

The Commission invites your Government to submit all information and/or comments it might consider to be relevant in this case within one month of being notified of this letter.

It should be pointed out that, failing a reply from the German Government or in the event of an inadequate reply, the Commission is entitled, pursuant to the judgment given by the Court of Justice on 14 February 1990 in case C-301/87 (Boussac), to take a decision, ordering the German Government to suspend the payment of the aid and to supply all necessary information.

The Commission would remind your Government that any aid granted unlawfully, i.e. without prior notification or without awaiting the Commission's final decision under the procedure provided for in Article 6 (4) of Commission Decision 3855/91/ECSC of 27 November 1991 establishing Community rules for aid in the steel industry, may have to be recovered from the recipient firm.

The abolition of the aid involved repayment, in accordance with the procedures and provisions of German law, in particular those relating to interests on arrears on State liabilities, with interests starting to run on the date on which the unlawful aid was granted. This measure is necessary in order to restore the status quo

(Judgment of 21 March 1990 in C-142/87, Tubemeuse) by removing all the financial benefits which the firm receiving the unlawful aid has improperly enjoyed since the date of which the aid was paid.

The Commission requests your Government to inform the recipient firm and the Government of the Land Saxony-Anhalt of the initiation of this procedure and the fact that the company in question might have to repay the aid received.

The Commission further informs your Government that it will publish a notice in the *Official Journal of the European Communities* giving the other Member States and other parties concerned notice to submit their comments. The ESA will be informed in accordance with Protocol 27 of the EEA Agreement.'

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the measures in question within one month of the date of the publication of this notice to:

European Commission,
rue de la Loi/Wetstraat 200,
B-1049 Brussels

Their comments will be communicated to the German Government.

STATE AID

C 18/95 (NN 103/94)

France

(95/C 289/08)

(Articles 92 to 94 of the Treaty establishing the European Community)

Commission notice pursuant to Article 93 (2) of the EC Treaty to other Member States and interested parties concerning aid for promotional measures which France has decided to grant to the sheepmeat industry

By the following letter, the Commission informed the French Government of its decision to initiate the procedure.

'By letter of 12 August 1994, recorded as received on 16 August 1994, the French Permanent Representative to the European Union notified the Commission of the above measures in response to the Commission's request of 27 June 1994 for such notification. By letter of 22 February 1995, recorded as received on 23 February 1995, the French authorities provided additional information in response to the Commission's request of 25 August 1994.

On the basis of the information in its possession, the Commission has therefore undertaken a preliminary examination of three series of measures for the sheepmeat industry, i.e. two "production conversion" measures entailing technical support and investment aid, and promotional measures.

I hereby inform your Government that the Commission has no objections to raise pursuant to Articles 92 and 93 of the EC Treaty with regard to the aid for technical support and investment in the sheepmeat industry. When adopting its position with regard to the investment aid, the Commission took account of the commitment of the French authorities set out in their letter of 22 February

1995 not to grant aid exceeding 35 % in respect of each investment.

However, the Commission has adopted a different position with regard to the promotional measures.

The Commission can regard such measures as compatible with the common market under the following conditions:

- the granting of aid for promotional measures contravening Article 30 of the Treaty or for advertising to promote particular enterprises is prohibited,
- promotion must cover surplus agricultural production, new or non-surplus replacement products, the development of certain regions, the development of small and medium-sized enterprises, or quality and health-food products,
- the aid may not exceed 50 % of the expenditure.

In the case in point, on the basis of the information available to the Commission, only compliance with the condition set out in the third indent above can be verified; compliance with the condition set out in the second indent above cannot be verified and in all cases Article 30 of the Treaty referred to in the first indent above is likely not to be complied with according to the French Ministry of Agriculture's Bulletin d'Information of 25 June 1994.

As that publication states, the "quality marks" selected by the French authorities refer solely to the national origin of the products by displaying the French flag and the expressions "agneau français, qualité bouchère" and "agneau des bergers de France". The guidelines for Member States's involvement in promotion of agricultural and fisheries products (point 2.2.1 of the Annex to the Commission communication published in *Official Journal of the European Communities* No C 272 of 28 October 1986) list promotional campaigns which advise consumers to buy national products solely on account of their national origin under promotional actions which clearly infringe Article 30 of the Treaty.

As a consequence, according to the information in the Commission's possession, aid for publicity and promotional campaigns cannot qualify under any of the exceptions provided for in Article 92 of the Treaty and must be considered incompatible with the common market. Accordingly, the Commission has decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of this aid measure.

Under that procedure, the Commission hereby calls on the French Government to forward, within one month of notification of this letter, its remarks and any information on those aid measures, and in particular the advertising material in question.

Where no satisfactory reply is received on the expiry of the time limit laid down, the Commission may be compelled to take a provisional decision requiring the French authorities to suspend payment of the aid immediately and to provide all information which may be relevant for an examination of the aid measures in question.

The Commission regrets that it was not notified of the aid measures in question in accordance with Article 93 (3) of the Treaty. It urges the French authorities to take the necessary measures to comply henceforward with the obligation on prior notification.

The Commission draws the attention of the French Government to the letter it sent to all the Member States on 3 November 1983 concerning their obligations pursuant to Article 93 (3) of the Treaty and to the notice published in *Official Journal of the European Communities* No C 318 of 24 November 1983, page 3, which stated that any aid granted illegally, i.e. before a final decision under the procedure provided for in Article 93 (2) of the Treaty has been reached, is likely to be the subject of a request for reimbursement and/or a refusal to pay advances from the European Agricultural Guidance and Guarantee Fund (EAGGF) or to charge to the EAGGF budget expenditure on national measures directly affecting Community measures.

The Commission hereby informs the French Government that it will be giving formal notice to the Governments of the other Member States and interested parties to submit their comments, by publishing a notice in the *Official Journal of the European Communities*.

The Commission hereby gives the other Member States and interested parties notice to submit their comments on the aid measures in question within one month of the date of this publication to the following address:

Commission of the European Communities,
Rue de la Loi/Wetstraat 200,
B-1049 Brussels.

The comments will be forwarded to the French Government.