II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 6 May 1987

concerning a State aid consisting of a reduction in the social charges imposed in respect of the employment of casual labour and of persons seeking employment in six agricultural sectors in France

(Only the French text is authentic)

(88/39/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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 1351/86 [2], and in particular Article 31 thereof, and the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

After having requested the parties concerned, in accordance with Article 93 (2) of the EEC Treaty, to submit their comments [3],

Whereas :

I

1. As a result of information notified to it, the Commission sought information from the French authorities on 26 September 1985 as to the existence of aid for the horticultural industry.

   On 5 November 1985, by note No 1338, the French Permanent Representation to the European Communities forwarded to the Commission information concerning arrangements planned 'with a view to assisting the fruit and vegetable industry in the light of the accession of Spain and Portugal.'

   Further information was received by note of 14 February 1986 and by telexes of 17 and 28 April 1986 in reply to the Commission's telexes of 23 December 1985 and 16 April 1986. Information was also provided at a bilateral meeting held on 14 May 1986 between a representative of the French Ministry of Agriculture and the Commission, and by note of 2 June 1986 from the French Permanent Representation.

2. The aid consists of measures to :

   — reduce from 8 to 4 SMIC (minimum wage) the standard daily rate on which are based the social contributions payable in respect of casual workers, and to extend from 10 to 21 days worked consecutively the period of application of the reduced basis of assessment,

   — provide a better definition of 'casual labour' which would include any person not working habitually as an agricultural wage-earner but covered either personally or as a dependent by health insurance,

   — extend to a maximum of four months the period during which employers are entitled to benefit from the reduced basis for the assessment of social charges by virtue of the fact that they are employing casual labour,

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 119, 6. 5. 1986, p. 46.
[3] OJ No C 312, 6. 12. 1986, p. 3.

— reduce social charges to 0,5 SMIC (minimum wage) during the first 21 days of employment in respect of the employment of any person seeking employment registered with the ANPE where the person is employed for a period of at least 40 days worked,

— require, for the purpose of securing entitlement to the standard reduction in the basis for assessing contributions, a prior declaration made by the employer at the beginning of the year or before the period during which casual labour is employed.

3. These measures apply nationally and are the subject of the Order of the Minister of Agriculture of 9 May 1985 fixing a standard basis for the assessment of social security contributions payable in respect of certain categories of casual labour already qualifying for social security cover other than in respect of their casual labour.

Article 1 of the abovementioned Order provides that the measures are to apply to the following sectors: non-specialized arable and stock farming, wine-growing, specialized crops, cooperatives for preserving products other than meat, cooperatives for storing and packaging flowers and vegetables, and wine-making cooperatives.

II

1. By letter dated 25 July 1986 to the French Government, the Commission stated that it had decided to initiate in respect of the above aid the procedure provided for in Article 93 (2) of the EEC Treaty.

2. The Commission took the view that this aid, which does not apply to all agricultural sectors, affects products harvested predominantly on a seasonal basis and for which the cost of labour plays a major role as a production cost in their cost price. The measure is not justified, therefore, by criteria inherent in the social security system. Its aim is to offset the effects of the accession of Spain and Portugal, particularly as regards competition in products belonging to the sectors in question. This is clear, among other things, from the fact that the measure applies to only six sectors out of the 36 for which the Ministry of Agriculture has responsibility in respect of social security in France.

Since the reduction in social charges is confined to certain economic sectors, it represents a specific instrument of income for certain farmers.

The Commission considered, therefore, that the measure was incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty because it threatens to distort competition and affect trade between Member States by favouring certain undertakings. None of the exceptions provided for in Article 92 of the Treaty for aids covered in principle by paragraph 1 of that Article may be relied on.

3. Under the procedure the Commission gave notice to the French Government to submit its comments.

The Commission also gave notice to the other Member States and to parties concerned other than the Member States to submit their comments.

III

By letter dated 29 September 1986 the French Government replied to the Commission's letter of notice and made the following comments:

1. While the Order of 9 May 1985 is one of a number of measures taken to facilitate for fruit, flower and vegetable producers the entry into the Community of Spain and Portugal, in fact the reduction in social security contributions is basically a social measure taken as part of a more general strategy adopted by the Government to promote employment and combat undeclared labour, the Order in question being one of such measures dealing with the agricultural sector.

