

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 22 December 1999

**concerning and aid scheme implemented by Spain in favour of horticultural products intended for industrial processing in Extremadura in the 1997/98 marketing year**

(notified under document number C(1999) 5207)

(Only the Spanish text is authentic)

(2000/237/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 Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables <sup>(1)</sup>, as last amended by Regulation (EC) No 1257/1999 <sup>(2)</sup>,

The parties concerned having been given notice, in accordance with the first subparagraph of Article 88(2) of the Treaty, to submit their comments <sup>(3)</sup>,

Whereas:

I. PROCEDURE

(1) The Government of Extremadura Ministry of Agriculture and Trade Order of 8 July 1998 lays down the aid for horticultural products intended for industrial processing for the 1997/98 marketing year. The Order was published in the *Diario Oficial de Extremadura* <sup>(4)</sup>.

(2) The Commission, not having received notification of the State aid from the Spanish authorities in accordance with Article 88(3) of the Treaty, sent a letter on 8

February 1999 requesting confirmation of the existence of the aid and the date of its introduction.

(3) By letter dated 26 February 1999, the Office of the Spanish Permanent Representative to the European Union sent the Commission the information it had requested in its letter dated 8 February 1999.

(4) By letter dated 14 June 1999, the Commission informed Spain of its decision to open the procedure provided for in Article 88(2) of the Treaty with respect to the aid scheme. In its letter, the Commission gave notice to Spain to send its comments.

(5) The Commission Decision to open the procedure was published in the *Official Journal of the European Communities* <sup>(5)</sup>. The Commission gave notice to the interested parties to submit their comments on the aid scheme.

(6) Spain submitted its comments by letter dated 19 July 1999.

(7) The Commission received comments on the scheme from the interested parties. It forwarded those comments to Spain by letter dated 17 November 1999, giving Spain the opportunity to make any observations on them. The Commission received no such observations from Spain.

<sup>(1)</sup> OJ L 297, 21.11.1996, p. 1.

<sup>(2)</sup> OJ L 160, 26.6.1999, p. 80.

<sup>(3)</sup> OJ C 233, 14.8.1999, p. 37.

<sup>(4)</sup> *Diario Oficial de Extremadura* No 84, 23 July 1998, p. 5807.

<sup>(5)</sup> See footnote 3.

## II. DETAILED DESCRIPTION OF THE AID MEASURE

(8) The Order of 8 July 1998 provides for aid for horticultural products intended for industrial processing in the 1997/98 marketing year.

(9) The beneficiaries of the aid are growers in Extremadura who signed contracts with processors to supply horticultural products in the 1997/98 marketing year. The maximum aid per farmer is ESP 500 000.

(10) Producer groups may sign contracts on behalf of their members. In such cases, the group may receive an additional grant equal to 1 % of the value of its members' production, up to a maximum of ESP 1 million per group.

(11) The products for which the aid can be paid and the amounts concerned are as follows:

- peppers for the production of ground red pepper (designation of origin): ESP 5/kg
- peppers for the production of ground red pepper: ESP 1,5/kg
- ground industrial peppers: ESP 1,5/kg
- industrial gherkins: ESP 5/kg
- cabbages for dehydration: ESP 1,5/kg
- onions for dehydration/freezing: ESP 1,5/kg
- broccoli for dehydration/freezing: ESP 1,5/kg
- cauliflower for dehydration/freezing: ESP 1,5/kg
- spinach for freezing: ESP 1,5/kg
- leeks for dehydration: ESP 1,5/kg
- broad beans for freezing: ESP 1,5/kg
- potatoes for freezing: ESP 1,5/kg.

(12) The maximum quantities eligible for aid are as follows:

- 9 500 t of peppers for ground red pepper (designation of origin Pimentón de la Vera),
- 4 000 t of peppers for ground red pepper and industrial peppers,
- 250 t of industrial gherkins and
- 15 000 t of the remaining products.

Where the total quantity exceeds those limits, a coefficient is applied to the production of each farmer eligible for aid.

(13) The Order of 8 July 1998 is based on Government of Extremadura Decree 84/1993 of 6 July 1993 establishing a system of aid for horticultural products intended for industrial processing<sup>(6)</sup>. The Decree lays down that the products eligible for aid, the amount of the aid and the maximum quantity eligible for aid are to be laid down for each marketing year by an Order.

(14) In its letter dated 14 June 1999, the Commission informed Spain that the aid scheme for horticultural products, in which the amount of aid depended on the quantities produced and which could infringe Articles 28 and 29 of the Treaty, did not appear to fulfil the conditions for any of the derogations provided for in Article 87(3) of the Treaty.

In its letter, the Commission recommended that the Spanish Government abolish the aid for potatoes.

