COMMISSION

COMMISSION DECISION
of 11 April 2000
on State aid implemented by France for the pig-farming sector

(notified under document number C(2000) 1169)

(Only the French text is authentic)

(2000/805/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to those provisions and having regard to those comments,

Whereas:

I

PROCEDURE

(1) Following a press article of 11 September 1998 mentioning a French Government decision concerning aid measures for pig-farmers, the Director-General for Agriculture sent the French authorities a request for notification on 15 September 1998.

(2) The French authorities notified the measures referred to by letter of 2 October 1998, recorded as received on 9 October 1998. A request for further information was sent on 28 October 1998. The purpose of the letter was to request documents setting out the technical arrangements to be sent immediately. It drew attention to Article 88(3) of the Treaty, which prohibits the implementation of State aid. It also mentioned the principle that aid which is not compatible with the common market is to be recovered. Further information containing additional details reached the Directorate-General for Agriculture on 27 November and 1 and 2 December 1998.

(3) The Commission initiated the procedure provided for in Article 88(2) of the EC Treaty in respect of the above aid measure by letter No SG (98) D/12216 of 22 December 1998.

(4) The decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission called on the other Member States and interested parties to submit their comments on the aid in question.

(5) By letter of 31 March 1999 the Commission received the comments of the Danish authorities on the initiation of the procedure by the Commission. France forwarded its comments by letter of 12 February 1999.

(6) The Commission wrote again to the French authorities by letters from the Director-General for Agriculture of 1 June and 20 October 1999. The French authorities replied by letter of 24 November 1999.

II

DESCRIPTION

(7) By letter of 2 October 1998 to the Commission, the French authorities wrote concerning the arrangements as follows: 'Following the crisis in the pig-farming industry, characterised by a sharp fall in prices and an unprecedented level of excess production in the Community, in order to back up market measures decided at Community level, the French authorities have taken a number of financial and social measures.' The measures notified are described below.

[1] OJ C 61, 3.3.1999, p. 7.

Stabiporc

(8) The French authorities intend to restart the scheme of advances refundable to the Caisse professionnelle de régulation porcine (hereinafter referred to as 'stabiporc'). The scheme involves paying fully refundable advances to producer groups to enable them to regularise the prices for pork pigs paid to pig-farmers belonging to the scheme. It is therefore intended to regularise pig-farmers' incomes, which are affected by the crises in pigmeat production. Stabiporc is a company constituted under civil law whose purpose is to raise funds from a number of financial partners in order to provide pig-farmers with refundable advances. This calls for agreement and cooperation among the various partners.

(9) The Commission has already stated a position on the scheme. Two negative decisions were adopted in the past [1] concerning aid, deemed unlawful, to be provided to beneficiaries under the scheme. The rates of interest on advances granted were well below the market rates and advances not refunded by producer groups were defrayed by the Office national interprofessionnel des viandes, de l'élevage et de l'aviculture (hereinafter referred to as 'Ofival').

(10) The arrangements will be adjusted in line with the European Commission's remarks in the decisions it took previously. As a result:

— the public authorities' contribution will be confined to authorising Ofival to join the financial partners in financing a loan amounting to FRF 72 million (approximately EUR 11 million). In addition, Ofival will not act as guarantor in the event of debts outstanding or arrears in payment. Contractual relations between Ofival and Stabiporc will state explicitly that, in the event of debts outstanding or arrears in payment on the reimbursement of the capital of and interest on Ofival loans, Ofival will be entitled to seize sums due, plus interest on late payments, from producer groups,

— the interest rate on loans will be fixed on the basis of the normal market rate, i.e. the Paris interbank offered rate (PIBOR) + 0,6 %. The value for PIBOR used will be the most recent available quarterly indicator. The loans granted to pig-farmers will vary in duration depending on the economic situation at the time and in particular on the level of market prices. At all events, the rate will be fixed for one year and it will never be less than the reference rate in force for loans of a duration of one year or less. Loans are granted to solvent producer groups only.

