

COMMISSION

COMMISSION DECISION

of 22 December 1999

concerning an aid scheme implemented by Spain to finance operating capital in the agricultural sector in Extremadura

(notified under document number C(1999) 5201)

(Only the Spanish text is authentic)

(2000/240/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,

The parties concerned having been given notice, in accordance with the first subparagraph of Article 88(2) of the Treaty, to submit their comments ⁽¹⁾,

Whereas:

I. PROCEDURE

- (1) Government of Extremadura Decree No 35/1993 of 13 April 1993 on the financing of operating capital in the agricultural sector in Extremadura was published in the *Diario Oficial de Extremadura* ⁽²⁾.
- (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 its entry into force.
- (3) By letter dated 26 February 1999, the Spanish Permanent Representation to the European Union sent the Commission the information it had requested in its letter dated 8 February 1999.
- (4) By letter dated 4 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* ⁽³⁾. The Commission gave notice to 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 no comments on the scheme from interested parties.

II. DETAILED DESCRIPTION OF THE AID MEASURE

- (8) Decree No 35/1993 provides for financing to meet capital requirements for a single marketing year in order to develop agriculture and food processing in Extremadura.
- (9) The beneficiaries are farmers, agricultural cooperatives and other associations in Extremadura and processing undertakings in Extremadura signing contracts with agricultural and livestock holdings in the Autonomous Community for raw materials for industrial processing.
- (10) The aid takes the form of an interest-rate rebate for loans lasting less than one year, the amount of which varies depending on the beneficiary.

⁽¹⁾ OJ C 225, 7.8.1999, p. 6.

⁽²⁾ *Diario Oficial de Extremadura* No 45, 15.4.1993, p. 1027.

⁽³⁾ See footnote 1.

(11) An interest-rate rebate of up to five percentage points is provided for farmers practising farming as their main occupation and of up to four percentage points for other farmers; where there is Community or State part-financing, the beneficiary must pay a minimum interest rate of 6 % (4 % for farmers practising farming as their main occupation).

(12) In the case of cooperatives and other associations, an interest-rate rebate of up to one percentage point is provided for the purchase of inputs (with an additional 0,5 percentage points for the purchase of certified plants and seeds and a further 0,5 percentage points for the purchase of straight fertilisers) and of up to five percentage points in the case of loans to provide operating capital for seasonal payments to members.

(13) In the case of processing undertakings, an interest-rate rebate of up to five percentage points is provided for loans for the purchase of raw materials under contracts with farmers and for loans to provide general operating capital, in the sectors laid down each year by an Autonomous Community order.

(14) The Government of Extremadura Ministry of Agriculture and Trade Order of 29 September 1998 ⁽⁴⁾ lays down the following products for the 1997/98 marketing year: dried figs and fig paste, peppers for the production of ground red pepper, Iberian swine, olives for the production of olive oil and tomatoes for dehydration other than powdered tomatoes. An interest-rate rebate of five percentage points is provided for, for a maximum of one year. The interest rate for loans is the MIBOR 365-day rate plus one percentage point.

(15) Ceilings are placed on the aid; for farmers these are maximum amounts per hectare, product and animal, for cooperatives the average value of inputs purchased in the last three years plus 10 % and for processing undertakings the value of the loan.

(16) The aid scheme has an annual budget of ESP 107 million and is of indefinite duration.

(17) In its letter dated 4 June 1999, the Commission informed Spain that the aid scheme (with the exception of the aid for farmers and for cooperatives and other associations before 30 June 1998) did not appear to fulfil the conditions for any of the derogations provided

for in Article 87(3) of the Treaty. It notified Spain that the aid for farmers and for cooperatives and other associations before 30 June 1998 was eligible for the derogation provided for in Article 87(3)(c) since it was aid for the development of the sector.

III. COMMENTS SUBMITTED BY SPAIN

(18) Spain considers the aid scheme to be a non-discriminatory general scheme, providing reduced-rate seasonal loans to the whole agricultural sector in Extremadura. The scheme is applied each year by means of an order laying down the disadvantaged sectors and subjecting payment of the aid to the conclusion by the buyer and the seller of a contract approved by the Ministry of Agriculture guaranteeing producers a minimum price above the market price and processing undertakings supplies of raw material meeting minimum quality requirements.

(19) Priority is given to sectors producing products with a local or regional identity or with particular characteristics conferred by their form of production or processing. The nature of the aid means that it does not affect free competition in Community trade in other products, being of purely regional scope.

(20) Application of Decree No 35/1993 on the financing of operating capital in the agricultural sector in Extremadura has been suspended and is due to be repealed and replaced by another more in accord with the Commission Communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*) ⁽⁵⁾ ⁽⁶⁾.

IV. ASSESSMENT OF THE AID

Article 87(1) of the Treaty

(21) Article 36 of the Treaty lays down that the rules on competition set out in the Treaty apply to production of and trade in agricultural products only to the extent determined by the Council.

(22) In the case of aid for agricultural products listed in Annex I to the Treaty not covered by a common organisation of the market (potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork), Council Regulation No 26 applying certain rules of competition to production of and trade in agricultural products ⁽⁷⁾, as amended by Regulation No 49 ⁽⁸⁾, applies. 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.

