COMMISSION

COMMISSION DECISION

of 18 December 1987

relating to a proceeding under Article 85 of the EEC Treaty

(IV/31.735 — New potatoes)

(Only the French text is authentic)

(88/109/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products [1], as amended by Regulation No 49 [2],

Having regard to the request for the application of Article 2 of Regulation No 26 submitted on 17 October 1985 by the French Government [3],

After consulting the Member States and hearing the parties concerned,

Whereas :

A. THE FACTS

I. Procedure

On 17 October 1985 the French authorities submitted to the Commission, at the same time as a request for the extension of the scope of the rules adopted by four regional agricultural economic committees in the fruit and vegetables sector to cover non-members, a request that Article 2 of Regulation No 26 be applied to decisions taken by seven economic committees in the field of the production and marketing of new potatoes.

II. The French legislation governing fruit and vegetables

(1) The French Law of 8 August 1962 aims, in the sphere of the economic organization of agricultural markets, at adjusting price levels and bringing the production and marketing of the products concerned into line with the requirements of the market.

To this end, the French Government has entrusted, under its supervision, implementation of the organization of the markets in the fruit and vegetables sector to producer groups recognized and economic committees authorized by the Ministry of Agriculture.

Article 14 of the Law provides that these producer groups may adopt rules to organize and regulate production and marketing and to adjust price levels, *inter alia* by fixing a withdrawal price should the need arise.

Article 15 states that, with a view to organizing and regulating production and marketing, recognized producer groups in a given region may merge to form an agricultural economic committee.

(2) The Decree of 22 November 1962 lays down the procedure for recognizing producer groups and authorizing economic committees, and it also contains detailed rules on how the Ministry of Agriculture should supervise such bodies.

(a) Applications from producer groups for recognition must be sent to the Ministry of Agriculture via the 'Prefect' concerned, who is responsible for examining them.

The Minister reaches a decision on such applications after considering the opinion of the technical committee set up at national level by Article 14 of the Law of 8 August 1962.

The recognition of a group is deemed equivalent to approval of its rules as notified in advance.

[1] OJ No 30, 20. 4. 1962, p. 993/62.
[2] OJ No 53, 1. 7. 1962, p. 1571/62.
[3] See the summary of the request published in OJ No C 159, 17. 6. 1987, p. 2.

The Minister for Agriculture may withhold approval for certain rules.

A recognized producer group may not adopt new rules or amend rules which have already been approved without the express approval of the Minister for Agriculture acting on the advice of the national technical committtee. The application for approval sent via the 'Prefect' must be submitted not later than six weeks before the date on which the rules are scheduled to enter into force;

(b) The authorization of agricultural economic committees and the approval of the rules they adopt are governed by a procedure similar to that applicable to producer groups:

— transmission to the Ministry of Agriculture via the 'Prefect',

— opinion of the national technical committee,

— possibility of withholding approval for certain rules,

— approval of the Minister for Agriculture necessary for the adoption of new rules.

In addition, a ministerial delegate is attached to each economic committee where he acts as technical adviser and attends management board and general meetings. He may consult on the spot or have sent to him all documents relating to the activities of the committee or its organs;

(c) Lastly, the decree provides that agricultural economic committees in the same product area may unite to form a federation.

(3) The basic decree of 22 November 1962 was supplemented by two other decrees adopted on 2 August 1963 which allowed producer organizations to:

(a) collect contributions (Decree No 63.786); and

(b) impose fines for breaches of the rules (Decree No 63.787).

(4) On the basis of the legislature described at points 1 to 3 above:

(a) The French Ministry for Agriculture has authorized by ministerial order and in accordance with Articles 14 and 15 of the Law of 8 August 1962:

— the Comité Economique Agricole Fruits et Légumes d'Aquitaine by Order of 6 July 1965,

— the Comité Economique Agricole Régional Fruits et Légumes de Bretagne (Cerafel) by Order of 27 July 1966,

— the CEAFL Languedoc-Roussillon by Order of 30 December 1966,

— the CEAFL Nord de la France and the CEAFL Provence by Order of 4 January 1967,

— the CEAFL Val de Loire by Order of 10 January 1967,

— the CEAFL Basse-Normandie by Order of 6 October 1971, and the producer groups affiliated thereto (see Annex);

(b) Pursuant to Article 28 of the Decree of 22 November 1962, the abovementioned seven authorized economic committees have united to form a federation, the Association française des comités économiques agricoles de fruits et légumes (Afcofel), whose statutes were submitted on 6 July 1971. This federation coordinates the various committees' market management activities. The following agricultural economic committees, which do not carry on any specific activities in the new potatoes sector, also belong to Afcofel.:

— Est de la France et Bourgogne,

— Ile de France,

— Midi-Pyrénées,

— Rhône-Alpes,

— Corse.

