

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 19 January 2005

**on the Rivesaltes plan and CIVDN parafiscal charges operated by France**

(notified under document number C(2005) 50)

(Only the French text is authentic)

(2007/253/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 given interested parties notice to submit their comments pursuant to that Article <sup>(1)</sup>, and having regard to those comments,

Whereas:

I. PROCEDURE

(1) Following a complaint, the Commission questioned the French authorities about the measures subject to this Decision by letters of 19 July 1999, 16 December 1999, 24 August 2000 and 9 December 2000. France replied to the Commission by letters of 19 August 1999, 24 February 2000 and 25 January 2001. The Commission met the French authorities on 26 January 2000 and a delegation of the inter-branch committee for natural sweet wines (CIVDN) on 31 March 2000.

(2) Since the measures were applied without prior authorisation from the Commission, they were entered in the register of non-notified aid under the number NN 139/2002.

(3) By letter dated 21 January 2003, the Commission informed France of its decision to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission called on the other Member States and interested parties to submit their comments on the aid in question.

(5) The French authorities sent their comments by letter of 16 and 18 June 2003. The Commission received comments from the complainant which it sent to the French authorities by letter of 6 August 2004. The French authorities replied by letter of 10 September 2004.

II. DESCRIPTION

1. THE 'RIVESALTES PLAN'

(6) In 1996, the CIVDN decided to set up a wine conversion project aiming to replace part of the production of natural sweet wines in the Eastern Pyrenees region by grubbing up and replanting with quality wine varieties, in order to remedy the structural crisis facing this product, demonstrated by regular collapses in outlets. The purpose of the aid was to finance improvements to the quality of the vine population in the region. The scheme was fully wound up on 1 August 2002.

<sup>(1)</sup> OJ C 82, 5.4.2003, p. 2.

<sup>(2)</sup> See footnote on page 1.

(7) Producers in the region had access to two types of aid designed to implement this conversion project (known as the 'Rivesaltes Plan'):

- a 'set-aside premium' per hectare financed by an inter-branch contribution;
- and area aid financed from State and local authorities' funds to cover part of the conversion costs proper.

#### 1.1. THE 'SET-ASIDE PREMIUM'

(8) By decision 96-1 of 5 July 1996, the CIVDN for registered designation of origin (AOC) introduced an inter-branch contribution to finance the conversion plan for 'Rivesaltes' and 'Grand Roussillon'.

(9) The purpose of the contribution, amounting to FRF 50/ hectolitre<sup>(3)</sup> produced in the Eastern Pyrenees Region where the natural sweet wines concerned are made, was to finance the payment of a 'set-aside premium' for any plot which, having produced 'Rivesaltes' or 'Grand Roussillon' wine in 1995, would produce table wine or 'vin de pays' from the 1996 to the 2000 harvests inclusive. The capital generated from levying the contribution was assigned to a special fund.

(10) The 'set-aside premium' was in effect granted to producers undertaking not to claim the registered designations of origin (AOC) 'Rivesaltes' or 'Grand Roussillon' for five years. This premium was also designed to compensate for the loss of revenue caused by the impact on pricing of no longer using these two designations. The premium did not imply stopping or reducing production, but merely compensating for producing without the registered designation of origin. The aim was therefore to rapidly reduce the potential for marketing AOC wines.

(11) The premium amounted to FRF 5 000 a year per hectare 'set aside'. All plots benefiting from aid ceased to receive the premium in the year they were converted.

(12) The Commission was not informed of the overall amount of aid paid under this scheme. No information was provided on the amount of revenue that the inter-branch contribution generated nor on the number of hectares for which aid was received.

#### 1.2. CONVERSION AID

(13) According to the French authorities, the conversion plan for the AOC Rivesaltes vineyard as adopted in 1996 covered 3 250 hectares: 1 250 hectares for production of 'Muscat de Rivesaltes'; 1 000 hectares for production of 'Côtes du Roussillon' and 'Côtes du Roussillon Villages' (Syrah,

Mourvèdre, Roussanne, Marsanne and Vermentino) and 1 000 hectares for the production of varietal 'vins de pays' (Chardonnay, Cabernet, Merlot...).

(14) To support this plan, the French authorities had agreed to provide FRF 111 million in financial assistance, distributed as follows: FRF 85 million via the *Office national interprofessionnel des vins* [National Inter-branch Wine Office] and FRF 26 million by local authorities (Languedoc-Roussillon and the Eastern Pyrenees General Council).

(15) This assistance would cover aid amounting to FRF 25 000/ha for conversion to AOC Muscat de Rivesaltes, and FRF 40 000/ha for conversion to AOC Côtes du Roussillon Villages and 'vin de pays'.

(16) According to the French authorities, the real costs of conversion in the region could be estimated at FRF 110 000/ha. The French authorities confirmed that the conversion plans had mostly been implemented (2 350 ha out of the 3 250 ha planned).

(17) According to the French authorities, the total cost of the conversion plan implemented came to FRF 258,5 million (EUR 39,4 million). The public authorities contributed FRF 75,250 million (EUR 11,01 million) of the FRF 111 million (EUR 16,9 million) initially provided for. According to the information provided by the French authorities, as a proportion of the total funding, 29,11 % of the conversion costs actually incurred was covered by public bodies.

(18) The French authorities pointed out that they send an annual report to the Statistical Office of the European Communities, in accordance with Article 9 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of the market in wine<sup>(4)</sup>, including a statement of the area under vines, broken down by department and by type of grape produced (wine grapes, including quality wine produced in certain regions (quality wine psr), table grapes) and a statement of grubbed-up areas and vine planting submitted in the same format with a breakdown by department and by type of grape produced. The French authorities enclosed a copy of the tables sent for the 1997/98 marketing year.

#### 2. INTER-BRANCH CONTRIBUTIONS FOR PUBLICITY AND PROMOTION AND FOR OPERATING CERTAIN AOCS.

(19) By Decision 97-3 of 29 December 1997, the CIVDN introduced an inter-branch contribution starting on 1 January 1998 to finance advertising campaigns and for operating the following AOCS: 'Rivesaltes', 'Grand Roussillon', 'Muscat de Rivesaltes' and 'Banyuls'.

<sup>(3)</sup> 1 FRF = EUR 0,15 approximately.

