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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 May 2004

on the scheme of aid which Spain intends to grant to certain olive oil producer organisations*(notified under document number C(2004) 1630)***(Only the Spanish text is authentic)**

(2004/834/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first paragraph of Article 88(2) thereof,

Having given the parties concerned notice to submit their comments pursuant to that Article⁽¹⁾, and having regard to those comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 5 June 2001, the Spanish authorities notified the Commission of the aid to olive oil producer organisations set out in the decision to initiate proceedings, as provided for in Article 88(3) of the Treaty.
- (2) By faxes dated 28 June and 12 September 2001 and 29 January and 29 April 2002, the Commission requested further information, which was sent by letters dated 27 July 2001 and 17 January, 4 March and 12 June 2002. In their letter dated 12 June 2002, the Spanish authorities stated that the information supplied was complete and sufficient and asked the Commission to adopt a decision on compatibility as soon as possible.
- (3) By letter dated 17 July 2002, the Commission informed Spain of its decision to initiate the procedure laid down in Article 88(2) of the Treaty concerning this aid scheme.
- (4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*⁽²⁾. The Commission invited interested parties to submit their comments on the aid in question.

- (5) By letter dated 24 September 2002 Spain submitted a series of comments.

- (6) The Commission has received comments on the aid from the interested parties. It sent those comments to Spain so that it could comment on them.

II. DETAILED DESCRIPTION OF THE AID

- (7) Name, scheme: scheme of aid to olive oil producer organisations.
- (8) Budget: for 2001, ESP 20 million (EUR 120 200).
- (9) Duration: indefinite.
- (10) Beneficiaries: four olive oil producer organisations in Extremadura.
- (11) Purpose of the aid: to help these organisations to undertake the management of olive oil production aid.
- (12) Possible impact of the aid: distortion of competition, encouragement for certain olive oil producers and violation of the provisions of the corresponding market organisation.
- (13) Intensity of the aid, eligible costs, cumulation: between ESP 1 500 and ESP 2 000 per application forwarded by the organisation.

⁽¹⁾ OJ C 222, 18.9.2002, p. 18.

⁽²⁾ See footnote 1.

- (14) The reasons why the procedure was initiated are described below:
- (15) The draft regional decree notified provides for aid to be granted to olive oil producer organisations which undertake the management and inspection of production aid for olive oil and table olives; the aid is in the form of a grant calculated on the basis of the number of aid applications forwarded. These organisations undertake administrative work and are not concerned with the marketing of the oil.
- (16) According to the Spanish authorities, the beneficiaries are four organisations with a total of 11 500 producers. These organisations are recognised in accordance with Council Regulation No 136/66/EEC establishing a common organisation of the market in oils and fats⁽¹⁾.
- (17) The aid for the first 1 200 applications processed is ESP 1 500 (EUR 9,02), a figure which may be increased, if the number of applications processed is greater than in the previous year, to ESP 1 600 (EUR 9,62) and ESP 2 000 (EUR 12,02) per application. If the number of applications exceeds 1 200, the aid is ESP 2 000 (EUR 12,02) per application.
- (18) The financing of these organisations is governed by Article 20d of Regulation No 136/66/EEC, which allows 0,8% of the production aid to be paid to recognised organisations and associations to help finance expenditure incurred by their activities as a whole.
- (19) According to the Spanish authorities, the region of Extremadura currently does not pay the full 0,8% to the organisations but only pays about 0,6%. This is due to two factors:
- The first is the enormous difference in the allocation of the 0,8% advance between the organisations and the associations of organisations, specifically under Commission Regulation (EC) No 647/2001⁽²⁾ fixing, for the 2000/2001 marketing year, the amounts provided for in Article 21(1)(a) and (b) of Regulation (EC) No 2366/98 laying down rules for the application of the aid scheme for the 1998/99, 1999/2000 and 2000/2001 marketing years⁽³⁾. That difference is EUR 2 per aid application in favour of the associations. Spain is the only country in the Community where the associations enjoy this advantage.
 - The second factor is the subsequent allocation of the balance of the 0,8%, using a different criterion, to the number of applications transmitted by each organisation, creating differences between regions.
- (20) According to the Spanish authorities, the olive oil producer organisations are an effective means of managing production aid but in the region of Extremadura most applications for aid are made on an individual basis; the aid analysed will allow the number of organisations and the number of members of existing organisations to increase.
- (21) The duration of the aid scheme is indefinite and the budget for 2001 is ESP 20 million (EUR 120 200).
- (22) In initiating the procedure, the Commission had regard to the following:
- (23) Article 20d of Regulation No 136/66/EEC allows 0,8% of the amount of the production aid to be paid to recognised organisations and associations to help finance expenditure incurred by their activities as a whole. Furthermore, Article 11(2) of Council Regulation (EEC) No 2261/84 laying down general rules on the granting of aid for the production of olive oil and of aid to olive oil producer organisations⁽⁴⁾ requires the producer Member States to ensure that the sums made over to the associations and to producer organisations are used by them only for financing the activities for which they are responsible under Community legislation, including the submission of aid applications on behalf of their members. Article 11(3) states that if sums are not used, in whole or in part, as specified in paragraph 2, they must be repaid to the Member States concerned and shall be deducted from the expenditure financed by the European Agricultural Guidance and Guarantee Fund.
- (24) The granting of State aid to producer organisations, over and above the aid allowed under Community rules, is not allowed under those rules and could cause market distortions and possible discrimination against other producers in the Community. The producer organisations which undertake the management of aid receive two types of aid: Community aid plus State aid on top. The management of production aid may be considered to confer an advantage on producers forming part of the organisations receiving this aid as compared with producers not forming part of an organisation or forming part of other organisations not receiving State aid. This would be the case in particular if the total amount of the aid received exceeded the cost of managing the aid and the surplus went to the producers or to activities which benefited them. Furthermore, the producers or organisations which do not benefit from State aid could be obliged to bear part of the cost of managing the applications for aid, which those producers forming part of organisations receiving aid would not have to do.

