

## STATE AID

Aid No 451/90

France

(91/C 165/06)

*(Articles 92, 93 and 94 of the Treaty establishing the European Economic Community)***Commission communication pursuant to Article 93 (2) of the EEC Treaty to other Member States and interested parties concerning aids and parafiscal charges in the forestry sector**

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

'1. By letter of 6 August 1990, received on 28 August 1990, the Permanent Representative of France to the European Communities submitted to the Commission the draft law that the French authorities propose to submit to the national Parliament as part of the 1991 Finance Act, concerning levies collected in the forestry sector (Articles 1613 and 1618a of the General Tax Code (GTC)). The law extends an existing system of levies.

The letter was in response to requests for information made by Commission staff under Article 93 of the Treaty on 2 August and 15 September 1989 and a bilateral meeting held on 8 June 1990.

In reply to a request for information made by Commission staff on 1 October 1990, the French authorities sent additional information in a letter dated 19 December 1990, received on 21 December 1990.

At the request of the French authorities, made by letter dated 13 February 1991, a bilateral meeting was held on 26 February 1991 so that additional information could be given to Commission staff.

2. The letter from the French authorities of 6 August 1990 also referred to Commission reasoned opinion No C(87) 2126 final of 16 December 1987, notified to the French Government by letter dated 15 December 1987 under the procedure referred to in Article 169 of the Treaty (A 219/86). The procedure was initiated in respect of a system of taxes applied to forestry products (Article 1613 of the General Tax Code) for infringement of Article 95 of the Treaty.

The following assessment, however, does not cover this aspect of the case, which is the subject of a separate infringement procedure, but examines in particular aid granted by the Fonds forestier national (FFN —

National Forestry Fund) in the light of Articles 92 and 93 of the Treaty in view of the way they are financed. According to decisions of the Court of Justice of the European Communities, with regard to aid financed by a parafiscal charge, an assessment should be made of both the aid and the method of financing. It is clear that the Commission, for the reasons given in point 9 below, can no longer consider aid financed by parafiscal charges which also apply to products imported from other Member States as compatible with the common market <sup>(1)</sup>.

3. The measures on the renewal of the levy scheme were adopted and published in the French Official Journal on 30 December 1990 as part of the 1991 Finance Act of 29 December 1990. The Commission regrets that the French Government has not complied with Article 93 (3) of the Treaty and, in particular, the time limit necessary for the Commission to express an opinion on the measures in question after receipt of additional information by the letter referred to above on 19 December 1990.

4. The aid in question is financed by the levy scheme provided for in Articles 1613 and 1618a of the GTC as amended by Article 36 of the Finance Act of 29 December 1990. This scheme involves two levies:

- the forestry levy, the proceeds of which go to the Fonds forestier national (FFN),
- the levy on timber in the rough, the proceeds of which go to the 'budget annexe des prestations sociales agricoles' (BAPSA — Budget supplement for social security in agriculture).

<sup>(1)</sup> In particular the negative decision on aid for the promotion of the farming of poultry and other small animals and of fruit and vegetable growing in Belgium — OJ No L 85, 30. 3. 1989, p. 45.

### Aid and forestry levy received by the FFN

5. Aid is paid either directly by the FFN or through organizations such as:

- the Centre technique du bois et de l'ameublement (CTBA — Wood and Furnishing Technical Centre),
- the Institut pour le développement forestier (IDF — Institute for Forestry Development),
- the centres régionaux de la propriété forestière (CRPF — Regional Woodland Centres).

6. The aids to promote forestry development are mainly of the following kinds:

- research aid benefiting the whole sector,
- aid to promote the dissemination of knowledge gained and for training,
- aid for information retrieval,
- aid for technical and economic assistance,
- aid for the purchase of plants, afforestation and related work,
- aid for extensions, restocking and improvement of forests,
- aid for training for forestry associations.

7. Aid for timber growing for wood production is mainly of the following kinds:

- aid for research and development in the wood and furnishing sector (particularly through the CTBA),
- aid for technological support and advice for enterprises (CTBA),
- aid for advice and training for timber growers,
- aid for the mechanization of timber growing,
- aid for advertising of wood products.

8. According to the Finance Act of 29 December 1990, revenue from the forestry levy is put at FF 414 160 000 (around ECU 60 million).