<sup>(4)</sup> OJ L 84, 27.3.1987, p. 1. Regulation repealed by Regulation (EC) No 1493/1999 (OJ L 179, 14.7.1999, p. 1).

- (20) The amount per hectolitre excluding tax was set as follows: 'Banyuls and Banyuls Grand Cru': FRF 25/hl; 'Grand Roussillon': FRF 30/hl; 'Muscat de Rivesaltes': FRF 50/hl and 'Rivesaltes': FRF 30/hl.
- (21) These contributions were allocated as follows: 'Rivesaltes': FRF 25/hl for advertising and FRF 5/hl for operations; 'Grand Roussillon': FRF 45/hl for advertising and FRF 5/hl for operations; 'Banyuls': FRF 20/hl for advertising and FRF 5/hl for operations.
- (22) By Decision 98-1 of 10 July 1998, the CIVDN introduced an inter-branch contribution starting on 1 September 1998 to finance advertising campaigns and for operating the following AOCs: 'Rivesaltes', 'Grand Roussillon' and 'Maury'.
- (23) The amount of contributions per hectolitre excluding tax were set as follows: 'Grand Roussillon': FRF 25/hl; 'Maury': FRF 5/hl; 'Rivesaltes': FRF 35/hl.
- (24) These contributions were allocated as follows: 'Rivesaltes': FRF 30/hl for advertising and FRF 5/hl for operations; 'Grand Roussillon': FRF 20/hl for advertising and FRF 5/hl for operations; 'Maury': FRF 5/hl for operations.
- (25) The previous two contributions were repealed by Decision 99-1 of 17 December 1999, by which the CIVDN introduced an inter-branch contribution to finance publicity and promotion initiatives and for operating the following AOCs: 'Banyuls', 'Banyuls Grand Cru', 'Muscat de Rivesaltes', 'Rivesaltes', 'Grand Roussillon', and 'Maury'.
- (26) The amounts per hectolitre excluding tax were set as follows: 'Grand Roussillon': FRF 25/hl; 'Rivesaltes': FRF 35/hl; 'Banyuls' and 'Banyuls Grand Cru': FRF 25/hl; 'Muscat de Rivesaltes': FRF 55/hl; 'Maury': FRF 0/hl.
- (27) These contributions were allocated as follows: 'Rivesaltes': FRF 30/hl for advertising and FRF 5/hl for operations; 'Grand Roussillon': FRF 20/hl for advertising and FRF 5/hl for operations; 'Muscat de Rivesaltes': FRF 50/hl for advertising and FRF 5/hl for operations; 'Banyuls and Banyuls Grand Cru': FRF 20/hl for advertising and FRF 5/hl for operations.
- (28) This contribution was continued, with slight modifications, by Decision 00-1. At the time the examination procedure was initiated, the Commission did not have any information on the duration of this scheme or as to whether it would be continued.

3. POINTS RAISED BY THE COMMISSION IN THE  
CONTEXT OF INITIATING AN EXAMINATION PROCEDURE

- (29) Dealing first with the nature of the contributions in this case, the Commission noted that they were directly

approved by the French Government under the procedure provided for in Law 200 of 2 April 1943 creating an inter-branch committee for natural sweet wines and liqueur wines with registered designations. The Government's approval is thus a precondition for such contributions to be adopted. Law No 200 stipulates, in particular, that contributions are to be compulsory for all members of the branches concerned as soon as they have been approved by the Government or, in the case in point, its Commissioner. It follows that this type of contribution requires an official act in order to take full effect. Consequently, the Commission considered at this stage of the examination procedure that this was a case of parafiscal charges, i.e. public resources.

- (30) With regard to the 'set-aside premium' provided for in the French aid scheme, no provision was made for such premiums under the common market organisation (CMO) and, more specifically, Council Regulation (EEC) No 456/80 of 18 February 1980 on the granting of temporary and permanent abandonment premiums in respect of certain areas under vines and of premiums for the renunciation of replanting<sup>(5)</sup>. That Regulation provided only for a premium for temporary or permanent cessation of production, payable when a producer decided to contribute to reducing the Community's wine-growing potential by, in particular, grubbing up vines. Since potential was not reduced and no abandonment initiatives were financed by the premium, the scheme did not appear, at the time the examination procedure was initiated, to fall within the scope of the former common organisation of the market in wine under Regulation (EEC) No 822/87.
- (31) The purpose of the aid would appear to have been to give financial support to producers who, as business operators, had freely decided to undertake a purely commercial venture, for charges which seem to be expenditure connected with the exercise of economic activity. According to the consistent practice of the Commission and according to the case law of the European Court of Justice<sup>(6)</sup>, operating aid is aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management or its usual activities. This concept is reiterated in point 3.5 of the Community guidelines on State aid in the agriculture sector<sup>(7)</sup> (hereinafter 'agriculture guidelines'), according to which such aids, by their very nature, are likely to interfere with CMO mechanisms.
- (32) The Commission noted here that the aid was granted per hectare and per year, and is therefore closely connected with the quantity of wine produced. The Commission explained that under no circumstances can it approve aid

<sup>(5)</sup> OJ L 57, 29. 2.1980, p. 16. Regulation repealed by Regulation (EC) No 1493/1999.

<sup>(6)</sup> Judgment of the Court of First Instance of the European Communities of 8 June 1995, case T-459/93, *Siemens SA v. Commission*, Rec. p. II-01675.

<sup>(7)</sup> OJ C 28, 1.2.2000, p. 2.

which would be incompatible with the rules governing a CMO or which would disturb the smooth operation of the market organisation concerned. When the examination procedure was initiated, it considered that the 'set-aside premium' seemed to constitute operating aid likely to interfere with the mechanisms of the wine CMO and that it could therefore be incompatible with the applicable market and competition rules.

