COMMISSION DECISION

of 31 March 1982

concerning aid granted by the French Government in the sheepmeat and pigmeat sectors

(Only the French text is authentic)

(82/261/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 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat [1], as last amended by Regulation (EEC) No 899/81 [2], and in particular Article 23 thereof,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat [3], as last amended by Regulation (EEC) No 2966/80 [4], and in particular Article 21 thereof,

Having given formal notice to the parties concerned to submit their comments, in accordance with the first subparagraph of Article 93 (2), and having regard to these comments [5],

I

Whereas, having been informed of draft aids to the pigmeat and sheepmeat sectors, 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 measures in the pigmeat sector; whereas a similar request was made on 22 May and 10 June 1981 in respect of the aid measures for the sheepmeat sector;

Whereas, under the said aid measures:

— in the pigmeat sector, producers were paid a sum equal to the difference between the average national price and the price of FF 8·40 per kilogram,

— in the sheepmeat sector, price support premiums and monthly flat-rate premiums were granted under the terms of contracts for the rearing of lambs for slaughter, such premiums being payable on the slaughter of the animals in question;

Whereas the price support premiums are intended to provide farmers with a guaranteed price derived from a seasonally adjusted intervention price and the flat-rate premiums are intended to bring production into line with market requirements;

Whereas the abovementioned aid measures fall within the scope of Articles 92 to 94 of the Treaty by virtue of the specific Articles relating to the common organization of the markets in question;

Whereas the Commission, having conducted a preliminary examination on the basis of the documents at its disposal and having been unable to find these aid measures compatible within the meaning of Article 92 of the Treaty, initiated the procedure provided for in Article 93 (2) of the Treaty in respect of these aid measures on 29 June 1981 and, under the same procedure, gave notice to the parties concerned to submit their comments;

II

Whereas the French Government, in its reply to the Commission dated 7 August 1981, stated that in the pigmeat sector, the payment of the difference between the guaranteed price of FF 8·40 and the average national price was a temporary and exceptional measure, but did not specify its duration; whereas the aid is intended to enable farmers to overcome the considerable financial problems with which they are faced as a result of outbreaks of foot-and-mouth disease;

Whereas the French Government stated, as regards the sheepmeat sector, that the aid in question was payable to members of producer groups under the terms of contracts relating to the rearing of lambs for slaughter; whereas, according to the French authorities, such aid represents compensation for the considerable constraints which the sheep farmers accept in order to meet technical and quality requirements and to establish regular marketing procedures; whereas, moreover, price support measures are provided for in provisions which existed before the common organiza-

[1] OJ No L 183, 16. 7. 1981, p. 1.
[2] OJ No L 90, 4. 4. 1981, p. 26.
[3] OJ No L 282, 1. 11. 1975, p. 1.
[4] OJ No L 307, 18. 11. 1980, p. 5.
[5] OJ No C 187, 28. 7. 1981, p. 2.

tion of the market; whereas the aid takes the form of a supplement to provide producers with a guaranteed price derived from the threshold price; whereas this supplement has not been paid since 20 October 1980, the date on which the common organization of the market in question came into force;

Whereas several Member States and the parties concerned have forwarded their comments to the Commission; whereas they all consider that the French measures are such as to distort competition and affect trade between Member States to an extent contrary to the common interest and that they contravene the rules of the common market organizations; whereas the French measures should not, therefore, qualify as one of the exceptions provided for in Article 92 (3);

III

Whereas the payment of a supplement to ensure that pigmeat producers receive a guaranteed price constitutes a national aid measure to support farmers' incomes; whereas, therefore, this measure contravenes the rules of the common organization of the market in pigmeat; 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 [1] stipulates that 'aids the amount of which is fixed on the basis of the price or quantity of products ... shall be prohibited'; whereas the Commission considers that the said Article 24 (1) merely confirms the limitations on Member States' powers to intervene directly in the operation of common market organizations comprising a system of common prices, this being an area where the Community now has exclusive powers; whereas this principle has been consistently upheld in the rulings handed down by the Court of Justice, and in particular in its judgment of 23 January 1975 in Case 51/74 [2]; whereas, in general terms, this judgment states that, once the Community has legislated for establishment of the common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it, having regard not only to the express provisions of the legislation but also to its aims and objects [3];

Whereas the granting of the aid in question is at odds with the principle that the Member States no longer have the power to make unilateral arrangements relating to farmers' incomes within the framework of a market organization;

Whereas these observations are fully valid for the aid measures on behalf of sheepmeat producers, such measures being similarly incompatible with the common market organization in that they constitute intervention in a sphere where the Community alone has competence; whereas the French authorities have stated that the price-support premium has not been paid since the entry into force of the common market organization; whereas, nevertheless, provision for the granting of the premium still exists, in the form of circulars from ONIBEV, the body responsible for the practical arrangements which relate to the implementation of this measure and which are in theory still applicable; whereas, therefore it would be legally possible for the aid to be granted once more if the trend in prices on the national market made this necessary; whereas, therefore, the French Government must abolish the present price support arrangements;

Whereas, in view of the foregoing, the price support arrangements in the pigmeat sector and the price-support premiums and monthly flat-rate premiums in the sheepmeat sector are likely to improve production and marketing facilities for French producers as compared with producers in the other Member States, and therefore, are likely to affect trade between Member States and to distort, or threaten to distort, competition within the meaning of Article 92 (1) of the Treaty;

Whereas aids of the type defined in Article 92 (1) of the Treaty are essentially incompatible with the common market; whereas infringement of the rules governing the organization of the markets concerned excludes the aid measures in question from qualifying as an exception under Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The French Republic shall take such steps as are necessary to abolish:

(a) in the pigmeat sector, the aid granted in the form of a payment equal to the difference between the average national price and a guaranteed price;

(1) OJ No L 148, 28. 6. 1968, p. 13.
(2) P. J. van der Hulst's Zonen v. Produktschap voor siergewassen [1975] ECR 79.
(3) Toffoli and others v. Regione Veneto (judgment of 6 November 1979, conclusions of the Advocate-General, [1979] ECR 3320).

(b) in the sheepmeat sector, the aid granted in the form of price-support premiums and monthly flat-rate premiums for the guidance of production.

Article 2

The French Republic shall inform the Commission, within one month, of the measures taken to comply with the provisions of Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 31 March 1982.

For the Commission

Poul DALSAGER

Member of the Commission