COMMISSION DECISION

of 20 January 1993

concerning an aid measure proposed by the German authorities (Rhineland-Palatinate) for the distillation of wine

(only the German text is authentic)

(93/155/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 822/87 of 16 March 1987 on the common organization of the market in wine (1), as last amended by Regulation (EEC) No 1756/92 (2), and in particular Article 76 thereof,

Having regard to Commission Decision 90/472/EEC of 10 September 1990 recognizing that production of certain quality wines produced in specified regions is, because of their qualitative features, far below demand (3), as amended by Decision 91/461/EEC (4),

After having given notice, pursuant to the above Article, to the parties concerned to submit their comments and having regard to those comments (5),

Whereas :

I

By letter of 9 April 1991, registered on 22 April 1991, the German authorities notified to the Commission an aid for the distillation of wine, pursuant to Article 93 (3) of the Treaty. The aid was to be paid at a rate of DM 0,90/litre of wine distilled.

Given that the aid represented a State aid within the meaning of Article 92 (1) of the Treaty and that, being an operating aid, none of the derogations provided for in Article 92 could be applied to it, the Commission regarded the measure as incompatible with the Treaty.

Further, the measure was found to infringe the common organization of the market in wine, which is an all-embracing instrument of Community law and does not admit of national measures which seek to improve producers' incomes by the award of operating aid.

Thus, by letter SG(91)D/13454 of 16 July 1991, the Commission decided to initiate the Article 93 (2) procedure with regard to this aid and, under that procedure, to call upon the German authorities not to grant the aid. Moreover, the Commission reminded the German authorities of the Commission letter to the Member States of 3 November 1983 concerning Member States' obligations resulting from Article 93 (3) of the EEC Treaty, and also of the communication of the Commission published in *Official Journal of the European Communities* (6), which states that illegal aid schemes, i.e. those which have been granted without awaiting a final positive decision in connection with the procedure provided for in Article 93 (2), may cause the Commission to require Member States to recover the aid from recipients and/or to refuse to make EAGGF advance payments or to charge expenditure relating to national measures that directly affect Community measures to the EAGGF budget.

The Commission invited the German authorities to submit observations within four weeks of receipt of the above letter and published that letter, together with a request to the other Member States and interested parties to comment.

II

In the course of the Article 93 (2) procedure, the German authorities, despite sending a letter dated 22 August 1991 requesting additional time to reply to the Commission's letter initiating the Article 93 (2) procedure, have not contested the position adopted by the Commission, namely that the aid should not be granted ; no observations have been received from any other Member States or interested parties.

III

The measure is an aid to winegrowers for the distillation of wine of 1989 and earlier years produced in areas not authorized for production in 1989, but since authorized by the German authorities.

By the aforesaid Decision 90/472/EEC Germany was permitted to authorize a 982 ha increase in area for production of Rhineland-Palatinate wine for the 1990/91 wine year.

(1) OJ No L 84, 27. 3. 1987, p. 1.
(2) OJ No L 180, 1. 7. 1992, p. 27.
(3) OJ No L 256, 20. 9. 1990, p. 30.
(4) OJ No L 245, 3. 9. 1991, p. 26.
(5) OJ No C 254, 28. 9. 1991, p. 5.
(6) OJ No C 318, 24. 11. 1983, p. 3.

According to the German authorities, winegrowers are aggrieved that, since produce of earlier wine years is not covered by this arrangement, it may not be marketed despite having been produced on an area which was subsequently authorized.

Since the wine of 1989 and earlier years may not be marketed, the German authorities propose aid for distillation, the aid rate being sufficiently high to ensure that all produce concerned actually goes to distillation.

The aid rate proposed is 90 pfennigs per litre of wine distilled, the measure being a one-off subsidy for 1991 ; the total aid budget amounted to DM 4,5 million.

An address list is supplied to the competent authority, showing the winegrowers who have received authorization to produce in previously unauthorized areas.

The applicant must supply data on his land, the date of receipt of authorization and the volume of unmarketable from areas subsequently authorized.

The applicant must supply assurances that the wine which he has stored separately is actually produced from areas subsequently authorized.

The wine inspectorate then checks the above data *in situ.*

Following the examination by the wine inspectorate, the winegrower must submit proof of distillation to the competent authorities.

IV

Article 76 of Council Regulation (EEC) No 822/87 states that Articles 92, 93 and 94 apply to State aid in this sector.

This measure would give the German winegrowers in question a special advantage since it would enable them to reduce their costs. Consequently, its effect would be to distort competition between the latter and winegrowers from other Member States.

