II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 31 October 1995

concerning aid to French pig farmers in the form of a guarantee — Stabiporc adjustment fund

(Only the French text is authentic)

(96/297/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat [1], as last amended by Regulation (EC) No 3290/94 [2], and in particular Article 21 thereof,

Having, in accordance with Article 93 (2) of the EC Treaty, given notice to the parties concerned to submit their comments [3],

Whereas:

I

1. By letter dated 19 April 1993, recorded on 20 April 1993, the French Permanent Representative to the European Communities notified the Commission of the relaunch of the Stabiporc adjustment fund, in reply to the request made by the Commission on 9 March 1993.

2. On 16 February 1994, the Commission decided to initiate the procedure laid down in Article 93 (2) of the EC Treaty with regard to the measures financed from public funds through the Office national interprofessionnel des viandes, de l'élevage et de l'aviculture (Ofival — National Bureau for the Meat, Livestock and Poultry Trade), for the following reasons:

   — the measures are identifiable as aid in the form of advances at a reduced rate of Pibor interest (Paris interbank offer rate '12 months' +0,5 %). The advances bear an interest rate lower than the normal market rate and must therefore be considered as operating aids producing no long-term structural improvements in the sector concerned,

   — there was no guarantee of full or part repayment of the cash advances made to pig farmers from the funds made available by Ofival,

   — the adjustment mechanism was in breach of the rules of the common organization of the market in pigmeat,

   — the Commission had no information on other agreements between Stabiporc on the one hand and various banking institutions (Caisse nationale de crédit agricole CNCA, Crédit Mutuel) and the solidarity fund for cereal growers and stock farmers (Unigrains), on the other hand.

3. After examining the comments received from other interested parties and from France, the Commission adopted a final negative decision with regard to the measures referred to in point 2 (Case C 8/94) and asked France to abolish the aid in question and to recover the aid already paid [4].

[1] OJ No L 282, 1. 11. 1975, p. 1.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No C 311, 8. 11. 1994, p. 5.
[4] OJ No L 335, 23. 12. 1994, p. 82.

4. By letter dated 20 June 1994, the French authorities submitted the information requested by the Commission in its letter of 22 February 1994 (Procedure No C 8/94). This revealed that additional aid in the form of a State guarantee was provided for the loans granted to Stabiporc by a banking pool and Unigrains.

From the information submitted by France on 20 June 1994, it appears that the reduced interest rates on advances granted by Stabiporc to pig farmers and the absence of adequate guarantees as to the full repayment of those advances are the result not only of favourable terms given by Ofival to Stabiporc (Procedure No C 8/94) but also of the same favourable terms included in the loan agreements signed between Stabiporc and the banking pool and Stabiporc and Unigrains.

The Ofival guarantee, under the terms of the two agreements, covers a sum of FF 61 million.

5. On 27 July 1994, the Commission decided to initiate the procedure laid down in Article 93 (2) of the EC Treaty (No C 36/94) with regard to the State guarantee provided by Ofival on behalf of pig farmers for the funds made available by the banking pool and Unigrains. The French authorities were notified of this decision by a letter dated 8 August 1994.

6. By a notice in the *Official Journal of the European Communities,* the Commission informed the Governments of the other Member States and other interested parties of its decision and gave them notice to submit their comments.

II

In their letter of 17 November 1994, the French authorities submitted their comments in response to the Commission's letter dated 8 August 1994 informing them of the opening of the procedure with regard to the aid referred to in point I (5).

Under that procedure and following the adoption of a final negative decision on 27 July 1994 in Case C 8/94, France continued to deny the justification for the successive decisions adopted by the Commission. Four meetings were held between the Ministry of Agriculture and the Directorate-General for Agriculture on 21 December 1994 and on 31 March, 26 April and 3 October 1995. In addition, France sent further information by letter dated 27 January 1995 following the meeting of 21 December 1994 and by letter dated 29 September 1995.