III. The rules laid down in the new potato sector

The rules and decisions designed to organize and regulate the production and marketing of new potatoes which were adopted or implemented by the seven economic committees in question during the last three seasons are as follows:

(1) *General rules* of the producer groups and economic committees laying down an obligation to supply the produce to be marketed to the group alone and an obligation to sell it solely within the markets organized by the economic committees.

(2) *Specific rules* adopted by the recognized economic committees while the season is in progress. These rules, which are applied by all the committees with one or two regional variations, may be classified as follows:

(a) Rules on harvest forecasts and the provision of information. These rules require the communication, at the start of the season, of a list of areas planted. During the season lifting forecasts, quantities unsold that day and the day before and the destinations of produce are communicated on a daily basis;

(b) Setting of quotas for quantities lifted, fixed according to market conditions and sales possibilities. As far as production is concerned, guidelines may be issued on seed potatoes and varieties;

(c) Grading and sizing rules.

Compliance with a minimum size (30 or 32 mm);

(d) Fixing of a withdrawal price and the related daily minimum price;

(e) Financial contributions towards:

— administrative and monitoring costs,

— promotion of the region's image,

— experimentation.

The contributions vary from one region to another depending on the measures taken, ranging from FF 38/tonne in Aquitaine and FF 40/tonne in the Loire region to FF 80/tonne in Brittany, where a special regional potato promotion campaign is under way;

(f) Monitoring rules.

Obligation on the part of producers and the market preparation stations they supply to mark containers so as to indicate the product's origin and its conformity with the rules laid down. Failure to do so is punishable by a fine.

All these rules have been approved by the Minister for Agriculture within the framework of the Ministerial Orders authorizing the economic committees concerned.

IV. Economic consequences of the implementation of the rules laid down in the new potato sector

All members of the producer groups affiliated to the seven authorized economic committees are required to market their new potato crop within the markets organized in the region by the economic committees concerned. On these organized markets there are therefore concentrated, on the one hand, all the marketable supplies of the producers concerned and, on the other, all the demands expressed through dealer-shippers having access to those markets.

Prices are fixed freely on these markets according to supply and demand. From the start of the season during the first fortnight in May and until the end of May, they fluctuate on average between FF 4 and FF 2 per kilogram. During the first two weeks of June, prices fall from FF 2 per kilogram to FF 0,60 and sometimes even to FF 0,40 per kilogram.

The quantities placed daily on the markets are, however, influenced by the application of certain rules laid down by the economic committees: fixing of a minimum size, setting of quotas for quantities lifted, fixing of a withdrawal price and a daily minimum support price. These rules are applied only where prices fall sharply in times of glut which generally occurs from the month of June onwards.

Throughout the season, only new potatoes of a size greater than 30 or 32 mm may be marketed. From mid-June, when a surplus tends to build up, the minimum size may be increased to 35 mm.

It is around this time also that limits are generally placed on quantities lifted in the form of a maximum tonnage per hectare.

Lastly, to slow down or even stop the fall in prices, notably at sales by auction dial, these measures are supplemented by the fixing of a withdrawal price and a minimum support price.

Except in very exceptional circumstances, the withdrawal price is fixed for a season at a level well below the cost of production. In 1987, the season's withdrawal price was set at FF 0,58 per kilogram for Brittany, the main new potato producing region of France.

At the beginning of June, a minimum support price is also fixed to prevent an accidental fall in market prices. Its level is initially fixed at around twice the withdrawal price and then gradually reduced, in three or four steps (10 June, 20 June, 30 June), until at the end of June it is down to the level of the withdrawal price. This gradual fall in support price broadly reflects the fall in production costs due to the higher yields per hectare as the season progresses.

At times when support prices prevail, produce which has found no buyer at prices higher than this minimum price is put up for sale again the next day, except on those rare occasions when it is used for processing or for cattle feed or is, in the last resort, destroyed. Produce which cannot be sold at prices higher than the withdrawal price is withdrawn once and for all from the market and destroyed. The producers concerned are indemnified out of an equalization fund for the losses thus incurred. In 1987, the support and withdrawal price mechanism led to about 1 % of supplies being definitively withdrawn from the market.