2. The Ministry of Agriculture hoped to use the provisions of the Order of 9 May 1985 to clamp down on so-called 'moonlighting' in sectors where casual wage-earners who already enjoy social security cover frequently consent to their employers not declaring them (young people, school children or students, increasingly numerous during the school holidays; women covered by their husband's insurance and living in the neighbourhood who are not looking for full-time employment; retired people, increasingly numerous as a result of the lowering of the retirement age; industrial workers during their five weeks' annual paid leave).

3. Entitlement to benefit from the standard basis for assessing social charges is subject to the obligation imposed on employers by the Order of 9 May 1985 to declare casual wage-earners within 48 hours of recruiting them; other employers are only required to do so at the end of each quarter.

4. The measure was designed, therefore, according to the French authorities not to distort competition between Member States but to re-establish normal conditions of competition between employers who respect their obligations and others, and to guarantee workers the benefits to which they are entitled in the event of an accident at work.

5. While the Order of 9 May 1985 was restricted to six sectors of production, this was not to make it a specific instrument of income or to distort competition with foreign producers but because it is principally in these six sectors, where a considerable amount of casual labour is required, that undeclared labour is most widespread.

IV

1. Articles 92 to 94 of the Treaty apply to the production of and trade in products affected by the reduction in the social charges payable in respect of casual labour.

2. According to the French authorities the Ministerial Order of 9 May 1985 concerns 90 % of casual wage-earners working fewer than 40 days in farming; 87 % of these work in cooperatives preserving products other than meat, cooperatives for storing and packaging fruit, flowers and vegetables, and wine-making cooperatives.

   The products concerned are harvested predominantly on a seasonal basis and the cost of labour (wages as such and related social charges) plays a major role as a production cost in their cost price.

   The number of people benefiting from the measure, according to estimates made by the French authorities for 1985, is as follows:

   — workers employed on a casual basis:

      — number of undertakings concerned: 11 478,
      — number of wage-earners: 101 268,
      — total number of days worked: 807 855,
      — the breakdown of the number of wage-earners by sector is approximately 50 000 in wine-growing, almost 30 000 in specialized crops and 21 000 in non-specialized arable and stock farming;

   — unemployed persons:

      — number of undertakings concerned: 974,
      — number of unemployed persons: 40 000,
      — number of days worked: 125 000.

   The measures applies to around 100 000 wage-earners and 40 000 unemployed persons, i.e. 140 000 persons in all.

3. The products affected by the reduction in social charges for casual workers and for persons seeking employment do not include all agricultural products but only those belonging to six farming sectors out of the 30 covered by French legislation on social security contributions in agriculture.

   The sectors to which the reduction in social charges applies are those which are particularly affected by competition from similar products coming from Spain and Portugal. This is clear from the grounds for the measure presented by the French authorities, which are to assist fruit and vegetable products in view of the accession of Spain and Portugal.

   The products concerned represent more than 27 % of France's final agricultural production.

4. The measure in question consists of an aid linked to social charges imposed in agriculture. It has the effect of reducing, directly or indirectly, the contributions payable by employers in respect of casual workers in employment in certain agricultural sectors and does not make any corresponding reduction in the benefits to which such workers are entitled.

   According to the Court of Justice (judgment of 2 July 1974 in Case 173/73), Articles 92 to 94 of the Treaty apply in particular to 'a measure intended partially to exempt undertakings of a particular industrial sector from the financial charges arising from the normal application of the general social security system, without there being any justification for this exemption on the basis of the nature or general scheme of this system'.

   Consequently, the measure in question, which is confined to reducing social charges for six agricultural sectors only, is not justified by criteria inherent in the social security system. On the contrary, the adjustment of the existing arrangements appears to be a specific instrument of income favouring certain agricultural sectors.

5. The arguments put forward by the French authorities, in their letter of reply to the Commission's letter of formal notice, are intended basically to show that the provisions of the Order of 9 May 1985 are not to be regarded as State aid within the meaning of Article 92 of the EEC Treaty but as a social measure whose true purpose is to control undeclared labour in the subsectors in question.

   It should be borne in mind in this connection that the measure had originally been presented by the French authorities as one to assist the fruit and vegetable industry in view of the accession of Spain and Portugal to the Community.