- (33) Regarding the conversion costs, Article 14 of Regulation (EEC) No 822/87 stipulated that all national aid for planting vineyards would be prohibited from 1 September 1988, except where such planting met criteria relating, in particular, to reducing production or improving quality without resulting in an increase in production. Accordingly, only varieties that would bring about an improvement in quality and that did not have high productivity in the wine-growing area concerned would be allowed.
- (34) Commission Regulation (EEC) No 2741/89 of 11 September 1989 laying down criteria to apply under Article 14 of Council Regulation (EEC) No 822/87 on national aid for the planting of wine-growing areas<sup>(8)</sup> laid down the criteria for examining draft national aid schemes for the planting of wine-growing areas permitted under Articles 87, 88 and 89 of the Treaty. Article 2 of Regulation (EEC) No 2741/89 stipulates that draft national aid must satisfactorily demonstrate compliance with the objective of reducing production quantity or improving quality without leading to increased production.
- (35) Article 5 of Regulation (EEC) No 2741/89 stipulates that the amount of aid granted per hectare of vineyard planted may not exceed 30 % of the actual cost of grubbing-up and planting. The French authorities conclude that, since the total cost of the conversion carried out amounted to FRF 258 500 000 and the public authorities contributed FRF 75 250 000, taking all financing together, the public authorities contributed 29,11 % of the costs of the conversion scheme actually carried out. But Article 5 of Regulation (EEC) No 2741/89 stipulated that the relevant factor for calculating the conversion costs was the aid actually granted per hectare of vines planted. At the stage of the examination procedure, this logic seemed to exclude overall calculations relating to the conversion exercise as a whole and, consequently, calculations based on the average per hectare of the total costs. Moreover, the French authorities calculated this average in relation to differentiated conversion schemes.
- (36) The Commission considered at that stage that in view of the costs per hectare put forward by the French authorities (FRF 110 000/ha), the aid granted in this case should have been

capped at FRF 33 000/ha and 30 % of the real costs incurred by the individual producers. It follows that any aid granted in excess of that ceiling or of 30 % of the real costs incurred by individual producers might be incompatible with the applicable rules.

- (37) By virtue of the powers conferred on it under Article 10 of Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(9)</sup>, the Commission asked the French authorities to send it all the necessary information on the two conversion measures carried out. In particular, this was to include information concerning the number of wine-growers who had received national aid for planting areas under vines; the area concerned, broken down by soil type; the part of that area which was planted after grubbing; the part of that area recognised as suitable for producing quality wine psr; the intended use of the planted areas (wine grapes, table grapes, grapes for drying, nursery or parent vine for root-stocks, etc.); the varieties used; proof that the French authorities granted prior authorisation for the use of the aforesaid varieties; the development of production potential and all relevant information about the level of aid.
- (38) As for aid for advertising used by certain AOCs, the French authorities have pointed out that the rules governing the parafiscal charges intended to finance the CIVDN were regularly notified and had already been examined and approved by the Commission. Indeed, in the context of State aid No N 184/97<sup>(10)</sup> (Aid and parafiscal charges for the benefit of the CIVDN), the Commission most recently approved State aid financed by a parafiscal charge to cover, among other things, advertising and operating measures for the benefit of the CIVDN. However, according to the information received, the contributions in the case in hand are levied by the CIVDN in addition to the parafiscal charges intended for the communication and advertising measures already authorised by the Commission. Consequently, when the examination procedure was initiated, the Commission considered that the authorisation given previously did not tacitly authorise subsequent amendments or any other measure on top of the previously authorised aid.
- (39) The Commission has asked the French authorities to send it the necessary information about these aid schemes, including any schemes not mentioned or notified which may currently be in force, so as to allow it to assess their compatibility with, in particular, the negative and positive criteria applicable to advertising and the maximum amount of aid which may be authorised. This information should also make it possible to measure the repercussions of any

<sup>(9)</sup> OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

<sup>(10)</sup> Commission letter SG(97)D/3741 of 16.5.1997.

<sup>(8)</sup> OJ L 264, 12.9.1989, p. 5. Regulation repealed by Regulation (EC) No 1227/2000 (OJ L 143, 16.6.2000, p. 1).

accumulation of aid involving the previously authorised scheme and the non-notified schemes concerned by this Decision.

- (40) The Commission has also noted that the mechanisms of the para-fiscal charges in this case are very similar to those of the charge already authorised by the Commission. It is also clear from the texts introducing these charges that they affect only the wine production in a specific region. At the stage of the examination procedure, it could therefore be concluded that no imported products were or had been subject to the para-fiscal charges concerned in this case.

### III. THIRD PARTY COMMENTS

- (41) The complainant submitted the following comments and requested their identity to be treated as confidential. After having examined the grounds given for so doing, the Commission considers it right to respect the complainant's request.
- (42) According to the complainant, the set-aside premium and the conversion aid are but two elements of a single aid scheme designed to reduce the quantity of a certain product placed on the market. Aid allocated for setting aside plots and aid allocated under the conversion scheme must be taken together for assessment of compliance with Community law.
- (43) The complainant is of the opinion that the autonomous financial management of the Rivesaltes Plan provided for in CIVDN Decision No 96-1 of 5 July 1996 was breached since the set-aside premium was financed by funds that were not exclusively generated by the inter-branch contribution introduced in 1996. Thus the complainant believes that the set-aside premium was financed by the CIVDN's own resources to the tune of over FRF 11 million. Moreover, the complainant believes that part of the funding obtained through advertising contributions was used to finance the plan, in particular the set-aside premium.
- (44) According to the complainant, the General Council of the Eastern Pyrenees paid the CIVDN FRF 2 million at the beginning of the 2000 financial year to fund the set-aside premium. In addition, the General Council is alleged to have claimed in the March 2003 edition of its magazine *'L'accent Catalan'* to have directly paid wine-growers aid per hectare amounting to EUR761 and then EUR 1 293 under the Rivesaltes Plan on top of the aid paid as a set-aside premium and the conversion aid. The complainant believes that that this aid was not notified to the Commission.
- (45) The complainant deems that the capital generated by para-fiscal charges for advertising in favour of the CIVDN was used to finance advertising campaigns for their own products, i.e. for certain enterprises, rather than to finance advertising campaigns for the various categories of AOCs in general. It is alleged that these practices are still applied today by the inter-branch wine committee of Roussillon (CIVR), the body that replaced the CIVDN when it went

into liquidation. These aid schemes are held not to comply with EU rules in that they do not have an aim of general interest.

- (46) According to the complainant, during 2001 and 2002, the CIVDN continued to demand that merchants pay para-fiscal charges even though the body that replaced it afterwards, the CIVR, had also begun to invoice contributions in contradiction with national law.

