

COMMISSION DECISION

of 29 June 2011

concerning aid to the rendering sector in 2003 State aid C 23/05 (ex NN 8/04 and ex N 515/03)

(notified under document C(2011) 4425)

(Only the French text is authentic)

(Text with EEA relevance)

(2011/651/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 108(2) thereof,

Whereas:

I. PROCEDURE

- (1) By letter of 7 November 2003, the French Permanent Representation to the European Union notified the Commission under Article 108(3) of the Treaty on the Functioning of the European Union (hereinafter 'TFEU')⁽¹⁾ of an exemption from the rendering levy for certain undertakings retailing meat.
- (2) The original notification concerned, on the one hand, aid granted in 2003 and, on the other, aid planned to be granted starting in 2004. As part of the aid had already been granted, the Commission decided at the time to split the file into two cases. Of the aid granted in 2003, only the exemption from the rendering levy is being examined under this decision.
- (3) The rendering levy was abolished on 1 January 2004. After that the financing of public-sector rendering plants was guaranteed by the proceeds of a 'slaughtering tax', to which the Commission did not raise any objections⁽²⁾.
- (4) In the context of examining the 'slaughtering tax' file (State aid No N515A/03), the French authorities sent the Commission information relevant also to this case, in particular by letter of 29 December 2003.

⁽¹⁾ With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty are replaced by Articles 107 and 108, respectively, of the TFEU. These two series of provisions are identical in substance. For the purposes of this Decision, references to Articles 107 and 108 TFEU should be considered references to Articles 87 and 88, respectively, of the EC Treaty, where necessary.

⁽²⁾ State aid No N 515A/03, letter to the French authorities No C(2004) 936 fin of 30.3.2004.

- (5) By letter of 7 April 2005, registered on 12 April 2005, the French authorities submitted the additional information requested by the Commission by letter of 4 March 2005.
- (6) The Commission initiated the procedure laid down in Article 108(2) TFEU concerning the aid in question by letter No SG(2005)D/202956 of 7 July 2005.
- (7) The decision initiating the procedure was published in the *Official Journal of the European Union*⁽³⁾. The Commission called on the other Member States and interested third parties to submit their comments on the aid in question.
- (8) The French authorities provided their comments by letters dated 20 September 2005 and 15 November 2005, registered on 17 November 2005.
- (9) The Commission received comments from the French Confederation of Butchers, Delicatessens and Caterers (hereinafter 'CFBCT') on 18 October 2005 and from a private company on 17 October 2005⁽⁴⁾ and 11 July 2008.
- (10) By letter of 18 April 2011, the French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, was covered by Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid⁽⁵⁾.

II. DESCRIPTION

- (11) The measure in question concerns the financing in 2003 of public-sector rendering plants and the destruction of meat and bone meal that can no longer be used commercially.

⁽³⁾ OJ C 228, 17.9.2005, p. 13.

⁽⁴⁾ The company has requested that its identity be treated as confidential.

⁽⁵⁾ OJ L 379, 28.12.2006, p. 5.

