COMMISSION

COMMISSION DECISION

of 8 July 1981

on aid to maintain farm incomes in 1980 granted by the French Government

(Only the French text is authentic)

(81/601/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 804/68 of 27 June 1968 on the commo.' organization of the market in milk and milk products [1], as last amended by the Act of Accession of Greece, and in particular Articles 23 and 24 thereof, and to the corresponding conditions of other Regulations establishing common organization of the markets in agricultural products,

After having given notice, pursuant to the provisions of the first subparagraph of Article 93 (2), to those concerned to submit their observations, and having regard to those observations [2],

I

Whereas the French Government informed the Commission by telex from its Permanent Representation to the European Communities dated 14 February 1981, received by the Commission the same day, pursuant to Article 93 (3) of the Treaty and at the Commission's request, of a number of aid measures decided upon during the 1980 agricultural conference ; whereas one of these measures was for grant of an exceptional payment to farmers to maintain their incomes covered by Decree 81-59 of 26 January 1981 and by a ministerial Order of the same date ;

Whereas the exceptional aid takes the form of an indemnity calculated on the basis of receipts in 1980 for sale of certain agricultural products, on the basis of

— 3 % for meat and charcuterie animals up to a limit of FF 15 000 per farm ;

— 1 %, up to a limit of FF 5 000 per farm, for milk, eggs, poultrymeat, rabbits and other stock products ; for plant products and seeds therefore, with the exception of timber ; beet, oil seeds, protein plants and seeds therefore and cereals other than maize and sorghum ; for 'vins délimités de qualité supérieure' and for table wines ;

Whereas the said described above falls within Articles 92 to 94 of the Treaty pursuant to specific Articles in the common market organizations, with the exception of a few products (horsemeat, alcohol, potatoes other than for starch, fresh pineapple) for which only Article 93 (1) and the first sentence of Article 93 (3) apply ;

Whereas the Commission, after an initial study, felt that this aid was not compatible with the common market within the meaning of Article 92 of the Treaty, and initiated in that respect, on 25 February 1981 the procedure laid down in Article 93 (2) of the Treaty and, for this purpose, gave notice to those concerned to submit their observations ;

II

Whereas the French Government, in its answer to the Commission on 17 March 1981, stated that the measure has a purely social objective, namely to make up for farmers' loss of income and to assure them the same level of income as in other social and professional categories which have been eligible for specific measures, such as the rise in the guaranteed minimum wage ; whereas the French authorities state that this is a measure which merely provides internal social and economic compensation and, for this reason and on account of its detailed presentation, the aid has no effect on the competitivity on French producers and is not such as to distort competition ; whereas they feel that the measure could, accordingly, be eligible for the exception provided for in Article 92 (3) (b) of

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No C 95, 25. 4. 1981, p. 2.

the Treaty; whereas the French Government further points out that the measures in question have effects equivalent to those of fiscal measures introduced in other Member States to avoid similar distortions, such as the flat-rate refund of VAT at rates considerably exceeding the French rates;

Whereas several Member States and other parties concerned have submitted their observations to the Commission and all feel that the French measure distorts competition and affects trade between the Member States to an extent contrary to the common interest and that it therefore should not be eligible for one of the exceptions provided for in Article 92 (3);

III

Whereas the aid for maintaining farm incomes is paid on the basis of receipts from sales of the products concerned; whereas, therefore, it infringes the provisions of the respective common market organizations; whereas Article 24 (1) of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products forbids 'aid whose amount is determined on the basis of the price or quantity of products' covered by that Regulation; whereas the Commission feels that the said Article 24 (1) merely confirms one of the restrictions of the Member States power to intervene directly in the operation of the common market organizations with a common price system which are henceforth within the exclusive competence of the Community; whereas this principle is laid down by consistent judgments of the Court of Justice, particularly in the judgment delivered on 23 January 1975 in Case 51/74 [1]; whereas that judgment emphasizes in general that, when the Community has adopted rules setting up a common market organization in a given sector, the Member States are bound to refrain from taking any measure which might undermine it or create exceptions to it; whereas, in this respect, they must have regard not only to the express provisions of the rules but also to their aims and objects [2];

IV

Whereas, in introducing aid to maintain farm incomes, the French Government has ignored the principle whereby the Member States are no longer entitled to take unilateral measures in respect of farmers' incomes under a market organization; whereas the Council, when drawing up common organizations and when fixing the prices of agricultural products, clearly takes account of the objectives and elements of common policy set out in Article 39 of the Treaty;

