

COMMISSION DECISION**of 24 November 1982****on aid granted by the French Government to the equalization funds in the pigmeat sector****(Only the French text is authentic)****(82/952/EEC)**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat⁽¹⁾, as last amended by Regulation (EEC) No 2966/80⁽²⁾, and in particular Article 21 thereof,

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93 (2), and having regard to those comments⁽³⁾,

I

Whereas, having been informed of a plan to grant aid to the equalization funds in the pigmeat sector, the Commission, on 8 May and 12 June 1981, requested the French Government, in accordance with Article 93 (3) of the Treaty, to notify it of the aid measure in question;

Whereas the planned aid consisted in the payment of FF 146 million to the equalization funds in order to improve their cash-flow situation;

Whereas, the abovementioned aid falls within the scope of Articles 92 to 94 of the Treaty by virtue of Article 21 of Regulation (EEC) No 2759/75;

Whereas the Commission received no reply from the French authorities and, having concluded a preliminary examination on the basis of the documents at its disposal and having been unable to find the aid measure in question compatible with Article 92 of the Treaty, it initiated the procedure

provided for in Article 93 (2) of the Treaty in respect of that aid measure and, under the same procedure, gave notice to the parties concerned to submit their comments;

II

Whereas the French Government, in its reply dated 7 August 1981 in response to the letter of notice, stated that the payment was an exceptional measure and that it was intended to help the funds overcome the major cash-flow problems they were experiencing as a result of the fall in market prices;

Whereas several Member States and other parties concerned forwarded their comments to the Commission; whereas they all took the view that the French measure was such as to distort competition and affect trade between Member States to an extent contrary to the common interest and that it contravened the rules of the common market organizations;

III

Whereas, although advances to equalization funds have been allowed in the past, the payment of a non-returnable aid constitutes a novation and produces, indirectly, the same result as a subsidy which ensures a guaranteed price only for farmers who are members of those funds;

Whereas, accordingly, the measure is likely to improve production and marketing facilities for the producers concerned as compared with producers in the other Member States who do not receive such aids;

Whereas, accordingly, the measure in question affects Community trade; whereas it therefore meets the criteria for the application of Article 92 (1) of the Treaty;

Whereas, moreover, there is a common organization of the market in the sector in question and

(¹) OJ No L 282, 1. 11. 1975, p. 1.

(²) OJ No L 307, 18. 11. 1980, p. 5.

(³) OJ No C 187, 28. 7. 1981, p. 2.

Member States are no longer empowered to introduce national aid measures unilaterally;

Whereas, in view of the foregoing, the economic reasons put forward by the French Government cannot be accepted;

Whereas the prohibition laid down in Article 92 (1) cannot be lifted under paragraph 2 of that Article since the derogations it provides for are obviously not applicable in this case;

Whereas the derogations provided for in Article 92 (3) must, in the context of national or regional aids, be given a strict interpretation; whereas, in particular, there should be derogations only where the Commission can establish that the aid is necessary in order to attain one of the objectives specified in those provisions;

Whereas to authorize, under the said derogations, aids which do not feature such a compensating element would be tantamount to allowing trade between Member States to be undermined and to accepting distortions of competition which would not be in the Community interest and, by the same token, unjustified advantages for certain Member States;

Whereas it is not possible to establish that such a compensating element exists in the case of the planned aid in question;

Whereas the French Government has been unable to give, and the Commission to find, grounds for considering that the aid in question meets the requirements for a derogation under Article 92 (3) of the Treaty;

Whereas the measure is not intended to promote the economic development of an area where the standard of living is abnormally low or where there is serious under-employment and it is not an important project of common European interest or a measure to remedy a serious disturbance in France's economy; whereas, therefore, paragraphs (a) and (b) of Article 92 (3) of the Treaty are not applicable in this case;

Whereas, moreover, the measure constitutes an operating aid for the producers concerned which is purely of an interim protective nature; whereas the Commission has always opposed aids of this type which do not meet the conditions for a derogation under Article 92 (3) (c) of the Treaty since they are highly ineffective and therefore unlikely to promote development as laid down therein;

Whereas, in view of the foregoing, the abovementioned aid does not meet the requirements for application of a derogation under Article 92 (3) of the Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The aid granted by France in the form of a payment of FF 146 million to the equalization funds in the pigmeat sector is incompatible with the provisions of Article 92 of the Treaty.

Article 2

France shall inform the Commission, within one month, of the measures taken to comply with the provisions referred to in Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 24 November 1982.

For the Commission
Poul DALSGER
Member of the Commission