⁽¹⁾ OJ L 172, 30.9.1966, p. 3025/66. Regulation last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 91, 31.3.2001, p. 44.

⁽³⁾ OJ L 293, 31.10.1998, p. 50. Regulation last amended by Regulation (EC) No 1780/2003 (OJ L 260, 11.10.2003, p. 6).

⁽⁴⁾ OJ L 208, 3.8.1984, p. 3. Regulation last amended by Regulation (EC) No 1639/98. (OJ L 210, 28.7.1998, p. 38).

(25) Since the Spanish authorities, in their letter dated 12 June 2002, considered the information supplied to be complete and sufficient and asked the Commission to adopt a decision on its compatibility as soon as possible, the Commission had to take its decision on the basis of the information available.

(26) On that basis, the Commission considered that the aid planned appeared to be State aid intended to improve the financial situation of olive oil producer organisations, not contributing in any way to the development of the sector (point 3.5 of the Community Guidelines on State aids in the agricultural sector⁽¹⁾). Therefore, at this phase, this aid is regarded as operating aid, incompatible with the common market. This type of aid has no lasting effect on the development of the sector and its immediate effect disappears with the measure itself (see the judgment of the Court of First Instance in Case T-459/93, *Siemens SA v. Commission*⁽²⁾). This aid results directly in an improvement in the opportunities for the production and marketing of the products by the operators concerned as compared with those not receiving comparable aid (in the same or in other countries).

(27) It also considered that this aid to olive oil producer organisations related to a product, olive oil, subject to a market organisation governed by Council Regulation No 136/66/EEC which is the exclusive competence of the Community and in whose operation the Member States have only a limited capacity to intervene. The Court of Justice of the European Communities has always held (see, *inter alia*, Case 177/78 *Pigs and Bacon Commission v. McCarren*⁽³⁾) that market organisations must be considered to be complete and exhaustive systems which exclude any possibility of the Member States adopting measures which could establish exceptions or undermine them. This means that, at this phase, this aid should be regarded as an infringement of the market organisation and hence of Community rules.

(28) Accordingly, at the phase of initiating the procedure, the Commission considered that the aid in question seemed not to benefit from any of the exceptions in Article 87(3) of the Treaty and so decided to initiate against it the procedure under Article 88(2) of the Treaty; it asked Spain to submit its comments and provide information for the assessment of the aid.

III. COMMENTS BY SPAIN

(29) By letter dated 24 September 2002, Spain put forward the following arguments.

(30) The aid in question was based on Regulations No 136/66/EEC, (EC) No 2366/98 and (EC) No 674/2001, constituting the market organisation, and so was compatible with Articles 87 and 88 of the Treaty.