According to the statistics, domestic production of quality wine amounted to 14 491 000 and 9 313 000 hl for the 1989/90 and 1990/91 financial years respectively. Domestic consumption totalled 16 292 000 and 20 781 000 hl respectively. On the basis of these data, the degree of self-sufficiency was of the order of 88 % in 1989 and 47 % in 1990. The difference was mainly met by imports from other Member States (8 000 000 hl in 1989 and 10 000 000 hl in 1990). Exports to other Member States amounted to 2 031 000 hl in 1989 and to 1 914 000 hl in 1990.

This measure also affects trade in that it enables the winegrowers in question to reduce distillation costs, which they would normally have to bear in their entirety, and thus gives the recipient undertakings more room to manœuvre than their competitors.

The measure in question therefore meets the criteria laid down by Article 92 (1) of the EEC Treaty ; that provision establishes, in principle, the incompatibility with the common market of the aid meeting the criteria laid down in it.

The derogations from this incompatibility set out in Article 92 (2) are clearly not applicable to the aid in question. Those laid down in Article 92 (3) stipulate objectives pursued in the common European interest and not merely in the interest of specific sectors of the national economy. These derogations must be strictly interpreted when scrutinizing any regional or sectoral aid programme or any individual case of the application of a general aid scheme.

In particular, they may only be granted where the Commission is able to establish that the aid is necessary for the achievement of one of the objectives set out in the provisions. To grant these derogations to aids which do not involve a *quid pro quo* of this kind would be tantamount to permitting adverse effects on trade between Member States and distortions of competition without any justification on the grounds of Community interest and, at the same time, would give some Member States unfair advantages.

In the case in point no such *quid pro quo* appears to exist for the aid, since the German authorities were unable to demonstrate, or the Commission to determine, any basis for supposing that the aid in question satisfies the requirements for the application of one of the derogations provided for in Article 92 (3) of the Treaty.

This is not aid to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since in view of the effects it may have on trade it runs counter to the common interest.

Neither is it an aid to remedy a serious disturbance in the economy of the Member State in question within the meaning of the same provision.

As regards the derogation provided for in Article 92 (3) (a) and (c) concerning aids designed to promote or facilitate the economic development of areas or of certain activities mentioned in the said point (c), it should be noted that this aid cannot bring about any permanent improvement in the circumstances experienced by the economic sector receiving this aid since, when the aid ceases, the structural situation will remain unchanged.

Consequently, this aid is to be considered an operating aid — a type of aid from which the Commission has, in principle, always withheld its approval since it is granted independently of conditions likely to qualify it for one of the derogations provided for in Article 92 (3) (a) and (c).

In addition, the measure disregards the principle whereby any intervention by a Member State in the market mechanisms other than those specifically laid down by the Community is liable to interfere with the organization of the common market.

It may be noted that the Regulation establishing that common organization states, at Article 6 (1), that all new plantings of vines are prohibited until 31 August 1996.

However, the same provisions allows Member States for the 1990/91 wine year to authorize new plantings in the case of quality wine produced in specified regions for which the Commission has recognized that production, because of its qualitative features, is far below demand.

Thus by virtue of Commission Decision 90/472/EEC Germany was indeed permitted to authorize a 982 ha area for new planting of Rhineland-Palatinate wine for the 1990/91 wine year. As the German authorities themselves concede, wine produced in 1989 and earlier years is not covered by the above Commission Decision despite subsequent authorization for new planting of the very areas upon which the 1989 and earlier wine was produced.

Thus, again as the German authorities recognize, the wine produced on areas newly planted in 1989 and earlier may not legally be marketed.

Since the wine in question may not be marketed, the alternative outlets for grapes and wine produced from these areas in Community law are family consumption, production of grape juice and/or distillation at own expense.

V

In view of the above, the Commission considers that whilst the measure represents a State laid within the meaning of Article 92 (1) it is to be regarded as an operating aid to which none of the derogations of Article 92 may apply. Consequently, the measure is to be deemed incompatible with the Treaty and may not be granted.

Further, the measure is in conflict with the common organization of the wine market. This market organization, which has as one of its aims to guarantee producers a fair income, leaves no room for individual aid measures of Member States which aim at improving producers' income by granting operating aids. Thus, even if a derogation under the terms of Article 92 (3) of the Treaty were to be contemplated, this aid would infringe common market organization rules and thereby be debarred from the benefit of such a derogation,

HAS ADOPTED THIS DECISION:

Article 1

The aid measure proposed by the German authorities in the form of an aid of DM 0,90/litre of wine distilled is incompatible with the common market under the terms of Article 92 of the Treaty and may not be granted.

Article 2

The German authorities are required to inform the Commission, within two months of receipt of this Decision, of the measures taken to apply it.

Article 3

This Decision is addressed to the Federal Republic of Germany.

Done at Brussels, 20 January 1993.

For the Commission

René STEICHEN

Member of the Commission