### IV. COMMENTS FROM FRANCE

- (47) By letter of 16 June 2003, the French authorities submitted their comments concerning the Commission's decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid measure notified.
- (48) The French authorities confirmed at the outset that the measures in question had not been continued beyond the five-year period set initially, which began in the 1996/97 marketing year. In any event, the Commission was informed by letters dated 14 December 2000 and 6 December 2001 that the CIVDN had been wound up. The CIVR, which replaced the CIVDN, did not implement any of the same type of measures.

#### 1. THE 'RIVESALTES PLAN'

##### 1.1. THE 'SET-ASIDE PREMIUM'

- (49) The French authorities explained that the aim of the measure was not to reduce the wine-growing potential since the commitment made by beneficiaries was essentially to agree to market table wine or 'vin de pays', rather than AOC wine produced from set-aside plots. As such, this premium could not be treated, as the Commission deems, as a mere operating aid unduly constituting liquidity relief.
- (50) In fact, the purpose of the premium was to reward beneficiaries for undertaking not to market AOC production from the set-aside plots. It did therefore not constitute a supplement to beneficiaries' revenue but rather compensated them for a loss in income.
- (51) Thus, when the measure was implemented, one hectare under AOC Rivesaltes vine would generate, on the basis of the maximum authorised yield of 40 hl, a production of between 25 hl of natural sweet wine at FRF 1 140/hl and 15 hl of table wine or 'vin de pays' at FRF 350/hl, giving a turnover of between FRF 32 250 and FRF 33 000/ha. After the land is set aside, one hectare under vine could produce 50 hl of table wine or 'vin de pays' (average area yield), i.e. a turnover of between FRF 12 500 and FRF 17 500/ha.
- (52) The average difference after set-aside (loss of revenue for producers) would therefore be about FRF 15 000/ha, from which, in the interests of completeness, the cost of alcohol to produce natural sweet wine should be deducted, i.e. FRF 2 000 for 25 hl, which makes the net difference total FRF 13 000/ha.

- (53) Even if account is taken of the fact that the difference as of 1999 was less, due to the fall in the production price of natural sweet wines (FRF 900/ha), it was still FRF 6 500/ha [FRF 26 000 (turnover/ha AOC) — FRF 17 500 (turnover/ha for table wine or 'vin de pays') — FRF 2 000 (cost of alcohol to make natural sweet wines)].
- (54) Under these conditions, the French authorities considered that the set-aside premium could in no way constitute operating aid that would grant beneficiaries undue income supplements or liquidity relief.
- (55) Moreover, the French authorities underline that the set-aside premium did not jeopardise the wine CMO mechanisms by potential market disturbances. Thus no wine was distilled under the compulsory distillation scheme in the Eastern Pyrenees between the 1996/97 and 1999/2000 marketing years. Besides, the amount sent for preventative distillation for the marketing years in question reflects normal market conditions in table wine and 'vin de pays'.
- (56) Alternatively, the French authorities insist that the measure shows solidarity as it is not financed by the State but by an inter-branch contribution paid by the producers themselves.
- 1.2. CONVERSION AID
- (57) According to the French authorities, this measure constitutes an exceptional addition to national aid to renew vineyards, which was established to implement Regulation (EEC) No 2741/89.
- (58) The French authorities pointed out that aid to improve the vine population was first notified in 1993 (aid No N 769/93), the subject of document (FR/XXX/05.00/017) in successive lists of national aid. Regarding the annual report, the French authorities explained that the communication required under Article 8 of Regulation (EEC) No 2741/89 could be made in the context of the annual communication sent by Member States under Article 9 of Regulation (EEC) No 822/87. However Article 9 of Regulation (EEC) No 822/87 states that 'by 1 September of each year, the Member States shall forward a communication to the Commission concerning the development of wine-growing potential, which shall include a statement of the areas under vines on their territory' and 'by 1 December of each year ... a report on the development of wine-growing potential'.
- (59) The French authorities pointed out they send an annual report to the Statistical Office of the European Communities, in accordance with Article 9 of Regulation (EEC) No 822/87, including a statement of the area under vines, broken down by department and by type of grape produced (wine grapes, including quality wine psr, table grapes) and a statement of grubbed-up areas and vine planting submitted in the same format with a breakdown by department and by type of grape produced. The French authorities enclosed a copy of the tables sent for the 1997/98 marketing year. Under these circumstances, the French authorities considered that they could not be accused of failing to meet their obligations under Regulation (EEC) No 822/87.
- (60) In order to make an accurate and thorough assessment of the Rivesaltes Plan conversion aid, the French authorities deemed it necessary to take into account the fact that area under Muscat de Rivesaltes was excluded from the supplement to renewal aid under the plan. These areas only benefited from renewal aid at rates corresponding to national levels. Nonetheless, the FRF 85 million that the French authorities noted in their previous letters included FRF 31 million of national aid to renew vines in the area under Muscat.
- (61) In the end, the conversion aid in the context of the Rivesaltes Plan for the area under varietal 'vin de pays' and Côtes du Roussillon villages was assessed as follows:
- a) in the geographical area concerned by the Rivesaltes Plan and for vineyards with area under varietal 'vin de pays' and Côtes du Roussillon villages, 2 357 ha (875 producers) received national aid to renew vines, which totalled FRF 57,280 million.
  - b) out of these 2 357 ha, 875 producers received 'exceptional' supplements to the national aid under the Rivesaltes Plan for 1 238 ha. The total amount of this supplement was FRF 8,006 million, on top of the FRF 28,613 million of national conversion aid received for these 1 238 ha.
  - c) for these 875 producers, the supplement provided for in the Plan was paid on the following basis: 662 received FRF 5 000/ha for 990 ha, totalling FRF 4,950 million; 80 received FRF 10 000/ha for 133 ha, totalling FRF 1,330 million; and 133 received FRF 15 000/ha for 115 ha, totalling FRF 1,726 million.
- (62) In total, under this Plan, FRF 36,623 million was paid for the renewal of vines over an area of 1 238 ha to 875 producers.
- (63) 221 cases exceeded FRF 33 000/ha for an area of 166 ha, corresponding to FRF 0,883 million.

(64) The French authorities sent a list of the varieties used in conversion schemes and the different decrees setting the level of aid for each year.

## 2. INITIATIVES FOR PROMOTION AND PUBLICITY AND FOR OPERATING AOCs

(65) The French authorities first specified that these initiatives were not continued after 31 December 2000.

