II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 July 1985

concerning aids granted by the French Government in the beef and veal sector

(Only the French text is authentic)

(85/592/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),

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (1), as last amended by Regulation (EEC) No 868/84 (2), and in particular Article 24 thereof,

After giving notice, pursuant to the first subparagraph of Article 93 (2), to the parties concerned other than the Member States to submit their comments (3),

Whereas:

I. BACKGROUND AND DESCRIPTION

1. Background

The Commission, being informed of proposed changes to the existing aids granted in the beef and veal sector under production and supply contracts, asked the French Government on 25 November 1981, 11 January and 17 February 1982 to provide information additional to the brief particulars set out in the inventory of aids; the planned adjustment of the aid amounts in question was notified by the French Government on 29 December 1981 as part of the aids coming under the 1981 Annual Agricultural Conference.

A procedure pursuant to Article 93 (2) of the Treaty was initiated on 10 March 1982 in respect of the 1981 Annual Agricultural Conference aids for lack of information. The aids included, among other things, a general scheme granting 'aids for the rearing of sheep and cattle'. The French authorities explained in Memo No 242 of 26 July 1982 from the French Permanent Representation that the chapter entitled 'Aids paid in respect of cattle production and supply contracts' included 'premiums to encourage the suckling of calves at foot'. These premiums form part of a scheme already launched and described in the inventory of aids.

On 17 September 1982 the Commission received further information. Reminders had been sent on several occasions (Commission telexes of 11 January, 16 February, 10 March, 9 June and 18 August 1982) that information notified must include not only new aid schemes, but also changes to those set out in the inventory, with fuller details than those given on the inventory sheets.

On 23 March 1984, by letter (SG(84) D/3989), the Commission informed the French Government that it was reserving its position, which would be notified at a later date, in respect of the premium for calves at foot.

On 5 September 1984 by telex No 11471, the Director-General for Agriculture requested further information in order to determine whether the premium for calves at foot was covered by the measure laid down in Council Regulation (EEC) No 1357/80 of 5 June 1980 introducing a system of premiums for maintaining suckler cows (4).

The French authorities replied on 23 October 1984.

(1) OJ No L 148, 28. 6. 1968, p. 24.
(2) OJ No L 90, 1. 4. 1984, p. 30.
(3) OJ No C 95, 16. 4. 1982, p. 5.
(4) OJ No L 140, 5. 6. 1980, p. 1.

2. **Description**

(a) Legal basis, amount, beneficiaries: The basis for the scheme is a decision of 6 December 1968 of the Minister of Agriculture. In 1982 the aid consisted of a premium of FF 300 per slaughter calf fed solely at foot on farms not delivering milk and farming specific breeds only. On 1 January 1982 the premium was raised from FF 250 to FF 300. At the rate applicable between 1 January 1982 and 5 May 1983 of 1 ECU = FF 6,08656, this was equivalent to an aid, in ECU, of 49,29 ECU. The premium was apportioned as FF 270 paid to the farmer and FF 30 paid to the national association of farm calf producers to assist production measures taken to promote this type of product. According to the inventory sheet, it concerns only about 20 producer groups or small cooperatives in central France (Corrèze, Lot, Creuse, Dordogne). In October 1984 the French Government informed the Commission of its intention to raise the ceiling on the premium for suckler calves from FF 300 to FF 370.

(b) The mechanism for granting the aid is comparable with that in cattle production and supply contracts regarding which the Commission delivered a negative Decision on 14 September 1982 (C(82) 1319 final) as part of the procedure under Article 93 (2) of the Treaty. The incompatible aids consisted firstly in flat-rate premiums granted in connection with livestock contracts per head of livestock delivered in the case of full-grown cattle and on the basis of weight in the case of young bovine animals, and price supplement premiums paid for store cattle.

At the beginning of the scheme, the Onibev (National Joint Bureau for Livestock and Meat) concluded 'outline agreements' with individual producer groups specifying the conditions for the award of the premiums and the quality measures which would have to be complied with and the procedure for checking them.

3. **Grounds**

The producer groups in turn grant aids to farmers who assume contractual obligations, that is to say, the producers' commitments.

The French Government, in its reply, gave the following reasons for introducing this premium in 1969/70:

— producers of calves fed at foot forego the regular guaranteed income that they would obtain for milk in exchange for the long-term and more hazardous return that they obtain from the sale of a calf,

— if the calves were fed on the customary fattening feed, producers would benefit, through the price of the feed, from the Community subsidy granted for milk powder,

— the rather limited outlets for this type of product are not sufficiently attractive in themselves to ensure its development.

Output and the market are both very limited. There is no Community market for these products and consequently no risk of interfering with competition.