⁽⁵⁾ OJ C 44, 16.2.1996, p. 2.

⁽⁶⁾ By letter dated 4 July 1997, the Commission informed the Member States of its decision to suspend application of that Communication and, by letter dated 19 December 1997, informed them that it would reapply it from 30 June 1998.

⁽⁷⁾ OJ 30, 20.4.1962, p. 993/62.

⁽⁸⁾ OJ 53, 1.7.1962, p. 1571/62.

⁽⁴⁾ Diario Oficial de Extremadura No 114, 6.10.1998, p. 7412.

- (23) All the other products listed in Annex I to the Treaty are covered by common organisations of the market and the Regulations laying down those organisations expressly provide for the application of Articles 87, 88 and 89 of the Treaty to the production and marketing of those products.
- (24) 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.
- (25) There is a significant volume of trade in the products concerned between Spain and the rest of the Community: Spain imports 10 290 178 tonnes from the other Member States and exports 12 648 802 tonnes to them. The value of this trade is EUR 6 810 477 000 and EUR 10 308 134 000 respectively ⁽⁹⁾.
- (26) The measures concerned could therefore affect trade in agricultural products 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 agricultural products in Spain. They therefore give them 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.
- (27) 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

- (28) Derogations may, however, be granted from the principle of incompatibility laid down in Article 87(1) of the Treaty.
- (29) 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.
- (30) 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 from certain Member States to obtain undue advantage.
- (31) The Commission takes the view that the aid in question was not designed as regional aid for new investment or to create employment, nor to provide horizontal compensation for shortcomings in infrastructure 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).
- (32) 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.
- (33) The aid scheme must be assessed, in particular, in the light of that provision.
- (34) The aid takes the form of an interest-rate rebate for seasonal loans lasting less than one year. The Commission authorises this type of aid as a measure to promote the development of the sector, i.e. covered by Article 87(3)(c), provided that it complies with its Communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*).
- (35) The aid must be granted to all operators in agriculture on a non-discriminatory basis, irrespective of the agricultural activity for which the short-term loan is required. However, certain activities or certain operators may be excluded provided that the Member State is able to demonstrate that all such instances of exclusion are justified on the grounds that the problems of obtaining short-term loans faced by those excluded are inherently less significant than in the rest of the agricultural economy.
- (36) The aid must be limited to what is strictly necessary to compensate for the disadvantages suffered by agriculture. A Member State wishing to grant subsidised loans must quantify the disadvantages using the method it considers most appropriate but always remaining within the limits of the gap between the interest rate paid by a typical agricultural operator and that paid in the rest of the economy of the Member State concerned for short-term loans of a similar amount, not linked with investments. By letter dated 19 December 1997, the Commission informed the Member States that the only possible interpretation was that the interest-rate rebate from public resources for short-term loans in agriculture could not exceed that difference.

⁽⁹⁾ Source: Eurostat 1998.

- (37) The amount of subsidised loans to any beneficiary must not exceed the cash flow requirements arising from the fact that production costs are incurred before income from output sales is received.
- (38) Until the Commission reapplied the provisions of the above Communication on 30 June 1998 ⁽¹⁰⁾, it authorised, in accordance with its usual practice, aid in the form of an interest-rate rebate for short-term operating loans provided that the loan was for a maximum of one year and that the aid was not granted for a single product or on a one-off basis ⁽¹¹⁾.
- (39) Therefore, in assessing the above Decree, a distinction must be made between the period before 30 June 1998 and that following.
- (40) Similarly, a distinction must be made in the period before 30 June 1998 between beneficiaries.
- (41) The aid granted to farmers, agricultural cooperatives and other associations meets the criteria laid down by the Commission for this type of aid. More particularly, it involved aid in the form of an interest-rate rebate on operating loans for up to one year and was not granted for a single product or on a one-off basis. As a consequence, in its letter dated 4 June 1999, the Commission informed Spain that the aid was eligible for the derogation provided for in Article 87(3)(c) as aid to promote the development of the sector.
- (42) The aid granted to processing undertakings consisted of an interest-rate rebate on operating loans for up to one year and was not granted for a single product or on a one-off basis and therefore fulfilled the criteria applied by the Commission to this type of aid before 30 June 1998; however, the aid is limited to undertakings signing contracts with agricultural and livestock holdings in Extremadura for raw materials for industrial processing. This requirement constitutes a restriction on the free movement of goods between the Member States and a breach of Article 28 of the Treaty in that processors using raw materials from other Member States are ineligible for the aid. It constitutes a restriction on the introduction of products from other Member States, which will not be purchased by processing undertakings in Extremadura eligible for the aid. The aid could therefore adversely affect trading conditions to an extent contrary to the Community interest and is consequently not eligible for any of the derogations provided for in Article 87(3) of the Treaty.
- (43) After 30 June 1998, the Commission Communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*) applies to the aid.
- (44) The aid granted does not fulfil the criteria laid down in that Communication, in particular, that the aid must be granted to all operators in agriculture on a non-discriminatory basis, that it must be limited to what is strictly necessary to compensate for the disadvantages affecting agriculture and that the amount of subsidised loans granted to any beneficiary must not exceed the cash-flow requirements arising from the fact that production costs are incurred before income from output sales is received.
- (45) The aid is not granted to all operators in agriculture on a non-discriminatory basis. The Spanish authorities affirm that the aid scheme is implemented each year by means of an order stipulating the sectors considered to be disadvantaged compared with the rest and which are eligible for aid.
- (46) The aid is not limited to what is strictly necessary to compensate for the disadvantages affecting agriculture. On the contrary, the Decree fixes the interest-rate rebate on seasonal loans, of between 0,5 and 5 points, on a discretionary basis according to the beneficiary.
- (47) The aid scheme provides for no measures to ensure that the subsidised loans granted to a beneficiary do not exceed the cash-flow requirements arising from the fact that production costs are incurred before income from output sales is received.
- (48) In addition, in the case of the aid for agricultural processing undertakings in Extremadura, what is stated in recital 42 regarding the requirement to sign contracts for raw materials with holdings in the region also applies.
- (49) The aid must therefore be considered to be operating aid incompatible with the common market. Such aid has no lasting effect on the development of the sector concerned, since its immediate effects disappear with the measure itself. (See the judgement of the Court of First Instance of the European Communities of 8 June 1995 in Case T-459/93, *Siemens SA v Commission* ⁽¹²⁾). 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).
- (50) Consequently, with the exception of the aid granted before 30 June 1998 to farmers, agricultural cooperatives and other associations, this aid scheme is ineligible for any of the derogations provided for in Article 87(3) of the Treaty.