- (12) Public-sector rendering plants used to be financed by the rendering levy, introduced by Article 302a ZD of the French General Tax Code, which was adopted under Article 1 of French Law No 96-1139 of 26 December 1996 on the collection and destruction of animal carcasses and slaughterhouse waste (hereinafter 'Law of 1996').
- (13) The rendering levy was applied to the purchases of meat and other specified products by all retailers of those products. In principle, this levy was payable by all persons carrying out retail sales. The tax rate was the ex-VAT value of all purchases of meat and other specified products by all retailers of these products:
- fresh, cooked, chilled or frozen meats and offal of poultry, rabbit and game, of animals of the bovine, ovine, caprine and porcine species and of horses, asses and their crosses,
 - salted meats, cured meat products, lard, preserved meats and processed offal,
 - meat- and offal-based animal feed.
- (14) Undertakings whose turnover in the previous calendar year was less than FRF 2 500 000 ⁽⁶⁾ (EUR 381 122) excluding VAT were exempt from the payment of the levy. The rate of the levy was 0,5 % on monthly purchases of up to FRF 125 000 (EUR 19 056) excluding VAT and 0,9 % on monthly purchases above that amount. Article 35 of the Amending Finance Act for 2000 (Law No 2000-1353 of 30 December 2000) made certain amendments to the rendering levy scheme, which entered into force on 1 January 2001. These amendments were to offset the effects of the BSE crisis and the resulting extra costs. The levy was subsequently extended to 'other meat products'. The levy was set at 2,1 % on monthly purchases of up to FRF 125 000 (EUR 19 056) and 3,9 % on monthly purchases above that amount. In addition, all undertakings with a turnover in the previous calendar year of less than FRF 5 000 000 (EUR 762 245) excluding VAT were exempt from the levy.
- (15) Initially, i.e. from 1 January 1997, the proceeds of the levy were paid into an ad hoc fund used to finance the collection and destruction of animal carcasses and material seized at slaughterhouses and recognised as being unfit for human or animal consumption, i.e. the activities defined under Article 264 of the Rural Code as falling within the remit of a public service. The fund was managed by the National Centre for the Development of Farm Structures (CNASEA).
- (16) Starting on 1 January 2001, the proceeds of the rendering levy were paid directly into the general budget of the State and no longer into the fund set up for that purpose. For 2003, the funds were made available at the Ministry of Agriculture, Food, Fisheries and Rural Affairs by Decree No 2002-1580 of 30 December 2002 implementing the Finance Law for 2003. They were entered under the Ministry's ordinary expenditure under Title IV, Public aid, Part 4, economic measures, incentives and aid. The proceeds of this levy in 2003 were estimated at EUR 550 million.
- (17) The 2003 notification provided for aid for the stocking and destruction of animal meal as well as aid for the transport and destruction of fallen stock and slaughterhouse waste. In addition, under the Law of 1996, undertakings that retailed meat and had an annual turnover of less than EUR 762 245 were exempt from the levy. According to the information available to the Commission, the Law of 1996 was in force throughout 2003.
- (18) In its decision to initiate the procedure, the Commission concluded that the aid measures concerning the removal and destruction of fallen stock and the stocking and destruction of animal meal and slaughterhouse waste did not risk adversely affecting trading conditions to an extent contrary to the common interest. They could therefore qualify under the exception provided for in Article 107(3)(c) TFEU as measures able to contribute to the development of the sector. On the other hand, the Commission has decided to initiate the procedure referred to in Article 108(2) TFEU as regards the existence and compatibility of aid for trade exempt from the payment of the rendering levy.
- Points raised by the Commission in the context of initiating an investigation procedure*
- (19) When the investigation procedure was initiated, the Commission estimated that the exemption from the payment of the rendering levy implied a loss of resources for the State and did not appear to be justified by the nature and the general scheme of the tax system, which is designed to provide the State with revenue. Indeed, according to the information available to the Commission, the exemption was based on the overall turnover, not just the turnover on meat sales.
- (20) As the rendering levy is calculated on the value of meat products, it did not seem justified to exempt from the payment of the levy undertakings with a higher turnover on meat sales when their competitors with a lower turnover on meat products would have to pay it.

⁽⁶⁾ On the basis of FRF 1 = EUR 0,15.

- (21) Consequently, the exemption seemed to constitute a selective advantage. It would be aid in favour of the exempted vendors, whose tax burden would be lighter as a result. On the basis of the figures for trade in meat, the Commission concluded that the exemption of traders with a turnover of less than EUR 762 245 from the levy in 2003 was an advantage that might constitute State aid within the meaning of Article 107(1) TFEU.
- (22) The Commission could not rule out the possibility that the tax exemption might have an effect on trade between Member States, in particular in border areas.
- (23) Therefore the exemption of traders with a turnover of less than EUR 762 245 from the levy seemed to constitute State aid under the terms of Article 107(1) TFEU.
- (24) The exemption in this case seemed to consist of a tax reduction measure lacking any incentive element or counterpart on the part of the beneficiaries, and its compatibility with competition rules had not been demonstrated.
- (25) Therefore the Commission considered that the aid fell within the scope of point 3.5 of the Community Guidelines for State aid in the agriculture sector⁽⁷⁾, which were effective at that time. According to that point, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary in order to be considered compatible with the common market. Unless exceptions are expressly provided for in Community legislation or in the Guidelines, 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 are considered to constitute operating aid which is incompatible with the common market.
- (26) As regards trade exempt from the payment of the rendering levy, the Commission could not rule out that the aid in question might be State aid within the meaning of Article 107(1) TFEU and might constitute operating aid, regarding the compatibility of which with the internal market the Commission had doubts.