II. GENERAL DESCRIPTION OF THE INDUSTRY

1. **Market situation**

The suckler herd, that is to say the French herd of suckler mother cows is as follows compared with the Community suckler herd:

On 31 December 1981 the Community of Ten had 5,9 million suckler cows. France accounted for 48 %, the United Kingdom for 23,9 %, Italy for 12,8 %, Ireland for 6,8 %, Germany for 2,6 % and Belgium for 2,1 %.

The suckler herd supplies quality products. Suckler cows are cows which, by virtue of the way they are reared and produced, are not milked and do not therefore produce any milk or milk products for the market.

Slaughter calves suckled by their mothers are reared on natural milk since they suckle their mothers. They are sold at three months and weigh around 100 kg per carcase. In France they are most frequently produced on small family farms in the southern Limousin, producing this one product only and in the south-west engaging in other forms of production. Annual output is around 500 000 animals, of which approximately 100 000 are marketed by producer groups. It should be noted that there is also a more specialized category, consisting of heavy calves in the Aveyron, which are sold at six months and weigh between 150 and 200 kg per carcase.

2. **Links between the French national scheme and the scheme introduced by Community rules**

The premium for calves suckled at foot is a national scheme altogether different from the premium for maintaining suckler cows introduced by Regulation (EEC) No 1357/80 and brought into force in 1981 (Commission Regulation (EEC) No 1581/81 [1]).

According to the French authorities the aim of the premium for calves at foot is to encourage the production of high-quality slaughter calves. The suckler cows for which premiums are granted under the Community rules do not, in most cases, suckle calves intended to be slaughtered very young but, more frequently, animals to be fattened into adult cattle.

[1] OJ No L 154, 13. 6. 1981, p. 38.

The criteria for granting the premium for calves at foot meet the specific requirements of this measure and differ from those in force for the premium for suckler cows. The premium may be granted only for:

— calves sired by bulls of the following breeds: Limousin, Garonnais, Charolais or Blonde d'Acquitaine,

— born and fattened on the farm and fed exclusively on whole natural milk.

The eligible producer must:

— be a member of a producer group approved for this type of production,

— observe its rules (total contribution and control of production),

— register and establish the identity of their calves on birth with their group.

These strict rules for awarding the premium are necessary to ensure production control in order to guarantee the consumer a quality product.

It is not out of the question, however, that some recipients of the premium for calves at foot should also qualify for the premium provided for under Community rules.

Budget for premiums for suckled calves

Period	Number of calves delivered	Amount of premium	Budget
1 April 1980 to 30 March 1981	79 800	FF 250	FF 19 950 000
1 April 1981 to 31 December 1981	79 000	FF 250	FF 19 750 000
1 January 1982 to 31 December 1982	88 038	FF 300	FF 26 411 400
1 January 1983 to 31 December 1983	80 050	FF 300	FF 24 015 000

The forecast for 1984 is for approximately 80 000 calves.

3. Expenditure incurred

According to the information forwarded by the French authorities on 23 October 1984, expenditure incurred in respect of the aid (premiums for maintaining suckler cows) governed by Community rules (Regulation (EEC) No 1357/80), distinguishing between the part of the premium financed by the EAGGF Guarantee Section (15 ECU per suckler cow in 1984) and the supplementary part financed by the Member State (a ceiling of 25 ECU per suckler cow in 1984) can be summarized as in the following table:

Budget for the premium for maintaining suckler cows

(FF)

Farm year	Community portion	National portion
1980/81	264 225 663,54	244 177 169,40
1981/82	292 353 030,62	276 838 613,08
1982/83	231 218 668,35	368 153 889,65
1983/84	122 485 537,62	195 009 207,20

The figures forwarded for 1983/84 concern the partial budget drawn up on 3 April 1984.

They have been notified subject to alteration (in the event of a dispute concerning the file, legal proceedings, etc.).

According to those figures expenditure incurred in respect of the aid for premiums to encourage the suckling of calves at foot was:

III. INCOMPATIBILITY OF THE MEASURE

The measure involves the adjustment of existing aids introduced in 1969/70 set out in the inventory of existing national aids notified by France to the Commission.

1. According to Article 24 of Regulation (EEC) No 805/68, Articles 92 to 94 of the Treaty apply to the aids described above.

The premiums in question which are granted to farmers, who are members of producer groups or small cooperatives place them in a more advantageous position for the sale of calves at foot than that of other calf producers who are not eligible for the aid. The aid which is granted per quantity unit is liable to distort competition and affect trade between Member States, particularly since France is the Community's largest producer of beef/veal and a significant proportion of the production of calves and French store animals is exported to other Member States.

The schemes in question are consequently caught by Article 92 (1) of the Treaty, which lays down the principle that aids corresponding to the criteria it sets out are incompatible with the common market.