France's comments are given in points 1 to 4 below:

1. As regards the actual or potential contribution by Ofival:

— The French authorities deny, for the following reasons, that, under the terms of the two agreements, between Stabiporc and the banking pool, on the one hand and Stabiporc and Unigrains on the other, the financial contribution of Ofival to the Stabiporc adjustment fund can total FF 121 million. They insist that the potential financial contribution is FF 60 million plus a guarantee of FF 1 million.

They point out that the two agreements in question stipulate that:

'Any debts unpaid by producer groups to Stabiporc, after use of the joint surety provided by the groups in favour of Stabiporc, shall be borne by it from its own resources up to FF 1 million; Ofival undertakes to bear responsibility for an equivalent amount.

Beyond that sum, Ofival shall bear such unpaid debts from the credit of FF 60 million . . .; its assistance shall be dependent on that granted by Unigrains and the CNCA.'

— The fact that unpaid debts are charged first of all to Ofival's funds, together with the special recovery facilities it has in its capacity as intervention agency, provide additional guarantees of recovery which strengthen the whole system of contractual guarantees provided for. As an intervention agency, and unlike the other bodies providing funds to Stabiporc, Ofival is able to deduct debts owed to Stabiporc from amounts due to groups and/or producers under other measures it implements at a later date.

2. As regards the guarantee mechanisms:

2.1. According to the French authorities, the guarantee of recovery provided by booking unpaid debts in the first instance against Ofival's funds is just one of several guarantee mechanisms laid down in the arrangements negotiated by Stabiporc with the bodies funding it.

They point to the following principal private guarantee mechanisms:

— the relaunch of the Stabiporc business fund was subject to an increase in its own resources of FF 10 million through a levy of FF 1 per pig, paid by producers benefiting from the scheme,

— implementation of the Stabiporc scheme is subject to the provision of a joint surety by groups in favour of Stabiporc equivalent to 25 % of the advances granted to them,

— the agreements provide for the option of directly debiting sums to be recovered from groups' accounts.

2.2. At the meeting held on 3 October 1995, the French authorities insisted that the pyramidal structure of the adjustment system implemented through Stabiporc reduced the risk assumed by the lending bodies, for the following reasons:

— The solvency of the producer groups was thoroughly checked.

The Stabiporc organization selected the producer groups eligible to benefit from the adjustment mechanism on the basis of their financial position. Producer groups not providing adequate guarantees as to repayment were therefore not eligible for advances. At the meeting of 3 October 1995, the French authorities insisted on the importance of this rule, arguing that the selection of groups on the basis of their solvency was an essential condition for the grant of the FF 300 million loan made to Stabiporc by the banking pool and Unigrains.

The producer groups are generally agricultural cooperatives, not as a rule including producers whose sole activity is pig farming. Most of the producers concerned have more than one activity, providing a variety of income sources, thereby permitting the provision of a large capital sum and ensuring greater stability.

— There is a ceiling on the advances, which limits the debts of the groups involved.

Although not contesting the description of the current situation in the pig-farming sector, the French authorities stressed that the Stabiporc mechanism was limited to permitting the grant of loans to adjust cash flow, and thus involved small sums up to a maximum of FF 60 000 per beneficiary per annum. Under the terms of the agreement between Stabiporc and the producer groups, loans are limited to a maximum of FF 40 per heavy pig up to a maximum of 1 500 pigs per farmer per annum.

— The mechanism is designed to ensure that loans are to be repaid when pig prices are rising, thus greatly reducing the risk of unpaid debts.

— The producer groups concerned have provided a number of guarantees (joint sureties, own resources; see point 2.1). Furthermore, the contracts contain the usual conditions (cancellation clauses, interest for late payment, means of redress through the courts).

3. As to the recovery of unpaid debts:

The French authorities contest the Commission's interpretation of the final paragraph of Article 5 of the agreement concluded between Stabiporc and Ofival in view of the provision laying down that unpaid debts are booked in the first instance against Ofival's funds. They point out that the Commission has taken the view that, where the final paragraph of Article 5 lays down that 'Ofival may deduct the sums owing from any amounts due to groups or their members under other measures', this must be interpreted not as an obligation on Ofival to deduct the sums concerned but simply as a facility (point 5 of the grounds of the Decision of 27 July 1994).