[1] Commission Decisions of 27 July 1994 (Aid C 8/94) (OJ L 335, 23.12.1994, p. 82) and of 31 October 1995 (Aid C 38/94) (OJ L 114, 8.5.1996, p. 26).

Carry-over of social-security contributions

(11) In order to determine which holdings are eligible for the carry-over of social-security contributions, the authorities will conduct audits at department level. In order to assess how real and how serious the difficulties these holdings are facing are, three criteria will be considered in particular:

— a significant decline in turnover or a reduction in the trade margin recorded in 1996 and 1997 and the first few months of 1998,

— specific financial difficulties as shown by an increased level of short-term debt,

— delays in meeting terms of payment for banking or social-security commitments.

(12) In the light of the audit findings, holdings experiencing financial difficulties that are not likely to jeopardise their viability will be offered the possibility of staggering payment of their personal social-security contributions (this will not affect payment of contributions due as employers). The measure is estimated to cost FRF 6 million (approximately EUR 914 000).

Beneficiaries

(13) Only farmers whose holdings are deemed viable under the departmental audit findings will be eligible. Farmers whose payment records in previous years show unjustified incidents will not be granted loans. The measure will be available only to farmers whose turnover from pig-farming accounts for at least 50 % of the total turnover of their holdings (35 % for breeders). Lastly, pigfarms must comply with the terms of their authorisations or their declarations in accordance with French Law No 76-663 of 18 July 1976 on establishments classified for environmental protection.

Rules

(14) Payment schedules may extend for up to two years. The loans may cover technical and additional agricultural sickness contributions (AMEXA), old-age pension contributions, family allowance and widows' pension contributions outstanding under the self-employed agricultural workers' scheme. Payment by instalments will relate only to the balance of social-security contributions payable in respect of 1998 after payments on account have been made, which will represent 15 % to 20 % of total contributions.

(15) Detailed arrangements for recovering contributions will be a matter for each separate agricultural social-security mutual fund. They are responsible for deciding the terms under which eligible farmers may pay their contributions without losing social-security cover. Failure on the part of the farmer to comply with the payment schedule decided by the fund will lead to immediate suspension of this facility.

(16) In the present case, State assistance is intended to supplement the benefits normally provided by the agricultural social-security funds, which are not in a position to offer facilities for staggering payment of social-security contributions to all the producers concerned, given the magnitude of the problems they face and in view of their concentration in certain regions. The crisis affecting the pig-farming sector is so serious that many farmers are facing problems that could have major social and family repercussions (such as the loss of all social-security cover). This is why the authorities have decided to shoulder part of the cost of staggering the payment of contributions.

Recent investors

(17) This measure consists in relieving pig-farmers of part of the burden of interest payments on their bank loans. The arrangements involve taking over 3 % to 5 % of the volume of loans concluded in 1996 to 1998. The relief is calculated on the basis of the bank lending alone.

(18) Priority will be given to farmers whose borrowing was intended to finance initial investments in the industry. Furthermore, beneficiary farms must comply with the regulations on the environment. The borrowing base taken into account for the measure will not include household loans, real-estate financing or livestock loans.

(19) The French authorities pointed out that arrangements of this type in favour of recent investors were applied in the pig-farming sector in 1993. The Commission expressed its views on the compatibility of the arrangements in its decision of 27 July 1994 (Aid measure NN 116/93, later C 9/94). According to the French authorities, the support measures for small producers are comparable with those for recent investors. The arrangements contemplated will take account of the Commission's remarks; accordingly:

— the aid must relate to loans taken out to finance investments already made,

— the aggregate grant equivalent of any existing aid and the new aid may not exceed the rates generally authorised by the Commission. Special attention will be paid to cases where more than one start-up aid scheme is applied (start-up loans for young farmers and start-up allowances) to ensure that the aggregate grant equivalent complies with Community aid ceilings. Priority will be given to farmers with modernisation loans,

— aid will be granted after readjustment of rates on new loans to take account of changes in the cost of borrowing, or should involve agricultural holdings offering guarantees of viability, in particular where financial costs resulting from existing loans are such that the holdings may be threatened and possibly at risk of bankruptcy.