9. Without prejudice to the French Government's replies to the Commission's questions under point 13 below and excluding aid financed by the IDF (see point 11 below), the Commission has no comment to make on the purposes of the aid financed by the forestry levy referred to in point 4 above. The Commission has taken account of the interest to the Community of measures to

encourage timber production in France in view of the shortage of timber in the Community; nevertheless, these aids cannot be considered compatible with the common market since they are financed by a levy which is also applied to products imported from other Member States.

According to decisions of the Court of Justice<sup>(1)</sup>, financing of State aid through an obligatory charge designed for that purpose is an essential element of that aid, and in assessing such aid, both the aid and the method of financing should be examined in the light of Community law.

Therefore, even though aids may be compatible with the Treaty with regard to both form and aims, according to decisions of the Court of Justice their financing through taxes designed for that purpose that are also imposed on imported Community products has a protective effect which goes beyond mere aid.

In particular in the case of promotional aids, even where these aim to promote the sale of products irrespective of their origin, all products do not necessarily benefit equally since, even where equality of treatment is enshrined in the rules, on a practical level French operators are, by force of circumstances, in a more favourable position given that the results aimed at and the measures adopted are based on national specializations, needs and shortages.

Furthermore, operators in other Member States often take responsibility either directly or indirectly for promotion of their own products and do not, therefore, feel the need to participate in campaigns financed by the FFN.

In addition, most of the aid financed directly or indirectly by the FFN can only benefit holdings in French territory.

10. The Commission has therefore decided to initiate proceedings under Article 93 (2) of the Treaty with regard to the aid financed through the forestry levy provided for in Article 1613 (1) of the General Tax Code as amended by Article 36 of the 1991 Finance Act of 29 December 1990 in so far as the levy is also imposed on products imported from other Member States.

<sup>(1)</sup> Case No 47/69, 26 June 1970, [1970] ECR 487.

11. However, the aid financed by the IDF (point 5 above) can also be financed from the product of levies collected for the benefit of the ANDA, also imposed on imported products. The French authorities have been asked for information on this matter. The Commission has decided to postpone examination of these measures until it adopts a position on all of the aid financed by the ANDA.

12. In addition, the third subparagraph of Article 1613 (IV) (2) of the General Tax Code lays down that exported products are exempt from payment of the forestry levy.

This provision introduces a distinction between the conditions under which the products in question are sold on the French market and those applied for markets outside France. In this form, the exemption constitutes an export aid. It must therefore be considered as a State aid prohibited under Article 92 (1) of the EEC Treaty.

By its very nature, it affects intra-Community trade and distorts competition by favouring French wood product exporters who can, moreover, enjoy the advantages of the aid scheme without having to pay the parafiscal charge. This aid can have no long-term effect on the development of the sector in question and must be considered an operating aid, the effects of which would disappear if the aid were withdrawn.

This measure can not therefore be granted any of the derogations provided for in Article 92 (3) of the EEC Treaty.

The Commission has therefore decided to extend the proceedings to this measure.

13. As part of this procedure, the Commission is asking the French Government to reply to the following questions:

- (i) Is the research/development aid in the timber sector (first indent of point 7 above) in conformity with the Community framework for this type of aid (\*)?

- (ii) With regard to the activities of the CTBA (see point 5 above), which also receives financial contributions from the Comité de développement des industries françaises de l'ameublement (Codifa — Committee for the Development of the French Furniture Industry), the Commission recalls its letter No SG(90) D/27709 of 2 October 1990 on aid to the furniture industry financed through a tax on sales, including export sales, by manufacturers of wooden furniture. Given that the aid financed through the forestry levy on wood products is in addition to the aid financed by the tax on furniture, are the aims and methods of payment of these two aids identical? If not, what are the differences between them?

14. Under this procedure, the Commission gives the French Government notice to submit its comments within four weeks from the date of this letter.

15. The Commission also informs the French Government that it will notify the other Member States and parties concerned, by way of a notice published in the *Official Journal of the European Communities*, to submit their comments.

16. It should be pointed out that the BAPSA is mainly financed through parafiscal charges on several agricultural products as well as on French and imported timber in the rough (Article 1618a) of the GTC as amended by Article 36 (II) of the 1991 Finance Act of 29 December 1990). This system of taxation and social security measures must be examined as a whole. The Commission has therefore decided to postpone examination of the financing of these measures through the tax on timber in the rough until the examination, in the light of Articles 92 and 93 of the Treaty, of all the systems of parafiscal charges used to finance the BAPSA.'

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

Commission of the European Communities,  
rue de Loi, 200,  
B-1049 Bruxelles.

*Comments received will be communicated to the French Government.*

(\*) OJ No C 83, 11. 4. 1986, p. 2.