COMMISSION DECISION

of 21 December 1988

on a national scheme to encourage the use of milk for feeding calves

(Only the French text is authentic)

(89/229/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 the 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 571/89 [2], and in particular Article 24 thereof,

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

Whereas :

I

By letter of 15 January 1988, the French Government notified the Commission of a draft aid scheme to encourage the use of milk for feeding calves.

Details of the scheme are as follows :

According to the information received from the French Government, aid of FF 500 would be paid for each calf fed for three months on milk produced on the holding on which it was kept. The calves would have to have been born on that holding, or acquired between 1 December 1987 and 1 March 1988. The maximum number of calves for which the aid could be claimed would be equal to the number of cows present on 1 January 1988. A ceiling of FF 10 000 per holding is planned. The aid would be granted on condition that the stock farmer reduced his milk deliveries by at least 600 litres per calf for which the subsidy was claimed.

Information from a number of sources seems to indicate that aid payments have already begun.

According to the French authorities, the aim of the scheme is to reduce milk deliveries in the final quarter of 1987/88.

The aid was initially expected to cost a total of FF 100 million (ECU 14,5 million).

II

1. The Commission notified the French Government by letter of 19 February 1988 of its decision to initiate the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the proposed scheme.

2. In this letter, the Commission informed the French authorities that it took the view that the draft aid scheme was an operating aid which could not have any lasting effect on the sector, since its effects would disappear when the scheme lapsed. The Commission considers such schemes to be incompatible in principle with the common market.

In addition, Community rules and regulations concerning cattle farming constitute a full and comprehensive system which includes no provision for Member States to take additional income support measures for beef and veal producers.

Moreover, the scheme planned by the French Government is in addition to schemes already established at Community level : Council Regulation (EEC) No 1357/80 [4], as last amended by Regulation (EEC) No 573/89 [5], has already introduced a system of premiums for maintaining suckler cows.

The aid planned is thus a contravention of Community rules and regulations.

3. Under this procedure, the Commission has given notice to the French Government to submit its comments.

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

III

1. The French Government replied to the Commission's letter of notice by letter of 11 March 1988.

According to the French authorities :

— the scheme concerned is intended to address the situation of the most vulnerable agricultural holdings, which have been thrown into severe disequilibrium by the limits on milk production,

— the scheme would subsequently allow a process of conversion, changing the method of farming or even definitive cessation of production to be embarked on,

— the scheme is partly inspired by the Community premium for the non-marketing of milk,

[1] OJ No L 148, 28. 6. 1968, p. 24.
[2] OJ No L 61, 4. 3. 1989, p. 43.
[3] OJ No C 57, 1. 3. 1988, p. 4.
[4] OJ No L 140, 5. 6. 1980, p. 1.
[5] OJ No L 63, 7. 3. 1989, p. 3.

— this is intended as a once-only, non-renewable scheme,

— the forecast cost has fallen from FF 100 million to FF 60 million.

Finally, the French authorities take issue with the opinion that the scheme is supplementary to the Community's suckler cow premium scheme, since the Community premium is conditional on the cessation of milk deliveries during the period of the undertaking. As a consequence, in their view the French scheme does not contravene the market organization for beef and veal.

IV

With regard to the view of the French authorities, it must be emphasized that:

— the said authorities did not forward to the Commission any overall plan aimed at beginning a process of conversion or definitive cessation of milk production for agricultural holdings which were in serious disequilibrium,

— the fact that this is a once-only, non-renewable scheme does not detract from the fact that it is an operating aid, and does not alter the assessment made from the standpoint of Article 92 of the EEC Treaty; a similar conclusion applies to the reduction in the forecast cost,

— in order to remedy difficult situations in the milk sector all the necessary measures must be taken at Community level, with the particular aim of preventing even more serious difficulties arising from the implementation of unilateral national measures in this or other agricultural sectors,

— in view of the above, the justifications provided by the French authorities cannot be considered valid.

V

1. Articles 92 to 94 of the EEC Treaty apply to production of and trade in the products at which the draft aid scheme in question is aimed, by virtue of Article 24 of Regulation (EEC) No 805/68.