## III. COMMENTS SUBMITTED BY THE INTERESTED PARTIES

(15) The European Union of the Potato Processing Industries submitted comments on the aid scheme by letter dated 6 September 1999. It shares the Commission's opinion that the Spanish Government should abolish the aid for potatoes.

## IV. COMMENTS SUBMITTED BY SPAIN

(16) Spain said that establishing and maintaining the food industry by means of a link between production and processing, in the form of contractual relations, guaranteed a minimum price and the supply of quality raw materials. The link helped maintain production and the rural population in the areas concerned.

(17) The development and cultivation of irrigated autumn and winter vegetables in Extremadura provides a socio-economic alternative which is very important for the development of rural areas and has allowed a balance to be maintained between products for the fresh market and products for processing by means of maximum guaranteed quantities which have effectively limited production and marketing opportunities.

(18) The aid has not conferred any advantage on those concerned. In fact, it was intended solely to achieve a particular structural objective and, as soon as that had been accomplished, the aid scheme was suspended and there are no plans to reintroduce it.

<sup>(6)</sup> *Diario Oficial de Extremadura* No 82, 13 July 1993, p. 2071.

## V. ASSESSMENT OF THE AID

**Article 87(1) of the Treaty**

- (19) Article 43 of Regulation (EC) No 2200/96 lays down that Articles 87 and 88 of the Treaty apply to the production and marketing of the products referred to in Article 1(2) of that Regulation.
- (20) Under Article 87(1) of the 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 is, in so far as it affects trade between Member States, incompatible with the common market.
- (21) Spain produces 115 451 000 t of vegetables. There is a significant volume of trade in those products between Spain and the rest of the Community; for example, in 1998 Spain imported 28 782 000 t of vegetables from the other Member States and exported 28 782 000 t to them <sup>(7)</sup>.
- (22) The measures concerned could therefore affect trade in vegetables between the Member States, since that trade is affected by aid which favours operators active in one Member State over those in others. The measures have a direct and immediate effect on the production costs of undertakings producing and processing fruit and vegetables in Spain. They therefore confer an economic advantage over undertakings which do not have access to comparable aid in other Member States. They therefore distort or threaten to distort competition.
- (23) In the light of the above, the aid in question must be considered to be State aid fulfilling the criteria laid down in Article 87(1) of the Treaty.

**Possible derogations under Article 87 of the Treaty**

- (24) Derogations may, however, be granted from the principle of incompatibility laid down in Article 87(1) of the Treaty.
- (25) In the case in question, the derogations provided for in Article 87(2) clearly do not apply. Neither have they been claimed by the Spanish authorities.
- (26) The derogations provided for in Article 87(3) of the Treaty must be interpreted strictly when examining a regional or sectoral aid scheme or any individual application of general aid schemes. In particular, they can be granted only where the Commission concludes

that the aid is necessary to achieve one of the objectives of the derogations. Allowing any other aid to benefit from those derogations would permit damage to trade between Member States and distortion of competition without this being justified by the Community interest and would allow operators in certain Member States to obtain undue advantage.

- (27) The Commission takes the view that the aid in question was not granted as regional aid for new investment or to create employment, nor to provide horizontal compensation for shortcomings in infrastructures suffered by all the region's undertakings, but as operating aid for the agricultural sector. Consequently, it is clearly sectoral aid which must be assessed in the light of Article 87(3)(c).
- (28) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that such aid does not adversely affect trading conditions to an extent contrary to the common interest.
- (29) The aid scheme must be assessed, in particular, in the light of that provision.
- (30) Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products <sup>(8)</sup>, amended by Regulation No 49 <sup>(9)</sup>, applies to the aid for potatoes, a product listed in Annex I to the Treaty not subject to the common organisation of the markets. The only provisions of the Treaty which apply are Article 88(1) and the first sentence of Article 88(3), and the Commission can therefore only formulate comments. In its letter dated 14 June 1999, it recommended that the Spanish Government abolish the aid concerned.
- (31) In accordance with the Commission's constant practice in applying Articles 87 to 89 of the Treaty, any aid whose amount depends on the quantities produced must be considered operating aid incompatible with the common market <sup>(10)</sup>.
- (32) Such aid has no lasting effect on the development of the sector concerned, since its immediate effects disappear with the measure itself. On the other hand, a direct consequence of such aid is an improvement in the production and marketing opportunities of the operators concerned compared with other operators not receiving comparable aid (both within the country and in the other Member States). (See the judgment of the Court of First Instance of the European Communities of 8 June 1995 in Case T-459/93, *Siemens SA v Commission* <sup>(11)</sup>).

<sup>(8)</sup> OJ 30, 20.4.1962, p. 993/62.