(20) The measure is forecast to cost FRF 30 million (approximately EUR 4,5 million).

(21) As far as Stabiporc is concerned, when it initiated the procedure for the examination of measures notified the Commission took the view that State aid for viable undertakings would be confined to the granting of loans at the normal market interest rate. This market interest rate follows the reference rate and stood at 4,30 % (interbank rate for one year) in January 1999. The French authorities have provided evidence that the rate of interest applied is never below the reference rate in force for loans of a duration of one year or less. This measure thus implies no favour and therefore no aid.

(22) However, when the procedure was initiated, the Commission considered that the measures consisting in a carry-over of social-security contributions and the partial defraying of interest on bank loans constituted an advantage for pig-farmers. This aid was therefore not regarded in principle as compatible with the common market, unless it could qualify under one of the exceptions provided for in Article 87(2) or (3) of the Treaty. On the basis of the information available to it, the Commission had no evidence enabling it to conclude that the aid was compatible with the common market; it would seem to constitute operating aid. More especially, while the French authorities considered that the scheme could be covered by the Community Guidelines on State aid for rescuing and restructuring firms in difficulty [1], they did not provide information enabling the Commission to conclude that those Guidelines have been followed. The Commission therefore deemed it necessary to initiate the procedure provided for in Article 88(2) of the Treaty.

III

COMMENTS FROM FRANCE

(23) By letter of 12 February 1999, the French authorities presented their remarks concerning the Commission's decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid measure notified.

(24) The French authorities confirmed the information provided in the past concerning the Stabiporc scheme, both as regards its objective (to pay fully refundable advances to producer groups to enable them to regularise the prices for pork pigs paid to pig-farmers belonging to the scheme) and the mechanism whereby it operated (by granting loans at the market rate).

[1] OJ C 283, 19.9.1997, p. 2. These Guidelines have been replaced by a new version (OJ C 288, 9.10.1999, p. 2).

(25) As regards the aid by way of carry-over of personal social-security contributions and the measures for recent investors, the French authorities broadly confirm the information provided to the Commission, while pointing out that the two measures meet the requirements of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

(26) As regards the carry-over of personal social-security contributions, the French authorities state that the measure consists in staggering payment of the balance of the contributions payable in respect of 1998 after payment of the payments on account. Having regard to the criteria in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, they point out the following,:

(a) restoring an undertaking's long-term viability:

an audit of each potential beneficiary conducted at departmental level by a committee reporting to the agricultural social-security mutual fund is carried out to determine which farmers are capable of recovering;

(b) preventing undue distortion of competition in a sector suffering from structural excess capacity, through the irreversible reduction or closing-down of production capacity:

in accordance with the exemption provided for in point 3.2.5(c)(i) of the Guidelines, for measures targeting a particular category of products or operators, where the totality of decisions taken in favour of all beneficiaries over any consecutive 12-month period does not involve a quantity of product which exceeds 3 % of the total annual production of such products in that country, the Commission, subject to adherence to all other conditions, will waive the capacity reduction requirements.

The French authorities assert this principle since the estimated budget for the measure amounts to FRF 6 million, and 3 % of total annual production in France, taking the average for the three preceding years, represents FRF 780 million in value;

(c) aid in proportion to the costs and benefits of restructuring:

the measure does not involve the State's defraying of the contributions. The farmer pays his contributions in instalments and therefore only enjoys facilities in payment;

(d) full implementation of restructuring plan and annual report to the Commission:

the French authorities undertake to meet these two conditions.