The exceptions to this incompatibility set out in Article 92 (2) do not apply to the aids in question. Those set out in paragraph 3 define aims pursued in the interest of the Community and not in that of particular sectors of the national economy only. These exceptions must be interpreted strictly when any regional or sectoral aid programme or any individual application of general aim systems is being examined.

In particular they may be granted only in cases where the Commission can show that the aid is necessary for attaining one of the objectives set out in those provisions.

To grant the benefit of these exceptions for aids that do not yield this compensating advantage would be equivalent to permitting an interference with trade between Member States and distortions of competition devoid of any justification in terms of the Community interest, and correspondingly unfair advantages for some Member States.

In the case under consideration, the aids do not show any such compensating advantage. The French Government has been unable to put forward, or the Commission to detect, any argument that would qualify the scheme for any of the exceptions provided for in Article 92 (3) of the Treaty.

They are obviously not measures to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since they are contrary to the principles of the market organization in question.

Neither are they measures intended to remedy a serious disturbance in the economy of the Member State within the meaning of that same provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) concerning aids to promote or facilitate the economic development of regions and that of certain of the activities referred to under (c) above, it should be noted that the aids are granted solely in relation to the quantities of the product and not of any criteria for adjusting or improving business structures, energy saving or development in the regional context. The aids are to be regarded, therefore, as operational aids for the producers in question, a type of aid to which the Commission is in principle invariably opposed by virtue of the fact that their award is not linked to conditions that would qualify them for one of the exceptions provided for in Article 92 (3) (a) and (c).

2. Also, there are limitations on the power of Member States to interfere directly in the operation of EEC market organizations involving a common price system, for which the Community is now solely responsible.

The aid is in contradiction to the principle that Member States are no longer entitled to legislate unilaterally on farmers' incomes under an EEC market organization by granting aids of this type.

Moreover, the scheme is in addition to a measure, similar in its objective and mechanism, adopted at Community level by Regulation (EEC) No 1357/80. The main purpose of the Community measure is to guarantee specialist producers of quality beef an adequate level of income. The premium provided for under the Community rule may be granted only in respect of farms which do not deliver milk. The measures adopted by the Community rules can be broken into two parts: one financed by the EAGGF Guarantee Section and the other, known as the 'additional premium', may be granted within a limit and financed by the Member State; according to the Community rules this additional premium must not give rise to discrimination between stock farmers in the same Member State. The information notified to the Commission indicates that the French Government avails itself of this opportunity of awarding the 'additional premium' up to the limit authorized under the Community rules.

The national aid for calves at foot is to be regarded as an aid supplement for certain recipients of the premium provided for under the Community rules.

Even if an exception under Article 93 (3) of the Treaty could have been a possibility, the fact that the aid scheme infringes the market organization rules out the application of such an exception.

3. The premium for calves at foot is not covered by the system of compensatory allowances provided for in Articles 5 and 7 of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (1), as amended by Regulation (EEC) No 797/75 (2). The latter system provides for a compensatory allowance for the production of cattle for a maximum amount of 97 ECU per livestock unit.

According to the Annex to that Directive, it applies only to cattle more than six months old (see Annex to the Directive) and the national scheme for calves at foot applies only to calves sold at three months, or at six months in the particular case of heavy calves in the Aveyron. The purpose of the Directive is precisely to exclude the compensatory allowance for calves younger than six months.

Article 5 of the Directive prohibits, in addition, the grant of a compensatory allowance for permanent natural handicaps exceeding those limits or leaving aside those requirements in the areas shown in the list adopted pursuant to the procedure laid down in Article 2 (2). The premium for calves at foot could even be granted in addition to the compensatory allowance provided for by Council Directive 75/268/EEC for the same herd. France qualifies for application of this Directive. The departments of Creuse, Corrèze and Lot are partly classified as mountain or hill areas (Article 3 (3) of the Directive) and partly as less-favoured areas (Article 3 (4) of the Directive); the department of Dordogne is classified as a less-favoured area (Article 3 (4) of the Directive). The premium for calves at foot is therefore also contrary to Article 2 (2) referred to above.

(1) OJ No L 128, 19. 5. 1975, p. 1.
(2) OJ No L 93, 30. 3. 1985, p. 1.

4. To sum up, the premium for calves at foot must be regarded as an aid which is incompatible with the common market and must be discontinued.

5. This Decision is without prejudice to any action that the Commission may take as regards recovery of the abovementioned aid from the recipients, and as regards the financing of the common agricultural policy by the EAGGF,

HAS ADOPTED THIS DECISION:

Article 1

The financial benefit conferred by the premium intended to encourage the suckling of calves at foot is hereby found to be incompatible with the common market by virtue of Article 92 of the Treaty and must be discontinued.

Article 2

The French Government shall inform the Commission within two months of the notification of this Decision of the action it is taking to comply with the provisions of Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 31 July 1985.

For the Commission
Frans ANDRIESSEN
Vice-President