III. COMMENTS BY FRANCE

- (27) The French authorities submitted their comments by letters dated 20 September 2005 and 15 November 2005. In those letters, they stated that it could not be disputed that the tax exemption granted to the exempt companies represented aid within the meaning of the EC Treaty. Moreover, the Commission had come to a similar conclusion in its Decision 2005/474/EC⁽⁸⁾ on the exemption applied between 1 January 1997 and 31 December 2002 (aid NN 17/01 reclassified as C 49/02).
- (28) However, the French authorities had argued prior to the entry into force of Regulation (EC) No 1998/2006 that the aid fell within the scope of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid⁽⁹⁾. They pointed out that the number of undertakings concerned, an average of more than 100 000 a year, and the turnover threshold used for the exemption (EUR 762 245) implied that the amount of the exemption that might constitute State aid would in any case be below the threshold of EUR 100 000 over a three-year period provided for in Regulation (EC) No 69/2001.
- (29) In order to show that the amount of the exemption granted to these undertakings in 2003 was consistently below EUR 100 000 over a period of 3 years, the French authorities used two methods.
- (30) Firstly, the French authorities attempted to establish the turnover of an undertaking that had paid a levy of EUR 100 000 over 3 years, or an average annual levy of EUR 33 333. On the basis of the amount established, broken down by tax bracket (2,1 % and 3,9 %), they established the tax rate corresponding to the meat purchases of the undertaking. Finally, using the value of these meat purchases, the French authorities estimated the annual turnover on the basis of the maximalist assumption that the undertaking in question specialised in the meat trade. This method allowed them to establish a turnover for the undertaking that markedly exceeded the exemption threshold of the levy. The exemption threshold of EUR 762 245 was thus exceeded by far, meaning that a company that pays EUR 100 000 in taxes over 3 years may under no circumstances be exempt from the tax on meat purchases.
- (31) Secondly, the French authorities tried to establish the amount of tax for an undertaking that specialises in meat and has a turnover of EUR 762 000, which is just below the exemption threshold. On the basis of a purchases/turnover coefficient of 0,58⁽¹⁰⁾, the French authorities calculated the value of the meat purchases of the undertaking, i.e. EUR 441 960 (762 000 × 0,58). This second method shows that the maximum amount of the exemption is EUR 13 132 per year and undertaking, in other words less than EUR 100 000 over 3 years.
- (32) Following the entry into force of Regulation (EC) No 1998/2006, the French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, fell within the scope of the said Regulation, in particular Article 5 thereof on transitional measures.

⁽⁷⁾ OJ C 28, 1.2.2000, p. 2.
⁽⁸⁾ OJ L 176, 8.7.2005, p. 1.

⁽⁹⁾ OJ L 10, 13.1.2001, p. 30.

⁽¹⁰⁾ Information from the French authorities based on industry sources (management centres of the French Confederation of Butchers).

IV. COMMENTS FROM THIRD PARTIES

Comments of the Confederation of Butchers, Delicatessens and Caterers (CFBCT)

- (33) Firstly, the Confederation of Butchers, Delicatessens and Caterers (hereinafter 'CFBCT') pointed out that the measure in question did not meet the criteria for the definition of State aid and that the tax mechanism applied to certain companies on the basis of the amount of their turnover was fully justified owing to the general scheme of the tax system. The CFBCT states that the tax on meat purchases was collected and checked according to the rules applied to VAT and similar taxes. The exemption threshold was based on an objective and logical criterion identical to that for thresholds applied to other taxes. The Law of 1996 was part of the French system of collecting VAT. The goal was not to grant an exceptional advantage for certain companies but rather, by introducing a threshold level, to take into account the taxpaying capacity of undertakings and, in particular, the viability of artisanal butchers.
- (34) Secondly, according to the CFBCT, this measure did not affect intra-Community trade. Indeed, the extremely modest size of the companies concerned by the measure in question and the extremely limited geographical market on which they operate cast doubt on the claim that the measure constituted State aid within the meaning of Article 107(1) TFEU.
- (35) Even if it were considered that the tax-exempt undertakings had received aid, the CFBCT maintains that, in any case, this aid would comply with the rules of the Treaty.
- (36) The Commission should take the view that exempting small butcheries and artisanal butchers was, in fact, justified by an objective of general interest: the management of the mad cow crisis and the treatment necessary for dangerous products. Besides, this measure only concerned SMEs and would probably be covered by the exemption regulations valid at the time, namely Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽¹¹⁾ and Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹²⁾.
- (37) In any case, the CFBCT maintains that the requirement that the aid be recovered, which would be the consequence of classifying the measure as incompatible State aid, would violate Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed

rules for the application of Article 93 of the EC Treaty ⁽¹³⁾, because a negative decision and recovery would not take into account the legitimate expectations of the recipient undertakings.

- (38) Furthermore, if the amount of the aid were evaluated a posteriori on the basis of presumptive retroactive taxation it would probably remain below the de minimis thresholds, given that most of the potential beneficiaries of the aid were microenterprises.

Comments from a private company domiciled in France

- (39) According to the information available to the Commission, the private company in question engages in food distribution operations in France. Having paid the rendering levy for the years 2001 to 2003 and having requested that the French tax authorities refund the amount paid, the company considers that it is in its interest to submit its comments in the present procedure.
- (40) The company maintains that, contrary to the Commission's conclusion in its decision of 5 July 2005 (2005/C 228/06) ⁽¹⁴⁾ to initiate an investigation procedure, there was no disconnection between the aid to the rendering sector and the tax on meat purchases. It considers that the rendering tax paid for 2003 is based on Article 302a ZD of the French General Tax Code and finances a State aid scheme pursuant to Article 107 TFEU. As this mechanism was not notified to the Commission in advance, it should be declared illegal.
- (41) In addition, the company maintains that the tax exemption is incompatible with Article 107 TFEU and that it would make the tax incompatible with the principle of equality vis-à-vis charges levied by the State and consequently with the rules on competition.