(27) As regards the measure for recent investors, the French authorities point out that having regard to the criteria in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty:

(a) restoring the undertaking's long-term viability:

the audit of each beneficiary conducted by Ofival seeks to assess the undertaking's capacity to survive the short-term difficulties. It involves in particular a detailed analysis of the loans taken out and the corresponding amortisation schedules,

(b) preventing undue distortion of competition in a sector suffering from structural excess capacity, through the irreversible reduction or closing-down of production capacity:

the French authorities point to the exemption provided for in point 3.2.5(c)(i) of the Guidelines, since the estimated budget for the measure is FRF 30 million, and 3 % of total annual production in France, taking the average of the three preceding years, represents FRF 780 million in value and 780 000 pigs (source: Eurostat). A initial estimate by the French authorities puts the number of pork pig places under the measure at 60 000;

(c) aid in proportion to the costs and benefits of restructuring:

the arrangements involve taking over 3 % to 5 % of the volume of loans concluded in 1996 to 1998. The loans taken out in 1996, 1997 and 1998, particularly those going back furthest in time, were concluded at high interest rates that are far above the current rates for borrowing. Rates of 8,5 %, 7,6 % and 7,10 % are accordingly frequent while the PIBOR currently stands at 3,85 %, which means the bank is taking 4,5 %. As a consequence, the aid, which is equivalent to the granting of a sum in proportion to the amount, only represents a part of the annual financial burden, with the producer bearing the greater part;

(d) full implementation of the restructuring plan and annual report to the Commission:

the French authorities undertake to meet these two conditions.

The French authorities also state that only small and medium-sized holdings (with between 42 and 200 sows in production under the breeder-fattener system), generally employing the farmer and his spouse and sometimes one employee, qualify under this measure. The beneficiaries under the measure therefore fall within the category of small agricultural enterprises (SAEs) employing less than 10 annual work units. The arrangements accordingly contribute towards maintaining farmers and their families in rural areas where jobs are scarce.

IV

COMMENTS FROM OTHER PARTIES

(28) By letter of 31 March 1999, the Commission received the comments of the Danish authorities, which were then forwarded to the French authorities. The Danish authorities expressed their agreement with the Commission's initial conclusions concerning the three measures in question, but they pointed out that the measures would set the French pig-farming sector at an advantage over industries in the other Member States. They also said that support for the pig-farming sector can only be provided through the existing Community arrangements, while noting that the market had been significantly stabilised by drawing on the possibilities of aid under the common organisation of the market in pigmeat.

V

OTHER MEASURES ANNOUNCED BY FRANCE

(29) The Commission's initiation of the examination procedure was followed by several announcements concerning the implementation of other measures for the pig-farming sector, which were not, moreover, notified to the Commission. Thus, according to information published in France in early January 1999, aid amounting to around FRF 10 million (approximately EUR 1,5 million) was granted by the French Government in the form of a premium of FRF 2 per kilogram of pork paid to certain traders, who were supposed to pass it on to the producers through the slaughterhouses. On 7 April 1999 the French Agriculture Minister Mr Glavany announced aid totalling FRF 140 million (approximately EUR 21,3 million) by way of direct support for pigfarms. In addition, on 28 April 1999 French pig-farmers announced a measure that involved withdrawing animals from the market by slaughtering piglets (80 000 between May and August 1999). Lastly, on 9 December 1999 Mr Glavany outlined supporting arrangements for pig-farmers in difficulty to the representatives of the national branch organisations. These were to take the form of loans to supplement the arrangements for assistance for the amicable settlement of bankruptcy proceedings in the pigmeat sector, introduced in spring 1999, notified to the Commission on 5 July 1999 and authorised by the latter under State aid measure N 405/99 [1].

(30) The Commission wanted a comprehensive view of all the measures that the French authorities might have implemented in support of the pigmeat sector, in particular in order to prevent State aid for rescuing and restructuring firms in difficulty from being granted more than once to the same beneficiaries, which would be a breach of the principles laid down in the Community Guidelines for the granting of this type of aid. On several occasions (letters of 11 January, 19 April, 16 June and 14 December 1999), the Commission wrote to the French authorities to request them to confirm or deny the information on the new aid measures and to notify any aid to the pig-farming industry.