The draft scheme would confer a particular advantage on French stock farmers producing both calves and milk. It would reduce the cost of calf rearing to farmers in receipt of the premium. The scheme would thus distort competition between these stock farmers and other stock farmers not receiving the aid, both in France and in the other Member States.

The scheme would encourage calf production in France. This is in surplus (1985 self-sufficiency rate: 108,4 %); 38 000 tonnes of veal were exported to other parts of the Community, while oly 7 000 tonnes were imported. The forecast cost of the draft scheme, FF 60 million, accounts for approximately 50 % of the total value of these imports. As a result, the scheme threatens, in a market which is already in surplus, to encourage exports, depress imports and thus affect trade between the Member States.

The draft scheme in question therefore meets the criteria in Article 92 (1) of the EEC Treaty; this paragraph states that aid matching the criteria listed in it is incompatible in principle with the common market.

2. The exceptions provided for in Article 92 (2) can clearly not be applied to this scheme. Those provided for in Article 92 (3) concern aims pursued in the interest of the Community, and not merely that of individual sectors of a national economy. These exceptions must be strictly interpreted when assessing any programme of aid targeted at a particular region or sector or when assessing any individual application of general aid schemes.

In particular, the exeptions cannot be granted except in cases where the Commission can establish that the draft aid scheme is necessary to the achievement of one of the aims listed in the provisions. Allowing these exceptions to apply to aid which could not have such an effect would amount to allowing harm to be inflicted on trade between Member States and allowing distortions of competition which would both be unjustified by the Community interest and carry unfair advantages for certain Member States.

In the case in question, the draft scheme shows no signs of bringing compensatory benefits. The French Government could provide no evidence that the draft scheme fulfilled the conditions required for the application of any of the exceptions provided for in Article 92 (3) of the Treaty, nor could the Commission find any such evidence.

The measure concerned is not designed to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b), given that its likely effects on trade runs counter to the common interest.

Neither is the scheme aimed at remedying a serious disturbance in the economy of the Member State concerned within the meaning of the same provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) for aids intended to facilitate or promote the development of certain regions or of certain activities referred to in Article 92 (3) (c), it must be concluded that the proposed aid scheme could not bring about a lasting improvement in the conditions obtaining in the sector of the economy attracting the aid since, once the supply of aid stopped, the structural situation of that sector would be the same as before State intervention began to operate.

Consequently, the draft aid scheme should be considered to be operating aid, a form of aid to which the Commission has always in principle objected on the grounds that eligibility does not depend on conditions likely to make it qualify for one of the exceptions provided for in Article 92 (3) (a) and (c).

3. Moreover, where the products of cattle farming regulated by a market organization are concerned, limits have been placed on the Member States' powers to intervene directly in the operation of such market organizations comprising a system of common prices, this being an area where the Community now has exclusive powers.

The granting of an aid per product unit in this sector ignores the principle whereby the Member States no longer have the power to make unilateral arrangements relating to farmers' incomes within a market organization by means of the type of aid in question. The incompatibility of the scheme with Community rules and regulations is further compounded by the fact that it would supplement a Community measure set up as part of the market organization.

The scheme would be in addition to the current Community scheme instituted by Regulation (EEC) No 1357/80.

Given that the aid scheme in question could increase the amount of veal sent into intervention, it could also increase the expenditure of the European Agricultural Guidance and Guarantee Fund.

In this respect, it should be considered as running counter to the common interest.

Even if an exception pursuant to Article 92 (3) of the Treaty had been a possibility, this possibility would have been ruled out by the fact that the draft aid scheme constitutes an infringement of the market organization.

4. The draft aid scheme in question is therefore incompatible with the common market within the meaning of Article 92 of the EEC Treaty, and may not be implemented.

5. To the extent that initial payments may already have been made, this Decision is without prejudice to any measures the Commission may see fit to take as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS DECISION:

Article 1

The draft aid scheme aimed at encouraging the use of milk for feeding calves is incompatible with the common market within the meaning of Article 92 of the EEC Treaty and may not therefore be put into effect.

Article 2

The French Government shall inform the Commission, within two months of being notified 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, 21 December 1988.

For the Commission

Frans ANDRIESSEN

Vice-President