COMMISSION DECISION

of 22 May 1985

concerning an aid scheme for potable spirits producers in France

(Only the French text is authentic)

(85/379/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 337/79 of 5 February 1979 on the common organization of the market in wine [1], as last amended by Regulation (EEC) No 798/85 [2],

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93 (2) of the EEC Treaty,

Whereas :

I

On 3 October 1983, the French Government notified the Commission under Article 93 (3) of the EEC Treaty of a scheme to assist producers of potable spirits, to be implemented subject to the Commission's approval.

By telex dated 6 October 1983, followed by a telexed reminder on 17 November 1983, the Commission asked the French Government to supply further information about the scheme.

In a letter dated 7 December 1983, the French Government sent the Commission a brief reply.

On 31 January 1984, the Commission again contacted the French Government requesting further details.

By letter dated 13 March 1984 and by telex dated 30 March 1984, the French Government asked the Commission to give it more time to reply.

By telex dated 11 April 1984, the French Government sent the Commission additional information, pointing out, however, that the details of certain aids still had to be worked out.

The scheme provides for FF 12 million in grants to armagnac and calvados producers for storage and maturing operations. The anticipated duration of the scheme is three years.

The French Government gives as the main reason for awarding such aid the fact that the spirits producers in question are faced with structural and economic difficulties.

II

Armagnac and calvados are products which compete with spirits and alcoholic beverages produced in other Member States, notably whisky, brandies and gin. In 1982, intra-Community trade in all these products was worth approximately 800 million ECU.

In recent years, a fall in the consumption of these products has been recorded in most Member States.

This is due, on the one hand, to the general economic recession and, on the other, to the increase in the taxes and excise duties levied on such products.

In France, sales of alcoholic beverages other than wine and beer fell by 4 % in 1983 compared with 1980. Over the same period, sales of cognac fell by 26,5 %, of armagnac by 17 % and of calvados by 32 %. On the other hand, sales of grain spirits (whisky, gin, etc.) increased by 41 %. The considerable drop in cognac, armagnac and calvados sales is due especially to an increase in the taxes on those products.

Armagnac production is dependent on production of the region's wines and sometimes varies considerably from year to year.

Exports to Community countries account for approximately 50 % of sales on the French market.

As with armagnac, calvados production varies greatly from one year to the next depending on the apple harvest in Normandy.

In 1982, exports to Community countries accounted for approximately 30 % of sales on the French market and 84 % of total calvados exports.

III

Following scrutiny of the planned aid under Article 93 (3) of the EEC Treaty, effected on the basis of the analysis of the market in the products concerned on the one hand, and having regard to the additional information furnished by the French authorities on

(1) OJ No L 54, 5. 3. 1979, p. 1.
(2) OJ No L 89, 29. 3. 1985, p. 1.

the other, the Commission decided on 30 May 1984 to initiate the procedure provided for in Article 93 (2) EEC in respect of the aids for the private storage and maturing of armagnac and calvados on account of their effects on trade between Member States. The expected cost of financing these measures is FF 12 million.

Under the procedure provided for in Article 93 (2) of the EEC Treaty, the Commission gave the French Government and the other Member States and interested parties other than the Member States notice to submit their comments.

The French Government replied on 1 August 1984 to the Commission's letter of formal notice of 8 June 1984, arguing, among other things, that in respect of the aids for the private storage of armagnac and calvados those products are produced using traditional methods in rural areas giving rise to a high manufacturing cost for the producers concerned.

Of the other Member States, the United Kingdom Government supports the Commission's action in initiating the Article 93 (2) EEC procedure ; it points out in particular that United Kingdom spirits producers face serious difficulties in exporting their products and that the French aids cause distortions of competition in the spirits and comparable products sector.

Of the interested parties other than the Member States, the Scotch Whisky Association expressed similar concern in its letter to the Commission dated 28 February 1984.

IV

By notifying in good time its proposal to provide assistance to spirits producers, the French Government has fulfilled its obligation under Article 93 (3) of the EEC Treaty.