(31) By letter of 16 June 1999 the French authorities replied that the measure concerning the slaughter of piglets had not been introduced or financed by the authorities and that it was an exclusively interbranch measure. By letter of 24 November 1999, they confirmed that at the height of the crisis, the authorities had announced a series of measures for the pig-farming industry. However, as the situation on the market for pigmeat had improved in spring 1999, thanks in particular to the introduction of the food-aid programme and the Community management instruments (refunds), the French authorities decided not to follow up some of the arrangements announced. Accordingly, in addition to the measures covered by this procedure, the only measure was the aid for discontinuing activity, notified to the Commission on 5 July 1999 (see recital 29). No reply has, however, been provided to date as regards the plan presented on 9 December 1999.

VI

ASSESSMENT

(32) In accordance with Article 87(1) of the Treaty and save for the derogations provided for in that Treaty, any aid granted by the Member States or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(33) Article 21 of Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat [2], as last amended by Regulation (EC) No 3290/94 [3], provides that, save as otherwise provided therein, Articles 87, 88 and 89 of the Treaty are to apply to the production of and trade in pigmeat.

(34) The measures notified by France fall in principle under aid within the meaning of Article 87(1) of the Treaty in so far as they seek to relieve certain producers of the economic and financial burdens affecting competitors who are not in receipt of this assistance.

[1] Commission letter No SG(99) D/8509 of 25 October 1999 to the French authorities.

[2] OJ L 282, 1.11.1975, p. 1.
[3] OJ L 349, 31.12.1994, p. 105.

Stabiporc

(35) As far as Stabiporc is concerned, the French authorities explained that the State aid for viable undertakings [1] will solely involve granting loans at the normal market interest rate. The French authorities provided evidence that the rate of interest applied is never lower than the reference rate in force for loans not exceeding one year in duration. Furthermore, the contracts governing relations between Ofival and Stabiporc will explicitly mention that should amounts not be paid or delays arise in payment in connection with the reimbursement of the capital and interest of the Ofival loan, Ofival will be entitled to seize the sums due, plus interest on late payment, from the producer groups. Under those conditions, the possibility of any advantage, and consequently aid, may be discarded. The Commission therefore concludes that the Stabiporc scheme and the detailed arrangements for its application as they are currently contemplated by the French authorities comply with the provisions of the Treaty in so far as the scheme comprises no element of aid in accordance with Article 87(1) of the Treaty. At all events, if loans providing for more favourable conditions than these were to be contemplated in the future, the French authorities should inform the Commission.

(36) The French authorities are requested to present an annual report to the Commission setting out the details of the way the scheme operates, and in particular the advances paid during the financial year, the interest rates applied, the amounts reimbursed and/or in arrears, the balances of advances, etc.

Carry-over of social-security contributions and recent investors

(37) The purpose of these two measures is to relieve certain producers of economic and financial burdens; this would give them an advantage over competitors who are not in receipt of this assistance. As a consequence, the measures distort or threaten to distort competition in the abovementioned way and as a result they fall within the definition of State aid in Article 87(1) of the Treaty.

(38) The aid is likely to affect trade between Member States in so far as it favours national production over that of the other Member States. The pigmeat sector is especially open to competition at Community level, and therefore in France, and it is consequently very sensitive to any measure favouring production in any country.

(39) The following table shows the volume of trade in pigmeat between France and the other Member States.

