicable to the grant, for each area.

This table shows that while the ceilings on aid authorized in practice by the Commission for investments in primary production, namely 35 % (75 % in less-favoured areas within the meaning of Directive 75/268/EEC), seem to be observed when the investment concerned is very large (e.g. FF 2 million), they may be exceeded in both lowland and less-favoured areas when the investment is moderate (e.g. FF 300 000).

4. As a consequence, a distinction must be made between two cases :

- where interest is defrayed in combination with the grant of a modernization loan, the ceilings on aid authorized in practice by the Commission for investments in primary production are observed.

In such case, the aid measure concerned can qualify under the derogation in Article 92 (3) (c) and may be deemed compatible with the common market,

- where interest is defrayed in combination with the grant of setting-up aid (loan and grant), the observance of those ceilings is not guaranteed.

In such case, in so far as the rate of aid in the measure concerned exceeds the ceilings authorized by the Commission, it cannot qualify under the derogation in Article 92 (3) (c) and must be deemed incompatible with the common market.

VII

1. Since the aid measure was not notified, it should be pointed out that in view of the binding nature of the rules of procedure laid down in Article 93 (3) of the Treaty, which rules are also important from the viewpoint of public policy and whose direct effect was recognized by the Court of Justice in its judgments of 19 June 1973 (Case 77/72, *Carmine Capolongo v. Azienda Agricola Maya*)⁽²⁾, 11 December 1973 (Case 120/73, *Gebrueder Lorenz GmbH v. the Federal Republic of Germany*)⁽³⁾, 22 March 1977 (Case 78/76, *Firma Steinike und Weinlig v. Federal Republic of*

⁽¹⁾ OJ No L 218, 6. 8. 1991, p. 1.

⁽²⁾ [1973] ECR, p. 611.

⁽³⁾ [1973] ECR, p. 1471.

Germany⁽¹⁾, 21 November 1991 (Case C-354/90, *Fédération Nationale du Commerce Extérieur des Produits Alimentaires and Syndicat National des Négociants et Transformateurs de Saumon v. French State*)⁽²⁾, the illegality of the aid measures concerned cannot be reversed after the event.

In addition, in the event of incompatibility of an aid measure with the common market, the Commission may require, in accordance with the decisions of the Court of Justice, and in particular its judgment of 12 July 1973 (Case 70/72, *Commission of the European Communities v. the Federal Republic of Germany*)⁽³⁾, as confirmed by judgments of 24 February 1987 (Case 310/85, *Deufil GmbH & Co. KG v. Commission of the European Communities*)⁽⁴⁾, and 20 September 1990 (Case C-5/89, *Commission of the European Communities v. the Federal Republic of Germany*)⁽⁵⁾, that the Member States recover any aid granted illegally from the recipients.

2. The French Government did not respect the suspensory effect resulting from Article 93 (3) of the Treaty in so far as it did not wait for the Commission to take a position before granting the aid in question. As a consequence, the aid is illegal under Community law as from the granting.

Since the aid was granted illegally, i.e. without a final decision under the Article 93 (2) procedure having been reached, that part of the aid considered incompatible with the common market (second indent of point VI.4) should be refunded.

Although neither the exact amount nor the number of recipients of the aid in question is known to the Commission, since a combination of State aids is involved, the recipients who received the illegal aid must be known to the French authorities. Under these circumstances, that part of the aid exceeding the ceilings authorized by the Commission must be reimbursed.

Reimbursement must take place in accordance with the procedures and provisions of French law, and in particular those relating to interest on overdue payments on monies owed to the State, interest accruing as from the date the aid in question was granted.

Such reimbursement is necessary to re-establish the situation obtained previously, entailing the cancellation of all the financial benefits from which the recipients

of the aid, which had been granted improperly, benefited unduly since the date of granting. It is all the more necessary in view of the fragile situation of the market concerned.

This Decision is without prejudice to any consequences which the Commission may, where applicable, draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION :

Article 1

The aid granted by the French Government in the form of a reduction of 1 to 3 % in annual repayments due in respect of 1993 on bank loans taken out by specialized pig farmers between 1990 and 1992 is hereby declared illegal since it was granted in breach of the rules of procedure set out in Article 93 (3) of the Treaty.

Article 2

The aid granted by the French Government in the form of a reduction of 1 to 3 % in annual repayments due in respect of 1993 on modernization loans taken out by specialized pig farmers between 1990 and 1992 may be deemed compatible with the common market.

Article 3

The aid granted by the French Government in the form of a reduction of 1 to 3 % in annual repayments due in respect of 1993 on setting-up loans to young farmers taken out by specialized pig farmers between 1990 and 1992 is hereby declared incompatible with the common market within the meaning of Article 92 of the Treaty in so far as there is no assurance that the ceilings on aid authorized by Commission policy for investments in primary production will be observed in the event of receipt in combination with other aid such as setting-up loans and grants.

Article 4

The French Government shall abolish the aid measure in question to the extent that it does not observe the ceilings referred to in Article 3 in the event of receipt in combination with other aid and shall require that the part of the aid exceeding those ceilings (35,75 % in less-favoured areas) be recovered within three months of notification of this Decision.

⁽¹⁾ [1977] ECR, p. 595.

⁽²⁾ [1991] ECR, p. I-5505.

⁽³⁾ [1973] ECR, p. 813.

⁽⁴⁾ [1987] ECR, p. 901.

⁽⁵⁾ [1990] ECR, p. I-3437.

Such recovery shall take place in accordance with the procedures and provisions of French law and in particular those relating to interest on overdue payments on monies owed to the State. The sums to be recovered shall bear interest as from the date the aid in question was granted.

Article 5

The French Government shall inform the Commission within three months of notification of this Decision of the measures it has taken to comply therewith.

Article 6

This Decision is addressed to the French Republic.

Done at Brussels, 27 July 1994.

For the Commission

Martin BANGEMANN

Member of the Commission