The French authorities stress that reading through the whole of the agreement would show such an interpretation of the final paragraph of Article 5 to be incorrect. Article 8 of the agreement, pursuant to which any unpaid debts 'shall be deducted in accordance with Article 5' clearly confirms that this is an obligation on Ofival. They therefore have no difficulty in amending the two agreements initially concluded, as requested in the second indent of Article 2 of the Decision of 27 July 1994, by replacing the words 'Ofival may deduct' by 'Ofival shall deduct'. The amendments were notified to the Commission by letter dated 18 October 1995.

4. As to the interest rates:

By letter dated 5 July 1995, under Procedure No C 8/94, the French authorities stated that the interest rebate on the loan of FF 60 million granted to Stabiporc by Ofival was 2 % and that they undertook to recover the aid on that basis. The debate was calculated on the basis of an enquiry into the cost to enterprises carried out by the Bank of France and notified by France.

That information and the abovementioned untertaking, however, do not relate to the loan of FF 300 million granted by the banking pool and Unigrains to Stabiporc, namely Case 36/94 now under consideration.

III

1. Articles 92 to 94 of the EC Treaty were rendered applicable by Article 21 of Regulation (EEC) No 2759/75.

2. It would appear from the comments made by France on the actual contribution of Ofival (see point II (1)) that the latter's guarantee on the loan of FF 300 million is partly in the form of a subordinated debt of FF 60 million and partly in the form of a budget heading of FF 1 million.

3. The Commission takes note of the fact that, with regard to the recovery of unpaid debts, France is prepared to amend the agreements initially concluded, by replacing the words 'Ofival may deduct' by 'Ofival shall deduct' (see point II (3)).

4. According to the various agreements establishing the Stabiporc scheme, the terms governing the two loans granted to Stabiporc by, on the one hand, Ofival (Case C 8/94) for FF 60 million, and, on the other hand, the banking pool and Unigrains (Case C 36/94) for FF 300 million are different.

The loan from the banking pool and Unigrains is backed by a number of relatively significant private guarantees which are, however, lacking in the loan granted by Ofival (Case C 8/94). Therefore, the impact of the State guarantee on the interest rates for the two loans is not the same.

— The following private guarantees were given with the loan made to Stabiporc by the banking pool and Unigrains:

  — FF 90 million in private joint collateral in the form of a joint surety of 25 % of the advances made to pig producer groups,

  — FF 10 million paid by beneficiary groups in the form of a levy of FF 1 per pig at the time of the first two payments to the groups,

  — guarantees regarding the solvency of the producer groups;

  — a limit on the sums borrowed by the producer groups;

  — the usual contractual conditions ensuring recovery.

— The guarantee given by Ofival for the two loans is FF 61 million (FF 60 million for waiving the right to repayment plus an additional guarantee of FF 1 million).

— It follows from the figures given above that, of the FF 300 million in loans taken out by the Stabiporc organization, FF 139 million (FF 300 million less FF 161 million) are covered neither by the Ofival guarantee nor by the private sureties or contributions. Therefore, in order to assess the impact of State aid on the interest rates offered to Stabiporc by the two lender organizations, France was asked at the meeting held on 3 October 1995 to give details of the way in which the whole of the loan of FF 300 million was guaranteed and, in particular, whether the system involved other State aid.

At the abovementioned meeting, the French authorities stressed that the only State aid provided under the Stabiporc scheme was the guarantee of FF 61 million provided by Ofival in the form of a subordinated debt and the opening of a budget heading.

They stated that the FF 139 million was guaranteed by the pyramidal structure of the system and the reduced risk that this involved (see point II (2.2)).