Imports from EU-14 (1 000 ECU)	**1998**	**1999**	**Tonnes — carcase weight**	
			1998	**1999**
Pigmeat	899 584	821 979	524 935	532 044
Agricultural produce covered by WTO	18 644 780	19 007 811		
Total	185 465 865	194 409 593		
Exports from EU-14 (1 000 ECU)	**1998**	**1999**	**Tonnes — carcase weight**	
			1998	**1999**
Pigmeat	763 029	682 965	431 625	395 877
Agricultural produce covered by WTO	25 430 299	25 670 810		
Total	178 384 485	188 441 594		

[1] 'Viable undertaking' means any undertaking not experiencing economic difficulties within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

Current prices and current exchange rates		
1998	**Pigs (1 000 ECU)**	**Total final (agricultural) production**
EUR-15	21 263	213 467
France	2 844	46 187
France/EUR-15	13,4 %	21,6 %

(40) However, there are exceptions to the principle concerning the incompatibility of State aid set out in Article 87(1) of the Treaty.

(41) The exceptions to the principle of incompatibility laid down in Article 87(2) clearly do not apply. Moreover, the French authorities did not claim they did.

(42) The exceptions provided for in Article 87(3) of the Treaty must be interpreted strictly when any regional or sectorial aid programme or any individual case of application of general aid schemes is being considered. They may in particular be allowed only where the Commission is able to establish that the aid is necessary to achieve one of the aims in question. Allowing such exceptions to apply to aid not meeting that condition would be tantamount to allowing trade between Member States to be affected and permitting distortion of competition that has no justification having regard to the Community interest and, by the same token, undue advantages for the operators of certain Member States.

(43) Article 87(3)(c) provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(44) More specifically as regards the measure concerning the carry-over of social-security contributions, according to the decisions of the Court of Justice [1], payment facilities in respect of social security contributions granted in a discretionary manner to an undertaking by the body responsible for collecting such contributions constitute State aid for the purposes of Article 87(1) of the Treaty if, having regard to the size of the economic advantage so conferred, the undertaking would manifestly have been unable to obtain comparable facilities from a private creditor in the same situation vis-a-vis that undertaking as the collecting body. At no time have the French authorities claimed that such carry-overs do not fall within the scope of State as aid referred to above. Furthermore, the Commission does not have any information allowing it to conclude that the measure in question does not fall within the scope of State aid.

(45) The aid must be assessed in particular in the light of those provisions and of the special provisions governing the case in point.

(46) When it initiated the procedure, the Commission held that, in so far as the beneficiary undertakings were profitable establishments not covered by any restructuring or rescue plan, the exception provided for in Article 87(3)(c) (first part of the first phrase) could not be entertained. None the less, the French authorities subsequently took the view that the aid must be considered in the light of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

(47) If aid schemes for rescuing and restructuring are to be approved, the beneficiaries must be small and medium-sized enterprises in accordance with the Community definition. Small agricultural enterprises (SAEs) are those employing no more than 10 annual work units. The French authorities state that the beneficiaries under the measure for recent investors are SAEs. No details are given as regards the measure for the carry-over of personal social-security contributions. If the measure also covered enterprises other than SMEs, the French authorities should have notified the measure in respect of each individual beneficiary.

[1] Judgment in Case C-256/97 *Déménagements-Manutention Transport SA (DMT)* [1999] ECR I-391.

(48) In accordance with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty, this type of aid must comply with the following conditions.

(a) *Existence of financial difficulties*

(49) In accordance with the Community Guidelines for this type of aid, the Commission deems that an enterprise is in difficulty 'where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term.'

(50) It cannot be concluded from the information provided by the French authorities that the beneficiary undertakings are in financial difficulty within the meaning referred to above. The French authorities actually contemplate granting aid to holdings that are in awkward financial situations which do not jeopardise the holdings' viability.

(i) Thus, as far as the first type of aid is concerned (carry-over of personal social-security contributions), the measure seeks to prevent any undesirable effects, such as the loss of all social-security cover that could arise from the farmers' failure to pay their contributions.