(66) The advertising initiatives funded by receipts from the compulsory voluntary contribution (CVO) were of the same nature as those funded by revenue from the parafiscal charges, which were notified to and approved by the Commission (aid Nos N 230/90 <sup>(11)</sup> and N 184/97).

(67) The credit generated by collecting CVO therefore enabled the initiatives funded by the parafiscal charge to be consolidated. In fact it appeared necessary to step up advertising of this wine to develop outlets for it, given the market situation which had serious impacts on the local wine economy.

(68) In this respect, the French authorities noted that authorisation to finance promotion aid could be given for up to 100 %. The French authorities pointed out that the publicity aid concerned initiatives to advertise AOC products and was financed by parafiscal charges and voluntary contributions.

(69) In reply to the Commission's request, the French authorities sent examples of the promotion and publicity material used.

## 3. COMMENTS ON THE OBSERVATIONS MADE BY THIRD PARTIES

(70) In their letter dated 10 September 2004, the French authorities replied to the observations made by third parties. They explained that there was a perception that the aid had been diverted from its initial objective and used for the sole profit of an enterprise in competition with the third parties concerned. The French authorities took exception to these allegations, which directly challenged the probity of the various administrations concerned and therefore invited the Commission to dismiss these arguments.

## V. ASSESSMENT

### 1. ARTICLE 87(1) OF THE TREATY.

(71) Article 87(1) of the Treaty states that, 'save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which

distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market'.

(72) Article 76 of Regulation (EEC) No 822/87, applicable when the aid was granted, provided that, unless otherwise provided in the same Regulation, Articles 92, 93 and 94 of the Treaty (now Articles 87, 88 and 89) were applicable to the production and sale of wine products.

### 1.1. EXISTENCE OF A SELECTIVE ADVANTAGE FINANCED BY STATE RESOURCES

(73) Measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid.

(74) The Commission notes that the type of contributions in this case required the adoption of an act by a public authority for their full impact to be felt and that the resources they generated served as a tool to implement a State-supported policy. In addition, there is no proof that the beneficiaries of aid are always those liable to the corresponding charges. For these reasons, the contributions do not meet the criteria for derogations from Article 87(1) of the Treaty, as proposed by Court of Justice case law <sup>(12)</sup>. Consequently, the Commission considers that this is a case of parafiscal charges, i.e. public resources.

(75) Moreover, according to ECJ case law, measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect are also considered to be aid <sup>(13)</sup>.

(76) The existence and type of the aid must be established for the potential beneficiaries of the Rivesaltes Plan and of the inter-branch contributions for publicity and promotion and for operating and financing certain AOCs. In the case in point, the support given did favour certain undertakings since the aid was only granted to AOC producers operating in certain specific regions.

### 1.2. EFFECTS ON TRADE

(77) Lastly, in order to establish whether the aid falls within Article 87(1) of the Treaty, an assessment must be made on whether it is likely to affect trade between Member States.

<sup>(12)</sup> EU CoJ Judgment of 15 July 2004 in Case C-345/02, Pearle, not yet published in ECR.

<sup>(13)</sup> Court Judgment of 22 May 2003, Case C-355/00, Freskot, ECR p. I-5263.

<sup>(11)</sup> Commission letter SG(90)D/25148 of 22.8.1990.

- (78) The Court has ruled that when State financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid <sup>(14)</sup>.
- (79) The fact that there is trade between Member States in the wine sector is demonstrated by the existence of a common market organisation for the sector.
- (80) The following table shows, as an example, the level of trade in wine products between France and the other Member States over the last two years of the afore-mentioned conversion scheme in France.

	Wine	
	EU as at 30/04/2004	France
1999/2000		
Usable production	168 076 000 hl	54 271 000 hl
Exports to other MS as at 30/04/2004	—	15 500 000 hl
Imports from other MS as at 30/04/2004	—	5 700 000 hl

- (81) The aid granted is therefore likely to affect trade between the Member States and to distort or potentially distort competition since it favours the production of certain national wines to the detriment of production in other Member States. The wine sector is extremely open to competition at Community level and is consequently very sensitive to any measure favouring production in a particular country.

### 1.3. CONCLUSIONS REGARDING THE NATURE OF THE 'AID' UNDER ARTICLE 87(1) OF THE TREATY

- (82) In the light of the above explanations, the Commission considers that the measures in favour of producers of AOC wines operating in certain specific regions constitute a financial advantage financed by public resources allocated to them which is not available to other operators, which distorts or has the potential to distort competition by favouring certain undertakings and productions, thereby is likely to affect trade between Member States. It is therefore aid within the meaning of Article 87(1) of the Treaty.

## 2. ASSESSMENT OF THE COMPATIBILITY OF THE AID

- (83) However, Article 87 of the Treaty provides scope for derogations to the general principle that State aid is incompatible with the Treaty, whilst it is clear that some are not applicable to the case in point, notably the derogations under Article 87(2). These were not cited by the French authorities.
- (84) The derogations provided for in Article 87(3) of the Treaty must be interpreted strictly when considering regional or sectoral aid programmes or any individual case of application of general aid schemes. In particular, they may be allowed only where the Commission is able to establish that the aid is necessary to achieve one of the aims in question. Allowing such derogations to apply to aid not meeting that condition would be tantamount to allowing trade between Member States to be affected and permitting distortion of competition that has no justification in the light of the Community interest and, by the same token, undue advantages for the operators of certain Member States.
- (85) The Commission considers that the aid measures in question are not intended to encourage economic development in a region where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 87(3)(a) of the Treaty. Nor are they intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b). Nor again are they intended to promote either culture or heritage conservation within the meaning of Article 87(3)(d).

- (86) Article 87(3)(c) of the Treaty provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. In order to be covered by this derogation, aid must contribute to the development of the sector in question.

### 2.1. UNLAWFULNESS OF AID

- (87) The Commission notes that the French authorities did not notify it of the measures introducing the aid in question, as required by Article 88(3) of the Treaty. Article 1(f) of Regulation (EC) No 659/1999 defines unlawful aid as new

<sup>(14)</sup> Court Judgement of 17 September 1980 in Case 730/79, Philip Morris/Commission, ECR p. 2671, Ground 11.

aid put into effect in contravention of Article 93(3) of the Treaty. The obligation to notify State aid is enshrined in Article 1(c) of Regulation (EC) No 659/1999 <sup>(15)</sup>.