— The interest rate that Stabiporc should have paid if it had had to pay the risk premium from which it was exempted by the existence of the guarantee provided by Ofival was calculated by the Commission, using the following weighted average:

IRs: the conventional interest rate offered to Stabiporc by the banking pool and Unigrains.

PApub: percentage of the total loan amount guaranteed by public guarantees

PApriv: percentage of the total loan amount guaranteed by private guarantees

$$[PApub \times (IRs + 2\,\%)] + (PApriv \times IRs)$$

Given that the State guarantee of FF 61 million covers 20,33 % of the loan of FF 300 million and that no other State aid is involved in the scheme, it can be concluded that the private guarantees cover 79,67 % of that loan.

On the basis of the above, therefore, the interest rate that Stabiporc should have offered to pig producer groups in 1993 and 1994 from the funds made available to it by the banking pool and Unigrains was:

1993

(20,33 % × 8,83 %) + (79,67 % × 6,83 %) = 7,23 %

1994

(20,33 % × 8,07 %) + (79,67 % × 6,07 %) = 6,47 %

The interest rebate for 1993 and 1994 was therefore 0,4 %:

7,23 % − 6,83 % = 0,4 % (1993)

6,47 % − 6,07 % = 0,4 % (1994).

— France supplied the information necessary for calculating the total amount of aid by Stabiporc to producer groups from the loan of FF 300 million from the banking pool and Unigrains.

On the basis of that information, the amount of aid paid from the said loan to be recovered from producers is FF 1 617 738.

5. According to the Farm Accountancy Data Network, the rate of indebtedness of the pig-farming sector (relationship between total loans and total own capital plus borrowed capital) is almost 48 % in France and 31 % in the Community, as compared with 32 % in France and 15 % in the Community for the agricultural sector as a whole.

The Commission took account of the size of the private guarantees backing the Stabiporc scheme in estimating the actual impact of the State guarantee on the interest rate offered by the bodies granting loans to Stabiporc which that body then passes on to producer groups.

Nevertheless, given that the interest terms received by Stabiporc and passed on to pig farmers are clearly not terms that an economic operator could obtain on the financial market, this aid constitutes an operating aid for pig farmers.

IV

1. The aid granted to French pig farmers, in view of the position occupied by France in the pig-farming sector within the Community, could have an effect on the Community market and thus affect trade between Member States. It therefore fulfils the conditions laid down in Article 92 (1) of the EC Treaty. According to information supplied by Eurostat, in 1993 and 1994, 24 112 500 and 24 785 400 pigs respectively were slaughtered in France as against 180 022 887 and 179 937 466 pigs in the Community as a whole, France therefore accounting for about 13 % of the total. During the same two years, exports to third countries from France were 56 736 tonnes and 113 611 tonnes (live pigs and pigmeat) as against 730 642 tonnes and 973 498 tonnes from the Community as a whole, France accounting for 8 % and 12 % in 1993 and 1994 respectively.

2. This aid infringes the common organization of the market in pigmeat. Since the aid is for products covered by a common organization of the market, there are limits to the powers of Member States to intervene independently in the workings of that organization. The common organizations of the markets are comprehensive and exhaustive systems which preclude any measures by Member States which could derogate from or adversely affect them.

3. The derogations provided for in Article 92 (2) of the EC Treaty are manifestly not applicable to the aid in question.

— Those provided for in paragraph 3 of that Article specify objectives pursued in the interest of the Community and not solely in that of particular sectors of the national economy. Those derogations must be strictly interpreted when regional or sectoral aid programmes are examined. They can only be granted where the Commission can establish that the aid is necessary for the achievement of one of the objectives set out in those provisions. In the case in question, the Commission found no justification for concluding that the aid concerned fulfilled the conditions for allowing any of the derogations under Article 92 (3) of the Treaty.

— The measure is not intended to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) of the Treaty since, given the impact it could have on trade, the aid goes against the common interest. Neither is it a measure intended to remedy a serious disturbance in the economy of the Member State concerned within the meaning of that same provision.