(31) The draft Decree had not been published and so was not finalised.

IV. COMMENTS BY THE INTERESTED PARTIES

(32) The Organisation of olive oil producers in Extremadura (Opracolex) made comments as part of the procedure.

(33) The beneficiaries of this aid are four organisations which have, according to Opracolex, 11 500 producers as members. These organisations carry out administrative duties involving the management and inspection of production aid for olive oil and table olives.

(34) Opracolex considers that this aid does not fall under Article 87(1) of the Treaty, which requires beneficiaries to be undertakings, meaning bodies which carry out an economic activity so that measures which affect other types of beneficiary are excluded. The activity carried out by Opracolex in managing the inspection measures required for the granting of production aid under Community rules is not done for profit and is not one of the purposes of any form of economic activity. This activity cannot be regarded as a business activity and so falls outside the scope of Article 87 of the Treaty.

(35) The activities carried out by Opracolex do not distort competition or affect trade. They are activities which have no impact on the market and so cannot be regarded in any way as an aid likely to have an impact on trade between the Member States.

(36) The aid is intended solely for the administrative activities undertaken by the organisation, and there is no possibility of any surplus which could be used for production. The aid presupposes a benefit granted to offset the disadvantages existing in the region of Extremadura, such as the low level of infrastructure there, the level of education and training of the work force, etc. Hence it is an aid tending to benefit a particularly disadvantaged region.

⁽¹⁾ OJ C 28, 1.2.2000, p. 2.

⁽²⁾ [1995] ECR II-1675.

⁽³⁾ [1979] ECR 2161.

(37) It is highly improbable that the total amount of the aid received will exceed the cost of managing the aid. Opracolex provided a copy of the annual summaries of its income and expenditure in 1999, 2000 and 2001. They show that expenditure exceeded income and that the organisation relied basically on loans. In no circumstances did the aid generate a surplus which could be shared among the producers who were members of Opracolex. The difference between income and expenditure is borne by the members, who pay annual contributions, which means a reduction in their income.

Without aid it could not continue, so depriving its members of the management of aid which it now offers them,

- as regards Opracolex, this aid would have a lasting effect as regards its members' situation since it would mean that Opracolex could continue to operate, so providing olive oil producers with support.

V. ASSESSMENT OF THE AID

Article 87(1) of the Treaty

(EUR)

	Balance for 1999	Balance for 2000	Balance for 2001
Aid retained from total production aid ⁽¹⁾	15 090,58	59 606,87	0
Expenditure on the management and operation of the organisation	136 819,32	193 868,87	172 423,29
Loans used	58 977,47	63 733,58	115 765,80

⁽¹⁾ Within the meaning of Article 20d of Regulation No 136/1966/EEC.

(38) Furthermore, even if this aid were considered to fall under Article 87(1) of the Treaty, it could in any case, in Opracolex's view, be eligible for the exception provided for in Article 87(3)(a) of the Treaty as aid for the economic development of regions where the standard of living is abnormally low.

(40) 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, insofar as it affects trade between Member States, incompatible with the common market.

(41) Articles 87 and 88 of the Treaty apply to all agricultural products under Annex I which are subject to a market organisation. Olive oil is such a product so Articles 87 and 88 of the Treaty apply to it.

(42) The beneficiaries of this aid scheme are producer groups recognized within the meaning of Regulation No 136/66/EEC. These producer groups must, in conformity with Article 20(1)(c) of the Regulation:

(39) In this respect, Extremadura considers itself a region to which Article 87(2)(a) of the Treaty ⁽¹⁾ could apply. This aid would contribute to the development of Extremadura for the following reasons:

(a) consist of individual growers and/or organisations engaged in producing, processing or marketing olives and olive oil and consisting solely of olive growers;

— it would improve supervision of the approaches required to secure aid. Although this is not production aid, it helps improve the situation of olive oil producers in a particularly disadvantaged region by allowing them to secure cooperation for an important aspect of their activities, namely the management of aid,

(b) be capable of verifying the olive and olive-oil production of their members;

(c) where they do not belong to a recognized association be empowered to:

— Opracolex will benefit from economic aid which will allow it to cover at least some of its operating costs.

— submit an application for production aid on behalf of all their member growers,

— receive the aid and to share it out among their members;

⁽¹⁾ Map of State aids for regional purposes for 2000-06 (State aid No N 773/99, SG 2000 D/103727.cor).