   In any case, the determining factor for evaluating measures of this type is not their purpose but the effect they may have in intra-Community trade. According to a decision of the Court of Justice (judgment of 2 July 1974 in Case 173/73 referred to above), 'accordingly, Article 92 does not distinguish between the measures of State intervention concerned by reference to their causes or aims but defines them in relation to their effects. Consequently, the alleged fiscal nature or social aim of the measure in issue cannot suffice to shield it from the application of Article 92'.

   The French authorities' reply is not persuasive enough, therefore, for the Commission to alter its view of the aid in question as set out in this letter of 25 July 1986 to the French Government.

   The measure must therefore be regarded as State aid within the meaning of Articles 92 *et seq.* of the EEC Treaty since it gives a special advantage to producers in the sectors concerned, who thus benefit from more favourable production and marketing conditions than producers who are not entitled to the aid or who produce other agricultural products.

6. The aid (calculated at FF 50 million) has a considerable impact on intra-Community trade since France is one of the Member States which are net exporters and which export the largest quantities of the products in question to other Member States within the Community. In the first year of application of the measure, i. e. 1985, France exported to the other nine Member States, and to Spain and Portugal which were not yet members, 1 035 939 tonnes of fruit, 837 998 tonnes of vegetables and 7 817 000 hectolitres of wine. In the same reference period, exports from all Member States to their Community partners and to Spain and Portugal amounted to 5 086 217 tonnes of fruit, 3 828 532 tonnes of vegetables and 27 721 000 hectolitres of wine. Under those circumstances, the granting of the benefits arising from the measure is likely to affect the market directly, and the conditions of competition will be more favourable for French producers than for producers in other Member States.

V

1. The French measure is likely, therefore, to distort competition by affecting trade between Member States. It thus satisfies the criteria of Article 92 (1) of the Treaty. None of the exceptions provided for in Article 92, permitting aid covered in principle by paragraph 1 of that Article, may be relied on.

This prohibition cannot be lifted under Article 92 (2) of the Treaty since the exceptions provided for in that provision clearly do not apply in the case under consideration. The exceptions provided for in paragraph 3 of that Article set out in detail the aims to be pursued by the grant of the aid, which must be of Community interest; aid may be granted in particular only if the Commission can establish that it is necessary for attaining one of the objectives mentioned in those provisions. To grant the benefit of those exceptions to aid which does not imply such a *quid pro quo* would amount to admitting the existence of a situation harmful to trade between Member States, distrotions of competition without any justification in the Community interest and, hence, unjustified advantages for certain Member States.

The measure in question is clearly not designed to promote the execution of an important project of common European interest as provided for in Article 92 (3) (b), nor is likely to remedy a serious disturbance in the economy of the Member State concerned within the meaning of that same provision.

With regard to the exceptions provided for in Article 92 (3) (a) and (c) for aid to promote or facilitate the economic development of areas or of certain economic activities referred to in point (c), it should be noted that the aid is granted solely to certain producers, with no criteria concerning the adjustment or improvement of their production structure. The measure must therefore be regarded as an operating aid for producers, a type of aid for which the Commission has always expressed reservations by virtue of the fact that its grant is not subject to conditions that would entitle it to benefit from one of the exceptions provided for in Article 92 (3) (a) and (c).

2. Given also that each sector to which the measure in question applies is subject to a common organization of the corresponding market, there are limits on the power of Member States to intervene directly in the operation of those common market organizations, which include a common price system and now come solely within the competence of the Community. The grant of the aid in question disregards the principle whereby Member States are no longer empowered to decide unilaterally on farmer's incomes within the context of a commom market organization by granting aid of this type.

Consequently, even if an exception under Article 92 (3) of the Treaty were possible, the fact that the aid measure in question infringes the common organization of the market concerned rules out such an exception.

3. The measure consisting of a reduction in the social charges imposed in respect of the employment of casual workers and persons seeking employment in six agricultural sectors in France is therefore incompatible with the common market pursuant to Article 92 (1) of the EEC Treaty and must be abolished.

4. This Decision is without prejudice to any consequences that the Commission draws as regards the financing of the common agricultural policy out of the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS DECISION:

Article 1

The aid introduced by Ministerial Order of 9 May 1985 and consisting of a reduction in the social charges imposed in respect of the employment of casual workers and persons seeking employment in six agricultural sectors in France is incompatible with Article 92 of the EEC Treaty and must be abolished.

Article 2

The French Government shall inform the Commission within one month from the date of notification of this Decision of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 6 May 1987.

For the Commission
Frans ANDRIESSEN
Vice-President