- (88) Since the measures implemented by France contain elements of State aid, it constitutes new aid, not notified to the Commission, and therefore unlawful under the Treaty.

## 2.2. IDENTIFYING THE GUIDELINES APPLICABLE TO THE NON-NOTIFIED MEASURES

- (89) In accordance with Point 23.3 of the agriculture guidelines and the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid <sup>(16)</sup>, all unlawful aid under Article 1(f) of Regulation (EC) No 659/1999 must be assessed in accordance with the texts in force at the time when the aid was granted.
- (90) The agriculture guidelines have applied since 1 January 2000. Any aid granted after this date must be assessed in the light of these guidelines. However, any aid granted before this date must, where necessary, be assessed in the light of the measures and practice applicable before 1 January 2000.
- (91) Point 3.2 of the agriculture guidelines states that, even if Articles 87, 88 and 89 of the Treaty are fully applicable to the sectors covered by the CMOs, their application remains, however, subject to the provisions set out in the Regulations concerned. In other words, recourse by a Member State to Articles 87, 88 and 89 of the Treaty cannot override the provisions of the Regulation governing the market organisation concerned <sup>(17)</sup>. The Commission must also assess whether aid runs counter to smooth operation of the market concerned and therefore is incompatible with the single market.
- (92) The aid provided for in the Rivesaltes Plan was granted between 1 January 1997 and 31 July 2000, i.e. before the entry into force on 1 August 2000 of Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine. Since the measures concerned fall within the scope of the common organisation of the market in wine, they must be examined in the light of the legislation in force at that time, i.e. Regulation (EEC) No 822/87.
- (93) As for the advertising aid introduced for certain AOCs, which, according to the French authorities, was discontinued after 31 December 2000, the compatibility of the aid granted must be assessed in the light of the guidelines for State aid for advertising products listed in Annex I to the EC Treaty and of certain non-Annex I products <sup>(18)</sup>, point 70 of which states that unlawful aid within the meaning of

Article 1(f) of Regulation (EC) No 659/1999 is to be assessed in accordance with the rules and guidelines applicable at the time when the aid is granted.

- (94) Regarding State aid financed by parafiscal charges, the measures financed by this aid and the methods of financing the aid itself must be assessed by the Commission.

## 2.3. ANALYSIS IN THE LIGHT OF THE APPLICABLE RULES

### 2.3.1. *The aid measures*

#### 2.3.1.1. *The 'set-aside premium'*

- (95) The set-aside premium was financed by an inter-branch contribution, which was a compulsory charge levied by public authorities for the wine conversion project. The purpose of the premium was to compensate producers for the loss of income deriving from their commitment not to claim the registered designation of origin (AOC) 'Rivesaltes' and to refocus their production on table wine and 'vin de pays'.
- (96) However, the set-aside premiums as provided by the French aid scheme were not provided for in the market organisation nor, specifically, by Regulation (EEC) No 456/80. That Regulation provided only for a premium for temporary or permanent cessation of production, payable when a producer decided to contribute to reducing the Community's wine-growing potential by, in particular, grubbing up vines.
- (97) The Commission states that the purpose of the French measure was not to reduce wine production but solely to cease using the Rivesaltes AOC. Since potential was not reduced and the premium did not finance any abandonment, the measure does not fall within the scope of the previous organisation of the market in wine.
- (98) Although Regulation (EEC) No 456/80 appears not to apply because no production was abandoned, the measure must be assessed in the light of other horizontal measures regarding State aid. Article 17 of Regulation (EEC) No 456/80 stated that the provisions of this Regulation did not prevent aid from being granted under national rules that is designed to achieve the same objectives as those pursued by this Regulation, provided they are assessed within the meaning of Articles 92, 93 and 94 of the Treaty (now Articles 87, 88 and 89).
- (99) The measure in question does not provide for abandonment of production. It cannot therefore be treated as a measure designed to achieve the same objectives as those pursued by Regulation (EEC) No 456/80, in other words, to reduce wine-growing potential.

<sup>(15)</sup> 'New aid' shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.

<sup>(16)</sup> OJ C 119, 22.5.2002, p. 22.

<sup>(17)</sup> Court Judgment of 26 June 1979, Case 177/78, Pigs and Bacon Commission v. McCarren, ECR. p. 2161.

<sup>(18)</sup> OJ C 252, 12.9.2001, p. 5.