- (d) where they belong to an association, be empowered to provide the association with a statement of the production of each member grower, for the purposes of the application for aid;
- (e) have a minimum number of members or represent a minimum percentage of growers or of oil production in the region in which they have been set up;
- (f) exercise no discrimination in any of their activities, between producers who are eligible to become members, in particular on grounds of nationality or location of establishment;
- (g) have statutes which include provisions to ensure that the members of a group who wish to withdraw from membership may do so [...].'
- (43) The activities developed by the organisations benefiting from these aids are detailed in the above mentioned Article 20c of Regulation No 136/1966/EEC. These activities consist in an administrative task of managing and inspecting Community olive oil production aid. These activities can only be executed by the producer groups recognised by each Member state within the meaning of the Regulation No 136/1966/EEC. For these reasons, it would not be possible for these activities, which include the inspection of producers, to be executed by other entities or by a producer group of another Member state.
- (44) The organisations receiving the aid submit the applications for production aid on behalf of the producers and verify the olive and olive-oil production of their members. These groups carry on this activity for the benefit of olive oil producers.
- (45) Opracolex, whose comments included a copy of the annual summaries of income and expenditure for 1999, 2000 and 2001, showed that expenditure exceeded income, that the organisation is basically dependent on loans and that the aid does not generate a surplus. The difference between income and expenditure is borne by the members who pay annual contributions. This aid therefore allows members' contributions to the organisation receiving aid to be reduced or even eliminated.
- (46) For these reasons, the real beneficiaries of this aid are producers who benefit from lower annual contributions. The funding by the state of services which reduce farmers' normal operating costs is an aid to the farmer
- (see judgment of 20 November 2003 of the Court of Justice in Case C-126/01, *Ministère de l'Economie, des Finances et de l'Industrie v GEMO SA* ⁽¹⁾).
- (47) The aid in question confers on its beneficiaries an advantage which reduces the normal burden on their budget. It is granted by the State or from State resources. It is specific or selective in that it favours certain undertakings or types of productions, specifically olive oil producers.
- (48) In the light of the experience acquired, the Commission considers that very low levels of aid granted in the agriculture sector do not fulfil the criteria of Article 87(1) of the Treaty, provided certain conditions are met. This is the case where both the amount of aid received by individual producers remains small, and the overall level of aid granted to the agriculture sector does not go above a small percentage of the value of production.
- (49) Agricultural production in the Community is normally characterised by the fact that a commodity is produced by a large number of very small producers, producing largely interchangeable goods within the framework of common organisations of the market. For this reason, the impact of small amounts of aid granted to individual producers over a given period of time should be related to the value of agricultural production at sector level over the same period of time.
- (50) Aid not exceeding a ceiling of EUR 3 000 per beneficiary over any period of three years, where the total amount of such aid granted to all enterprises over three years remains below a ceiling around 0,3 % of the agricultural output for 2001 (for Spain, EUR 106 755 000) does not affect trade between Member States and/or does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty
- (51) This conclusion would not apply to aid the amount of which is fixed on the basis of price or quantity of products put on the market, aid to export-related activities, namely aid directly linked to the quantities exported, to the establishment and operation of a distribution network or to other current expenditure linked to the export activity and aid contingent upon the use of domestic over imported goods.
- (52) The total budget for the present scheme of aid is EUR 120 200 per year. As the number of producers who benefit from the scheme is said to be 11 500, the amount of aid per beneficiary and year is EUR 10,4.

(¹) Not yet published.

Conclusion

- (53) In view of the reduced amount of aid per beneficiary, its method of granting and the overall level of aid granted, the Commission considers that the aid in question does not fall within the scope of Article 87(1) of the Treaty.

notified does not constitute aid within the meaning of Article 87(1) of the Treaty.

Implementation of the aid is accordingly authorised.

VI. CONCLUSIONS

- (54) This aid does not constitute aid within the meaning of Article 87(1) of the Treaty,

Article 2

This Decision is addressed to the Kingdom of Spain.

HAS ADOPTED THIS DECISION:

Done at Brussels, 7 May 2004.

Article 1

The scheme of State aid which Spain intends to grant to olive oil producer organisations under the draft regional decree

For the Commission

Franz FISCHLER

Member of the Commission