In the sector of alcoholic beverages, and more particularly of spirits, there are substantial trade flows between Member States and competition is intense, partly because there is surplus production capacity and partly because consumption of such products is either at a standstill or is declining. When State aids strengthen the competitive position of certain firms whose products for the subject-matter of intra-Community trade, the latter must be deemed to be affected by those aids. In the present case, by reducing certain costs or increasing the income of the recipient firms, the planned aids may affect trade between Member States and distort or threaten to distort competition by favouring certain undertakings within the meaning of Article 92 (1) of the EEC Treaty, which provides that such aids are incompatible with the common market.

The exceptions to this principle do not apply in this case in view of the features of the plannned aids and the fact that they do not seek to satisfy the conditions for application of those exceptions.

Article 92 (3) of the EEC Treaty specifies which aids may be considered compatible with the common market. Such compatibility is determined in the light of objectives pursued in the interest of the Community and not in that of a single Member State.

In order to safeguard the proper functioning of the common market, and having regard to the principle embodied in Article 3 (f) of the EEC Treaty, the exceptions to the incompatibility of aids provided for in Article 92 (3) of the EEC Treaty must be construed narrowly when any aid is scrutinized.

In particular, they may be invoked only where the Commission is satifsfied that, without the aid, market forces alone would be insufficient to guide the recipients towards patterns of behaviour that would serve one of the said objectives.

To apply the said exceptions in the case of aid that did not serve such an objective or where aid is not necessary for that purpose would be to place the industries or firms of certain Member States at an unfair advantage. Their financial position would be bolstered as a result, whereas trading conditions between Member States would be affected and competition distorted without any jusification on grounds of the common interest within the meaning of Article 92 (3).

The proposed assistance for the storage and maturing of armagnac and calvados spirits would relieve the recipients of certain costs inherent in those operations. In fact, the operations are intended to enable them to sell later a better quality product at a higher price. This means that the producer foregoes an immediate income and pays certains costs, which are covered, however, by a higher return at some point in the future. Both in France and in other Member States, however, spirits competing with armagnac and calvados undergo similar treatment without their producers qualifying for assistance to cover part of the cost.

To agree to such aid being granted to armagnac and calvados producers alone would, under the circumstances, be tantamount to inflicting on their competitors a disadvantage which might be reflected in an unwarranted drop in their sales.

The aid is operating aid involving no restructuring, redeployment or innovation.

V

In view of the above, the prohibition provided for in Article 92 (1) cannot be waived under paragraph 2 of that Article, given that the exceptions provided for in that paragraph are clearly not applicable in the present case.

Nor do the aids for the private storage and maturing of armagnac and calvados satisfy the conditions for the application of one of the exceptions provided for in Article 92 (3) of the EEC Treaty.

With regard to the exceptions contained in subparagraphs (a) and (c) of Article 92 (3) for aids to promote the development of certain areas, the Armagnac and Calvados areas are not ones where the standard of living is abnormally low or where there is serious underemployment within the meaning of subparagraph (a).

The operating aids planned by the French Government are not likely to contribute to the development of certain economic areas within the meaning of subparagraph (c).

As regards the exceptions provided for in subparagraph (b) of Article 92 (3), it is obvious that the aids in question are not intended to support a project of common European interest or to remedy a serious disturbance in the French economy.

Lastly, as to the exception in subparagraph (c) of Article 92 (3) regarding aid to facilitate the development of certain economic activities, the aids in question, being intended to cover certain operating costs, cannot have a development effect within the meaning of that exception. Moreover, the fact that a substantial proportion of the products which are to qualify for assistance is exported to other Member States makes it impossible to take the view that trading conditions would not be affected to an extent contrary to the common interest.

Consequently, the planned aids do not satisfy the conditions necessary for application of one of the exceptions in Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aids for the private storage and maturing of armagnac and calvados, notified to the Commission by letter dated 29 September 1983, are incompatible with the common market and France may not implement them.

Article 2

France shall take the measures necessary to comply with this Decision within one month of its notification and shall inform the Commission thereof within the same period.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 22 May 1985.

For the Commission

Peter SUTHERLAND

Member of the Commission