- (100) The French authorities themselves explained that the aim of the measure was not to reduce the wine-growing potential since the commitment made by beneficiaries was essentially to agree to marketing table wine or 'vin de pays', rather than AOC wine, produced from set-aside plots.
- (101) The French authorities specified that the purpose of the premium was to reward beneficiaries for undertaking not to market AOC production from the set-aside plots. Thus, in their opinion, it did not constitute a supplement to beneficiaries' revenue but rather compensated them for a loss in income. As such, this premium could not be treated as a mere operating aid which unduly constitutes liquidity relief.
- (102) However, in contrast to the French authorities' recommendation, the Commission is of the opinion that the purpose of the national aid is to give financial support to producers who, as business operators, had freely decided to undertake a purely commercial venture, the costs of which constitute expenditure in connection with economic activity. In fact, State compensation to economic operators for a loss of voluntarily sustained income constitutes public aid with the impact of mitigating the economic effects of their decision.
- (103) According to the consistent practice of the Commission before the agriculture guidelines were adopted on 1 January 2000 and according to the Court of Justice case law <sup>(19)</sup>, operating aid is aid intended to relieve an undertaking of the expenses which it would itself normally have had to bear in its day-to-day management or its usual activities. The Court notes that it is consistent practice that operating aid can in no cases be declared as compatible with the single market under Article 87(3)(c) of the Treaty since by its very nature this aid has the potential to alter trading conditions to an extent that is contrary to common interest.
- (104) This principle is reiterated in point 3.5 of the agriculture guidelines, which state that unilateral state aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to be comparable to operating aids which are incompatible with the common market. Point 3.5 adds that by their very nature, such aids are likely to interfere with the mechanisms of the CMOs.
- (105) The Commission notes that the aid was granted per hectare per year on the basis of continued production and that it was therefore closely linked to the quantity of wine produced.
- (106) It considers that the set-aside premium constitutes operating aid likely to interfere with the mechanisms of the common organisation of the market in wine and that it is therefore incompatible with the applicable market and competition rules.
- 2.3.1.2. Conversion aid**
- (107) Article 14 of Regulation (EEC) No 822/87 stipulated that all national aid for planting vineyards would be prohibited from 1 September 1988, except where such planting met criteria relating, in particular, to reducing production or improving quality without resulting in an increase in production.
- (108) Commission Regulation (EEC) No 2741/89 laid down the criteria for examining draft national aid schemes for the planting of wine-growing areas permitted under Articles 92, 93 and 94 of the Treaty (now Articles 87, 88 and 89).
- (109) Article 2 of that Regulation stipulates that draft national aid must satisfactorily demonstrate compliance with the objective set out in the second subparagraph of Article 14 (2) of Regulation (EEC) No 822/87 of reducing production quantity or improving quality without leading to increased production.
- (110) Article 3 of that Regulation states that planting must involve varieties which, in the terrain concerned, are not considered high-productivity varieties, are recognized as improving quality and are specifically authorised by the national authorities under the draft aid measure concerned.
- (111) The French authorities pointed out that they send an annual report to the Statistical Office of the European Communities, in accordance with Article 9 of Regulation (EEC) No 822/87, with a statement of the area under vines, broken down by department and by type of grape produced (wine grapes, including quality wine psr, table grapes) and a statement of grubbed-up areas and vine planting submitted in the same format with a breakdown by department and by type of grape produced. The French authorities enclosed a copy of the tables sent for the 1997/98 marketing year.
- (112) The Commission did receive from the French authorities information on the varieties used in the conversion projects enabling it to ascertain compliance with the conditions referred to in points 107 to 110. This information had allowed the Commission previously to conclude that the vine varieties met the requirements of Community legislation applicable at the time the aid was granted.

<sup>(19)</sup> Court Judgment on the afore-cited Siemens case.

(113) Article 5 of Regulation (EEC) No 2741/89 stipulated that the amount of aid granted per hectare of vineyard planted may not exceed 30 % of the actual cost of grubbing-up and planting. The costs to be taken into account in allocating the aid may be determined on a flat-rate basis in each region, particularly in the light of geomorphological characteristics.

(114) According to the information provided by the French authorities, as a proportion of the total funding, 29,11 % of the conversion costs actually incurred was covered by public bodies. Thus the French authorities concluded that the total amount of the aid did not exceed the 30 % ceiling set by EU legislation.

(115) Article 5 of Regulation (EEC) No 2741/89 stipulated that the relevant factor for calculating the conversion costs was the aid actually granted per hectare of vines planted. This logic excludes overall calculations relating to the conversion exercise as a whole and, consequently, calculations based on the average per hectare of the total costs.

(116) The Commission considers that, in view of the costs per hectare put forward by the French authorities (FRF 110 000/ha), the aid granted in this case should have been capped at FRF 33 000/ha and 30 % of the real costs incurred by the individual producers.

(117) The new information provided by the French authorities shows that, in total, under this Plan, FRF 36,623 million was paid for the renovation of vines over an area of 1 238 ha to 875 producers. 221 cases exceeded FRF 33 000/ha for an area of 166 ha, corresponding to FRF 0 883 million.

(118) The Commission concludes that individual cases that exceed the ceiling of 30 % of actual costs and/or the ceiling of FRF 33 000/ha constitute State aid that is incompatible with the applicable rules.

#### 2.3.1.3. Aid for publicity and promotion and for operating the AOCs concerned

(119) The Commission most recently approved State aid No N 184/97, valid until the end of 2002, financed by a parafiscal charge to cover, among other things, advertising and operating measures for the benefit of the CIVDN. The initial measure was approved by the Commission in 1990 under State aid No N 230/90. The Commission had then concluded that the aid granted for collective promotion to improve and to consolidate the product image of natural sweet wine and to develop sales was in accordance with the

rules governing national aid for the promotion of agricultural products and certain products that are not listed in Annex II to the EEC Treaty, except for fishery products <sup>(20)</sup>, applicable to this type of aid. Moreover, the Commission considered that the CIVDN's administrative expenses were not to be counted as aid.

(120) The Commission deems that the authorisation given for State aid N 184/97 does not constitute a tacit authorisation for further modifications, or other measures, such as the case in point, on top of the previously authorised aid.

(121) However the French authorities confirmed that the advertising initiatives funded by CVO receipts were of the same nature as those financed through the parafiscal charge that had been notified to and approved by the Commission. According to the French authorities, it therefore constituted exclusively an increase in the overall budget for the measure.

(122) Since the same conditions had been applied when these aid schemes were granted, the Commission, in referring to its Decision on State aid N 184/97, is therefore in a position to conclude that advertising and operating aid for the AOCs financed by the new contributions are compatible with the applicable competition rules.

(123) The Commission takes note of the comments from third parties, according to which the measures financed breached the applicable competition rules on advertising aid for agricultural products since it was paid to specific undertakings. However the supporting documents submitted show instead that these advertising campaigns could be treated as technical assistance schemes where the beneficiaries were wine producers.

#### 2.3.2. Financing the aid

(124) In accordance with the case law of the Court of Justice <sup>(21)</sup>, the Commission normally considers that the financing of State aid by means of compulsory charges may influence the aid by having a protective effect which goes beyond the aid as such. The levies in question are compulsory charges. According to the same case law, the Commission considers that aid may not be financed by parafiscal charges that also apply to products imported from other Member States.

(125) The Commission already concluded, notably in State aid N 184/97, that the scheme introduced by the French authorities did not affect imported products.

<sup>(20)</sup> OJ C 302, 12.11.1987, p. 6.

<sup>(21)</sup> Court Judgment of 25.6.1970, Case 47/69, France v. the Commission, ECR. p. 487.

- (126) The documents introducing para-fiscal charges in the case in point show that they impact only on the production of natural sweet AOC wine in the Eastern Pyrenees Region. The set-aside premium was financed by a contribution that only affected regional production of the wine concerned, therefore excluding all imported products.
- (127) It can therefore be concluded that no imported products are or have been subject to the para-fiscal charges concerned in this case.