The system introduced therefore has the effect of controlling, by limiting the quantities placed on the market, the supply of new potatoes in the regions concerned when there is apt to be a glut. Owing to the particular method of marketing and the low level at which the withdrawal prices, whose object is to avoid the risk of accidental fluctuations inherent in sale by auction dial, are set, the prices actually paid continue to be determined normally on these markets in the light of supply and demand. The system is no barrier to competition from other Community producers, who continue to compete freely on the markets, their supplies being in no way affected by the measures in question.

V. Economic structure of the new potatoes sector

As a general rule, France produces over 400 000 tonnes a year of new potatoes, or some 13 % of the Community crop (3 million tonnes).

The production managed by the abovementioned recognized producer groups and economic committees amounts to approximately 250 000 tonnes.

The breakdown of this tonnage between the principal regions is approximately as follows: Brittany (150 000 tonnes), Aquitaine (30 000 to 35 000 tonnes), Lower Normandy (20 000 tonnes), Languedoc-Roussillon (15 000 tonnes), Provence (15 000 tonnes) and the Loire Valley (13 000 tonnes).

France imports each year about 100 000 tonnes of new potatoes (mainly from Morocco, Spain and Italy) and exports between 40 000 and 60 000 tonnes, mostly to the United Kingdom, the Federal Republic of Germany and Benelux.

The new potato season starts in May and ends in late July. Prices are generally high in May and early June, but fall sharply from mid-June onwards. Besides being affected by the abundant supplies from Mediterranean countries (Morocco, Greece, Cyprus, etc), prices are also influenced as soon as the season starts in May by the amount of ware potatoes left over from the previous crop.

B. LEGAL ASSESSMENT

Article 2 (1) of Regulation No 26 provides that Article 85 (1) of the Treaty shall not apply to such of the agreements, decisions and practices relating to the production of or trade in the products listed in Annex II to the Treaty as form an integral part of a national market organization.

I. French organization of the new potato market

(1) *Definition*

Although no formal definition of national or common market organization is given either in Regulation No 26 or in the Treaty, the latter nevertheless contains various pointers to what the term means.

Pursuant to Articles 43 (3) and 45 (1), the common organization replaces the national organization if it offers, for the product in question, equivalent safeguards for the employment and standard of living of the producers concerned, if it has arrangements designed to guarantee the latter a market for their products and if it ensures conditions for trade within the Community similar to those existing in a national market.

The objectives of the national market organization are therefore similar at the national level to those pursued by the common organization at the Community level, which are set out in Article 39 of the Treaty.

The national organization can thus be defined as a totality of legal devices placing the regulation of the market in the products in question under the control of the public authority, with a view to ensuring, by means of an increase in productivity and of optimum utilization of the factors of production, in particular of manpower, a fair standard of living for producers, the stabilization of markets, the assurance of supplies and reasonable prices to consumers (Court of Justice, Judgment of 10 December 1974, Case 48/74, Charmasson v. Minister for Economic Affairs and Finance (1974) ECR 1383).

(2) *Application*

On the basis of the French legislation described at A.II above, the regulation of the French new potato market is entrusted to producer groups recognized by the Ministry for Agriculture and to authorized economic committees.

These private-law bodies implement the regulation of the market in question by means of the decisions and agreements listed at A. III above. Although the attainment of the objectives which the French legislation has in view, that is to say *inter alia* to adjust price levels and bring the production and marketing of the products concerned into line with the market's requirements — such objectives being similar to those of Article 39 of the Treaty — is entrusted to professional organizations, the organization of the French new potato market takes the form of a national organi-

zation within the meaning of Article 2 of Regulation No 26 because both the constitution of the professional organizations in question and their relevant decisions and agreements are placed under the control of the French public authority.

II. **Nature of the decisions and agreements**

The decisions and agreements of the producer groups recognized and the economic committees authorized under the French legislation in question concern the production of and trade in potatoes. These are products which are mentioned in Annex II to the EEC Treaty and which are therefore subject to the provisions of Articles 39 to 46 of the Treaty.

These decisions and agreements implement the regulation of the market concerned; they therefore form an integral part of the national market organization in question.