<sup>(9)</sup> OJ 53, 1.7.1962, p. 1571/62.

<sup>(10)</sup> Precedents: aid N 51/92, N 741/94, N 623/92, N 214/91 and NN 24/93.

<sup>(11)</sup> [1995] ECR II-1675.

<sup>(7)</sup> Source: Eurostat 1998.

- (33) In addition, account must be taken of the fact that this aid (with the exception of that for potatoes) is for products subject to a common organisation of the market and that the powers of the Member States to intervene in the operation of those organisations are limited, they being the exclusive responsibility of the Community. The Court of Justice has consistently held that the common organisations of the market must be considered comprehensive and exhaustive systems which preclude the Member States from adopting derogations or measures which conflict with them (see, *inter alia*, the judgement of 26 June 1979 in Case 177/78, *Pigs and Bacon v McCarren* <sup>(12)</sup>).
- (34) Furthermore, the beneficiaries of the aid scheme are Extremaduran growers of vegetables intended for industrial processing, signing contracts to supply their production to processors in the region.
- (35) This requirement constitutes a restriction on the free circulation of goods between Member States and an infringement of Article 29 of the Treaty, since, in order to receive the aid, growers are obliged to sell their production to processors in the region. This requirement constitutes a restriction on the despatch of those products to the other Member States.

### Conclusion

- (36) In the light of the above and the applicable Community rules, the Commission takes the view that, as regards the derogations provided for in Article 87(3)(a) and (c) for aid to promote or facilitate the economic development of certain regions or the development of certain activities, the aid examined could adversely affect trading conditions to an extent contrary to the common interest.
- (37) The aid (with the exception of that for potatoes) must consequently be considered as an infringement of Community rules and therefore ineligible for any of the derogations provided for in Article 87(3) of the Treaty.

### VI. CONCLUSIONS

- (38) Since the aid in question was not notified to the Commission in accordance with Article 88(3) of the Treaty, its granting was illegal, given that it was granted before the Commission could decide on its compatibility with the common market.
- (39) Furthermore, for the reasons set out above, the aid (with the exception of that for potatoes) is incompatible with the common market, since it is covered by Article 87(1) of the Treaty but is not eligible for any of the derogations provided for in paragraphs 2 and 3 of that Article.

<sup>(12)</sup> [1979] ECR 2161.

- (40) Where aid is incompatible with the common market, the Commission must make use of the possibility offered by the judgment of the Court of Justice of 12 July 1973 in Case 70/72, *Commission v Germany* <sup>(13)</sup>, confirmed by the judgments of 24 February 1987 in Case 310/85, *Deufil v Commission* <sup>(14)</sup>, and of 20 September 1990 in Case C-5/89, *Commission v Germany* <sup>(15)</sup>, and require the Member State to recover from the recipients all the aid granted illegally. The requirement to recover aid is also laid down in Article 14(1) 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 <sup>(16)</sup> (now Article 88). Recovery is necessary in order to re-establish the previous situation by abolishing all the financial advantages enjoyed unduly by the beneficiaries since the aid was granted.
- (41) The aid granted (with the exception of that for potatoes) must be repaid in full.
- (42) Repayment must be made in accordance with Spanish law. The amounts to be repaid must include interest from the date the aid was granted to its actual recovery. The interest must be calculated on the basis of the commercial rate, taking as a reference the rate used to calculate the grant equivalent of regional aid <sup>(17)</sup>.
- (43) This Decision does not prejudice the conclusions the Commission may draw, if necessary, for the financing of the common agriculture policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

#### Article 1

The State aid scheme implemented by Spain by means of Government of Extremadura Ministry of Agriculture and Trade Order of 8 July 1998 laying down the aid for horticultural products intended for industrial processing for the 1997/98 marketing year, with the exception of the aid for potatoes, is incompatible with the common market.

#### Article 2

Spain shall abolish the aid scheme referred to in Article 1.

#### Article 3

1. Spain shall adopt all measures necessary to recover from the beneficiaries all aid referred to in Article 1 which has been granted illegally.

<sup>(13)</sup> [1973] ECR 813.

<sup>(14)</sup> [1987] ECR 901.

<sup>(15)</sup> [1990] ECR I-3437.

<sup>(16)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(17)</sup> OJ C 74, 10.3.1998, p. 9.

2. Recovery shall be immediate and in accordance with the procedures laid down in Spanish law, provided that these permit the immediate and effective implementation of this Decision. The amounts to be repaid must include interest from the date the aid was made available to the beneficiaries to its actual recovery. The interest must be calculated on the basis of the reference rate used to calculate the grant equivalent of regional aid.

*Article 4*

Spain shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 5*

This Decision is addressed to the Kingdom of Spain.

Done at Brussels, 22 December 1999.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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