Whereas it is clear, that in view of the diversity of these objectives, there are priorities which a Member State may not unilaterally overturn without shedding doubt on the options adopted at Community level and without tending to create distortions which would result in affecting trade between Member States;

Whereas, therefore, the economic and social justification put forward by the French Government cannot be accepted; whereas the situation of French farmers cannot be assessed exclusively in the light of other social and professional classes at national level but must be assessed in view of the situation of other farmers within the Community; whereas the improvement in income from aid taking the form of a supplement on prices, even though their impact is fairly low for the beneficiary, is nevertheless such as to improve the conditions of production and the scope for disposal of French products compared with the other Member States; whereas, furthermore, the social aspect of the measure seems not to be fully ensured, since the aid is granted to all production and to all farms regardless of their economic situations; whereas, finally, with regard to the reference to the compensation to be granted for application of different rates of refund of VAT between the Member States, this argument may not properly be accepted when assessing the aid; whereas, although the French Government may, under the sixth Directive on the subject, fix flat-rate refund rates sufficiently low to encourage farmers to opt for the normal VAT system, it cannot, in any circumstances, alter its choice by granting an aid;

V

Whereas the result is that grant of the aid decided upon by the French Government is likely to affect trade between the Member State and to distort or threaten competition within the meaning of Article 92 (1) of the EEC Treaty;

Whereas Article 92 (1) of the EEC Treaty states that aids fulfilling the criteria therein laid down are incompatible in principle with the common market; whereas exceptions to this incompatibility are set out in paragraph 3 of the said Article and lay down the objectives followed in the Communities' interest and not only in the interest of individual sectors of the

[1] P. J. van der Hulst's Zonen/Produktschap voor Siergewassen — 1975 reports, p. 79.
[2] Toffoli and others/Regione Veneto — Judgment of 6 November 1979, 1979 reports, opinion of the Advocate-General, p. 3320.

national economy; whereas these exceptions are to be strictly interpreted when studying any aid programme of a regional or sectoral nature or any individual case of application of general aid systems; whereas exceptions can be granted only in cases where the Commission can establish that the aid is necessary for achievement of one of the objectives set out in these provisions;

Whereas to allow such exceptions in respect of aid which does not offer such guarantees would amount to allowing trade between Member States to be affected and competition to be distorted without justification from the point of view of the Community interest and would bring about unfair advantage for certain Member States;

Whereas, in the case in point, the aid system does not offer such guarantees;

Whereas the French Government was unable to provide any justification, and the Commission could find none, showing that the aid in question fulfilled the conditions required for grant of one of the exceptions set out in Article 92 (3) of the EEC Treaty; whereas this is clearly not a measure intended to encourage economic development of regions where the standard of living is abnormally low or where there is serious under-employment, nor is it a measure intended to promote a project of common European interest, nor a measure intended to remedy a serious disturbance in the economy of the Member State in question, and accordingly Article 92 (3) (a) and (b) of the Treaty establishing the European Economic Community are inapplicable;

Whereas, moreover, the exceptional aid for income for the farmers concerned is merely a support aid for operation of the eligible farms; whereas, in general, the Commission has always been opposed to such aid, since, as a rule, such aid does not itself fulfil the conditions for eligibility for the exception provided for in Article 92 (3) (c) of the EEC Treaty, since it is not likely to facilitate 'development' as laid down in that provision;

Whereas, moreover, in view of the comparable economic situation facing farmers in all the Member States, with stagnating or falling incomes and sharply rising production costs, and taking into account the considerable or great intra-community competition in most agricultural products, this aid is likely to affect the conditions of trade to an extent contrary to the common interest;

Whereas, accordingly, there is no matter which would enable the Commission to declare that the measure under study is not incompatible, by invoking the exception provided for in Article 92 (3) (c) of the EEC Treaty;

Whereas, therefore, the French Government's aid measure does not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the EEC Treaty;

Whereas, moreover, even if it had been possible to envisage an exception under Article 92 (3), the fact that the aid, in respect of most of the products concerned, infringes the market organizations in question makes it impossible to implement any such exception,

HAS ADOPTED THIS DECISION:

Article 1

The aid for maintaining farm incomes for 1980, notified by the French Government to the Commission on 14 February 1981, as published in Decree 81-59, is in the case of products covered by common market organizations, incompatible with the provisions of Article 92 of the EEC Treaty and the relevant common market organizations it must accordingly be abolished.

Article 2

The French Republic shall inform the Commission, within one month from notification of this Decision, of the measures taken to ensure compliance with this Decision.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 8 July 1981.

For the Commission

The President

Gaston THORN