Because they place restrictions on the freedom to produce and market products, the basic agreements and decisions listed above may be caught by Article 85 (1) of the EEC Treaty in so far as they are likely to affect trade between Member States.

However, these agreements and decisions forming an integral part of the French national organization of the new potato markets do not jeopardize implementation of the fundamental principles of the Treaty, including the institution of a system ensuring that competition in the common market is not distorted. They do not exclude competition, and in particular price competition (1), either between the producers and producer groups participating in the system in question, or with other Community producers, who, as stated in A. IV above, continue to supply their products to all the markets.

Consequently, in accordance with Article 2 of Regulation No 26, Article 85 (1) does not apply to them,

HAS ADOPTED THIS DECISION:

Article 1

Pursuant to Article 2 (1) of Regulation No 26, the provisions of Article 85 (1) of the EEC Treaty are hereby declared inapplicable to the agreements and decisions of the type mentioned in the Annex to this Decision which have been concluded or adopted by the producer groups and economic committees likewise mentioned in the Annex.

Article 2

This Decision is addressed to the economic committees and producer groups listed in the Annex.

Done at Brussels, 18 December 1987.

For the Commission

Peter SUTHERLAND

Member of the Commission

(1) Case 6/72, Europemballage-Continental Can, Judgment of 21. 2. 1973, (1973) ECR 215, point 24; Case 26/76 Metro SB, Judgment of 25. 10. 1977, (1977) ECR 1875, point 21.

ANNEX

I. List of the regional agricultural economic committees and producer groups referred to in Article 1 of the Decision

1. Comité Economique Agricole Régional Fruits et Légumes de Bretagne (CERAFEL) to which are affiliated the following producer groups :
   — SICA de Saint-Pol-de-Léon,
   — Socoprim,
   — SYPA,
   — Coopérative des agriculteurs de Bretagne,
   — Union des coopératives Saint Pol,
   — Syndicat de Pont l'Abbé,
   — Union des coopératives Paimpol Tréguier,
   — Coopérative la Paimpolaise,
   — Sipefel,
   — APPRM,
   — GAARM,
   — SICA des producteurs de légumes du Morbihan.
2. CEAFL Aquitaine, to which are affiliated the following producer groups :
   — Bassin de l'Adour,
   — Ucofel,
   — Apucmin,
   — Sicoma,
   — Uniprovend,
   — Sicafel.
3. CEAFL Basse-Normandie, to which are affiliated the following producer groups :
   — Coopérative légumière du Val de Saire,
   — Union des producteurs de légumes du Nord Cotentin,
   — Coopérative La Normande,
   — Union des producteurs de légumes du Nord-Ouest Cotentin.
4. CEAFL Val de Loire, to which are affiliated the following producer groups :
   — Coopérative agricole des producteurs de pommes de terre de Noirmoutiers,
   — Coopérative maraichère de l'île de Ré.
5. CEAFL Languedoc-Roussillon, to which are affiliated the following producer groups :
   — Union des coopératives,
   — SOPRO,
   — Syndicat de Meynes,
   — Sica Covial,
   — Coopérative Aramon.
6. CEAFL Nord de la France, to which are affiliated the following producer groups :
   — Essor agricole,
   — Copaixor.
7. CEAFL Provence, to which are affiliated the following producer groups :
   — Syndicat de défense des producteurs de pommes de terre de Chateaurenard,
   — SOREP,
   — Fruitcoprovence,
   — Groupement des producteurs du Sud-Est Orange,
   — Sica l'Avignonnaise,
   — Cavaillon Provence Primeur.

II. The rules and decisions designed to organize and regulate the production and marketing of new potatoes which were adopted or implemented by the seven economic committees in question and their affiliated producer groups during the last three seasons are as follows :

1. **General rules** of the producer groups and economic committees laying down an obligation to supply the produce to be marketed to the group alone and an obligation to sell it solely within the markets organized by the economic committees.
2. **Specific rules** adopted by the recognized economic committees while the season is in progress. These rules, which are applied by all the committees with one or two regional variations, may be classified as follows :

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(c) Grading and sizing rules.
Compliance with a minimum size (30 or 32 mm) ;

(d) Fixing of a withdrawal price and the related daily minimum price ;

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— administrative and monitoring costs,

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(f) Monitoring rules.

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All these rules have been approved by the Minister for Agriculture within the framework of the French fruit and vegetables legislation.