V. ASSESSMENT

- (42) Pursuant to Article 107(1) TFEU, 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 incompatible with the internal market, in so far as it affects trade between Member States, save as otherwise provided for in the Treaty.
- (43) Articles 107, 108 and 109 TFEU apply to the pigmeat sector pursuant to Article 21 of Regulation (EEC) No 2759/75 of the Council of 29 October 1975 on the common organisation of the market in pigmeat ⁽¹⁵⁾. They apply to the beef and veal sector pursuant to

⁽¹¹⁾ OJ L 10, 13.1.2001, p. 33.

⁽¹²⁾ OJ L 1, 3.1.2004, p. 1.

⁽¹³⁾ OJ L 83, 27.3.1999, p. 1.

⁽¹⁴⁾ See footnote 3.

⁽¹⁵⁾ OJ L 282, 1.11.1975, p. 1.

- Article 40 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal⁽¹⁶⁾. Prior to the adoption of Regulation (EC) No 1254/1999, Articles 107, 108 and 109 TFEU applied to the beef and veal sector pursuant to Article 24 of Regulation (EEC) No 805/68 of the Council⁽¹⁷⁾. They apply to the sheepmeat and goatmeat sector pursuant to Article 22 of Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat⁽¹⁸⁾. They apply to the poultrymeat sector pursuant to Article 19 of Regulation (EEC) No 2777/75 of the Council of 29 October 1975 on the common organisation of the market in poultrymeat⁽¹⁹⁾. Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products ('single CMO Regulation')⁽²⁰⁾ repealed these Regulations, and Article 180 thereof states that the rules on State aid apply to the above-mentioned products.
- (44) The French authorities confirmed that the exemption from the payment of the tax on meat purchases ('rendering levy'), granted for 2003 to certain companies marketing agricultural products, fell within the scope of Regulation (EC) No 1998/2006.
- (45) According to Regulation (EC) No 1998/2006, aid that fulfils the conditions laid down therein is deemed not to meet all the criteria of Article 107(1) of TFEU and is therefore exempt from the notification requirement of Article 108(3) TFEU.
- (46) Regulation (EC) No 1998/2006 applies to aid granted to undertakings in all sectors but, in the case of undertakings active in the processing and marketing of agricultural products as listed in Annex I to the Treaty, only when the amount of aid is not fixed on the basis of the price or quantity of such products purchased from primary producers or put on the market by the undertakings concerned and when the aid is not conditional on being partly or entirely passed on to primary producers.
- (47) Pursuant to Article 5(1) thereof, Regulation (EC) No 1998/2006 applies to aid granted before its entry into force to undertakings active in the processing and marketing of agricultural products if the aid fulfils all the conditions laid down in Articles 1 and 2. Regulation (EC) No 1998/2006 entered into force on 29 December 2006.
- (48) Pursuant to Article 2(2) and (3) of Regulation (EC) No 1998/2006, the total de minimis aid granted to any one undertaking must not exceed EUR 200 000 over any period of three fiscal years. The ceiling laid down is expressed as a cash grant. All figures used are gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount is the gross grant equivalent of the aid.
- (49) The undertakings in question were active in the processing and marketing of the products as listed in Annex I of the Treaty and other products and were exempt from the rendering levy in 2003. Pursuant to the transitional measures laid down in Article 5 thereof, Regulation (EC) No 1998/2006 applies consequently to this case.
- (50) The French authorities have established that the conditions required by Regulation (EC) No 1998/2006 were fulfilled by showing that the grant equivalent of the aid received by each beneficiary did not under any circumstances exceed EUR 200 000 over any period of 3 years, as the maximum amount of the exemption was EUR 13 132 per year and undertaking (see recital 29).
- (51) In view of the foregoing, the Commission considers that the tax-exemption of undertakings retailing meat whose annual turnover was less than EUR 762 245 in 2003 falls within the scope of Regulation (EC) No 1998/2006 and fulfils the conditions laid down therein. Therefore this exemption does not constitute State aid within the meaning of Article 107(1) TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The exemption of undertakings retailing meat whose turnover is less than EUR 762 245 from the rendering levy in 2003 does not constitute aid pursuant to Article 107(1) TFEU.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 29 June 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission

⁽¹⁶⁾ OJ L 160, 26.6.1999, p. 21.

⁽¹⁷⁾ OJ L 148, 28.6.1968, p. 24.

⁽¹⁸⁾ OJ L 312, 20.11.1998, p. 1.

⁽¹⁹⁾ OJ L 282, 1.11.1975, p. 77.

⁽²⁰⁾ OJ L 299, 16.11.2007, p. 1.