— With regard to the derogations provided for in Article 92 (3) (a) and (c) of the EC Treaty concerning aid to promote or facilitate the economic development of regions and certain activities referred to in point (c), the measure, being operating aid, cannot bring about a long-term improve-

ment in the conditions of the recipient economic sector, since, when payment ceases, the sector will be in the same structural situation as prevailed before the government measure was introduced. It is a type of aid which the Commission has always in principle opposed, given that it is not linked to conditions making it eligible for either of the derogations provided for in Article 92 (3) (a) and (c) of the EC Treaty.

— Even if a derogation under Article 92 (3) of the EC Treaty were possible for the aid in question, the fact that the measure goes against the common organization of the market, as stated in point 2, precludes the application of such a derogation.

4. The aid in question must therefore be considered incompatible with the common market within the meaning of Article 92 of the EC Treaty.

5. This Decision should not prejudice any conclusions the Commission might draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund.

6. The measure, notified on 20 June 1994 in reply to the Commission's letter of 16 February 1994 under Procedure No C 8/94, was adopted and applied before the Commission had adopted its final decision, and is therefore illegal under Article 93 (3) of the EC Treaty.

7. Where aid is incompatible with the common market, the Commission, in accordance with case-law of the Court of Justice, and in particular the judgment handed down on 12 July 1973 in Case 70/72 [1], confirmed by the judgments of 24 February 1987 and 20 September 1990 in Cases 310/85 [2] and C-5/89 [3] respectively, must demand that Member States recover from the beneficiaries any aid granted illegally.

In view of the above, the aid in question must be repaid.

Repayment must be made in accordance with the procedures and provisions of French law, in particular those concerning interest on overdue payments owed to the State, the interest being calculated from the day the aid in question was paid.

Repayment is necessary in order to restore the previous situation by abolishing all the financial advantages enjoyed by the beneficiaries of the illegal aid since the date on which it was paid. It is especially necessary in view of the sensitive market situation and in view of the decision taken by the Commission on 19 August 1988 to close the procedure opened by its letter dated 12 October 1984 concerning the previous launch of Stabiporc. To that end, it took account of the particular circumstances of the case and decided not to pursue aid paid during the previous period on condition that France did not pay this type of aid in future. Accordingly, it asked the French authorities to notify all planned amendments and reserved the right to initiate the procedure provided for in Article 93 (2) of the EC Treaty should those measures be found to be incompatible with Article 92,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted to pig farmers in connection with the advances made under the Stabiporc-banking pool and Stabiporc-Unigrains agreements is illegal, having been granted in breach of Article 93 (3) of the EC Treaty. This aid is also incompatible with the common market for the purposes of Article 92 of the Treaty.

The aid referred to in the first paragraph comprises the amount resulting from the difference between the interest rate applied to advances paid to producer groups through Stabiporc and the interest rate at which those groups could have obtained them through Stabiporc from the same financial institutions under normal market conditions, i.e. without the State guarantee provided by Ofival.

The amount to be recovered is FF 1 617 738.

Article 2

The French Government shall abolish the aid referred to in Article 1 by fixing the interest rate on advances at the normal market rate referred to in that Article.

Article 3

The French Government shall demand the recovery and repayment of aid already paid, referred to in Article 1, within two months of the date of this Decision.

(1) Commission v. Federal Republic pf Germany, [1973] ECr, p. 813.
(2) Deufiol GmbH v. Commission, [1987] ECR, p. 901.
(3) Commission v. Federal Republic of Germany, [1990] ECR, p. L-3437.

The aid shall be recovered in accordance with the procedures and provisions of national law, and in particular those relating to interest on overdue payments owed to the government. Interest on the sums in question shall be charged from the date on which the aid was granted.

Article 4

The French Government shall inform the Commission within two months of the date of notification of this Decision of the measures taken to comply with Articles 2 and 3.

Article 5

This Decision is addressed to the French Republic.

Done at Brussels, 31 October 1995.

For the Commission

Franz FISCHLER

Member of the Commission