⁽¹⁰⁾ See footnote 5.

⁽¹¹⁾ Precedents: aid N603/93, N377/91, N29/91, N394/92, NN90/93, N109/94, N768/93, N423/93, N218/93, N108/92, N598/93 and N644/92.

⁽¹²⁾ [1995] ECR II-1675.

- (51) Moreover, account must be taken of the fact that this aid for agricultural products listed in Annex I to the Treaty (with the exception of that for potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork) 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, their 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 McCarran* ⁽¹³⁾). The aid must therefore be considered to infringe the common organisations of the market and, therefore, Community rules.
- (56) The aid granted before 30 June 1998 to processing undertakings and that granted after that date (with the exception of that for potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork), for the reasons given above, 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.

Conclusion

- (52) 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 granted before 30 June 1998 to processing undertakings and that granted after that date to farmers, agricultural cooperatives and other associations could adversely affect trading conditions to an extent contrary to the common interest. In particular, the aid granted after 30 June 1998 does not comply with the Commission Communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*).
- (53) The aid (with the exception of that for potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork) must therefore be considered to infringe the common organisations of the market. In addition, the aid for processing undertakings infringes Article 28 of the Treaty.
- (54) The aid must therefore be considered to be operating aid incompatible with the common market and an infringement of Community rules and is consequently ineligible for any of the derogations provided for in Article 87(3) of the Treaty.
- (57) Where aid is incompatible with the common market, the Commission must make use of the possibility offered by the judgement of the Court of Justice of 12 July 1973 in Case 70/72, *Commission v Germany* ⁽¹⁴⁾, confirmed by the judgements of 24 February 1987 in Case 310/85, *Deufil v Commission* ⁽¹⁵⁾, and of 20 September 1990 in Case C-5/89, *Commission v Germany* ⁽¹⁶⁾, and require the Member State to recover all the aid granted illegally from the recipients. 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 ⁽¹⁷⁾ (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.
- (58) The Commission recommends that the Spanish Government abolish the aid for potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork.
- (59) The other aid granted before 30 June 1998 to processing undertakings and that granted after that date to farmers, agricultural cooperatives and other associations and to processing undertakings must be repaid in full.
- (60) 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 ⁽¹⁸⁾.

V. CONCLUSIONS

- (55) Since the aid in question was not notified to the Commission in accordance with Article 88(3) of the Treaty, its grant was illegal, given that it was granted before the Commission could decide on its compatibility with the common market.
- (61) This Decision does not prejudice the conclusions the Commission may draw, if necessary, for the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

⁽¹³⁾ [1979] ECR 2161.

⁽¹⁴⁾ [1973] ECR 813.

⁽¹⁵⁾ [1987] ECR 901.

⁽¹⁶⁾ [1990] ECR I-3437.

⁽¹⁷⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁸⁾ OJ C 74, 10.3.1998, p. 9.

HAS ADOPTED THIS DECISION:

Article 1

The aid granted before 30 June 1998 to processing undertakings and that granted after that date to farmers, agricultural cooperatives and other associations and to processing undertakings under the State aid scheme implemented by Spain by means of Government of Extremadura Decree No 35/1993 of 13 April 1993 on the financing of operating capital in the agricultural sector in Extremadura, with the exception of that for potatoes other than for starch, horsemeat, honey, coffee, vinous alcohol, spirit vinegar and cork, 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.

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