## VI. CONCLUSION

- (128) The State aid operated by France in the form of 'set-aside premiums' granted to French wine producers that undertake not to claim the registered designations of origin (AOC) 'Rivesaltes' or 'Grand Roussillon' from the 1996 harvest to the 2000 harvest inclusive is incompatible with the single market.
- (129) The State aid operated by France in the form of the conversion plan for the AOC Rivesaltes vineyard from the 1996 harvest to the 2000 harvest inclusive, that was granted to individual cases exceeding 30 % of the actual costs and/or exceeding the EUR 5 030,82/ha (FRF 33 000/ha) ceiling is incompatible with the single market.
- (130) The State aid operated by France between 1 January 1998 and 31 December 2000 in the form of advertising and operating aid to the 'Rivesaltes', 'Grand Roussillon', 'Muscat de Rivesaltes' and 'Banyuls' AOCs is compatible with the single market under Article 87(3)(c) of the Treaty.
- (131) The measures in question were not notified to the Commission in accordance with Article 88(3) of the Treaty and therefore constitute unlawful aid under Article 1(f) of Regulation (EC) No 659/1999.
- (132) The Commission regrets that France operated the above aid measures in contravention of Article 88(3) of the Treaty.
- (133) It should be remembered that, in the case of aid measures implemented without awaiting the Commission's final decision, given the binding nature of the rules of procedure laid down in Article 88(3) of the Treaty, which the Court of Justice recognised as having direct effect in its judgments of 19 June 1973 in Case 77/72, *Carminio Capolongo v. Azienda Agricola Maya* <sup>(22)</sup>; 11 December 1973 in Case 120/73, *Gebrueder Lorenz GmbH v. Federal Republic of Germany* <sup>(23)</sup> and 22 March 1977 in Case 78/76, *Steinike & Weinlig v. Federal Republic of Germany* <sup>(24)</sup>, the unlawfulness of the aid concerned cannot be regularised

ex post facto (judgment of 21 November 1991 in case C-354/90, *Fédération Nationale du Commerce Extérieur des Produits Alimentaires v. French Republic*) <sup>(25)</sup>.

- (134) The Court of Justice recalled that where an aid measure, of which the method of financing is an integral part, has been implemented in breach of the obligation to notify, national courts must in principle order the reimbursement of charges or contributions levied specifically for the purpose of financing that aid. It also noted that it is for the national courts to uphold the rights of the persons concerned in the event of a possible breach by the national authorities of the prohibition on putting aid into effect, referred to in the last sentence of Article 88(3) of the Treaty and directly applicable. Such breaches cited by interested individuals and ascertained by national courts must result in the courts drawing the necessary consequences, in accordance with national law, with regard to both the validity of the acts giving effect to the aid and the recovery of financial support granted <sup>(26)</sup>.
- (135) Where an unlawful aid is incompatible with the common market, Article 14(1) of Regulation (EC) No 659/1999 provides that the Commission must decide that the Member State concerned take all necessary measures to recover the aid from the beneficiary. Such reimbursement is necessary to re-establish the situation applying previously, and involves cancelling all the financial advantages from which beneficiaries of the unlawfully granted aid have unduly benefited since the date the aid was granted.
- (136) Article 14(2) of Regulation (EC) No 659/1999 stipulates that recovery includes interest at an appropriate rate fixed by the Commission. Such interest is payable from the date on which the unlawful aid was made available to the beneficiary.
- (137) The aid must be reimbursed in accordance with the procedures laid down by French law. The amounts include interest from the date on which aid was granted until the date of its effective recovery. It is to be calculated at the Commission's reference rate, laid down by the method for setting the reference and discount rates <sup>(27)</sup>.
- (138) The Commission does not have data on the overall amount of aid granted under the 'set-aside premium' since it does not know the amount of receipts taken nor the number of hectares for which aid was received. Whilst specifying that they do not in any way alter the Commission's conclusions, the Commission notes the comments made by third parties, according to which the 'set-aside premium' was the

<sup>(25)</sup> ECR p.I-5505.

<sup>(26)</sup> Court Judgment of 21 October 2003, joint cases C-261/01 and C-262/01, *Van Calster e.a.*, not yet published in the ECR.

<sup>(27)</sup> Commission notice on the method for setting the reference and discount rates (OJ C 273, 9.9.1997, p. 3).

<sup>(22)</sup> ECR p. 611.

<sup>(23)</sup> ECR p. 1471.

<sup>(24)</sup> ECR p. 595.

subject of additional public aid and financing undeclared by the French authorities. According to the information available to the Commission, the amount of public aid to finance the 'conversion aid' totalled EUR 11,01 million.

(139) This Decision will 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),

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The State aid operated by France in the form of 'set-aside premiums' granted to French wine producers undertaking not to claim the registered designations of origin (AOC) 'Rivesaltes' or 'Grand Roussillon' from the 1996 harvest to the 2000 harvest inclusive is incompatible with the single market.

2. The State aid operated by France in the form of the conversion plan for the AOC Rivesaltes vineyards from the 1996 harvest to the 2000 harvest inclusive, that was granted in individual cases to exceed 30 % of the actual costs and/or the EUR 5 030,82/ha (FRF 33 000/ha) ceiling is incompatible with the single market.

3. The State aid operated by France between 1 January 1998 and 31 December 2000 in the form of advertising and operating aid to the 'Rivesaltes', 'Grand Roussillon', 'Muscat de Rivesaltes' and 'Banyuls' AOCs is compatible with the single market under Article 87(3)(c) of the Treaty.

#### *Article 2*

1. France shall take all necessary measures to recover the incompatible aid referred to in Article 1(1) and (2) from the beneficiaries.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. It is to be calculated at the Commission's reference rate, laid down by the method for setting the reference and discount rates.

2. For the purpose of the recovery of incompatible aid referred to in Article 1(1), France shall inform the Commission of the overall amount of aid granted under this measure and its financing, including the overall amount of receipts from the inter-branch contribution introduced for this purpose, and the number of hectares for which the 'set-aside premium' was received.

#### *Article 3*

France shall inform the Commission, within two months of notification of this Decision, of the measures that it has taken to comply therewith.

#### *Article 4*

This Decision is addressed to the French Republic.

Done at Brussels, 19 January 2005.

*For the Commission*

Mariann FISCHER BOEL

*Member of the Commission*