While the Commission agrees that the situation currently affecting the sector is likely to put certain producers in an awkward situation, it considers that the fact that one of the conditions for entitlement to the aid is the undertaking's viability means that the scheme is in direct conflict with the Community rules applicable to firms in difficulty. The producers concerned may be going through a difficult phase, but their survival does not appear to be in jeopardy as a result of these difficulties, and State intervention is therefore not justified.

(ii) The way the second measure (recent investors) is applied does not imply that all the producers in question are facing a situation that could condemn them to go out of business. The Commission refers to the description of the measure in recitals 17 to 20 and recital 27 for the French claims.

(51) The Commission therefore takes the view that the Community Guidelines on State aid for rescuing and restructuring firms in difficulty are not adequately applied in the case in point. In their letter of 12 February 1999, the French authorities seek to show that certain conditions for this type of aid are met, without however targeting the beneficiaries who are eligible under the Community rules. The Commission's misgivings regarding the individual beneficiaries' financial status have not been dispelled as far as the situation prior to the initiation of the procedure (recital 46) is concerned.

(52) The Commission wishes to point out, moreover, that the arguments put forward by the French authorities at the time of the original notification and those presented once the procedure had been initiated appear to contradict each other. The former do not give the impression of a situation that can still force the undertakings out of business and the aid is not even described as measures for rescuing and restructuring the firms concerned. The latter suggest that the undertakings are facing economic difficulties when they state that the aim of the audit is to assess the farm's capacity to survive the current difficulties. But no argument is put forward to back up this statement and support the conclusion that the condition as to the existence of financial difficulties is thus met. The short-term nature of the difficulties, according to the French authorities, is such as to corroborate the Commission's arguments in recitals 49 and 50.

(b) *Restoring an undertaking's long-term viability*

(53) Aid for restructuring must be linked to a viable restructuring or recovery plan, which together with all the necessary details; must be submitted to the Commission, and validated by the latter. The plan must enable the undertaking's competitiveness to be restored within a reasonable timescale. The plan, the duration of which must be as limited as possible, must comprise a market study covering a series of points as set out in Annex I to the Community Guidelines. In addition, the undertaking's viability must mainly result from the internal measures laid down in the plan and it cannot therefore be based on external factors over which the undertaking has practically no influence, such as market trends.

(54) The French authorities point out that for both measures, audits are performed on each potential beneficiary with the aim of determining the farmers whose situations can actually be restored (recitals 26 and 27).

(55) Even assuming that the condition under (a) is fulfilled, the Commission considers that the information provided does not prove that this condition is actually met. Audits of holdings are not the same as restructuring plans. The former only serve to ascertain the economic situation of the holding and at most to determine its degree of solvency, but it cannot ensure the restoration of the holding's long-term viability. Audits are therefore confined to preventing holdings not viable at the present time from qualifying for aid, but they have no effect, via any action plan, on the long-term viability of many undertakings in a climate of production surpluses and cyclical crises. The aid measures notified by France are *de facto* similar to rescue aid to the extent that they are intended to provide an immediate response to a situation of economic crisis besetting many producers, but no restructuring is undertaken under a plan or guaranteed by the measures proposed. According to the Community Guidelines, rescue aid is temporary assistance that makes it possible to keep an ailing firm afloat for the time needed to work out a restructuring or liquidation plan and/or for the length of time the Commission needs to be able to reach a decision on that plan.

(56) Restructuring plans must principally serve to programme measures to be undertaken to restore the competitiveness of holdings within a reasonable time. Accordingly, given the type of undertakings targeted and the environment in which they operate, the Commission considers that restoring the viability of the undertakings affected cannot be guaranteed simply by relieving their short-term financial burden following a financial audit.

(c) *Preventing undue distortion of competition in a sector where there is structural excess capacity by reducing or definitively closing down production capacity*

(57) The French authorities refer to the exemption for the agricultural sector provided for in point 3.2.5(c)(i) of the Guidelines (point 5.4(c)(i) of the new Guidelines) for measures aimed at a particular category of products or operators. Where the totality of decisions taken in favour of all beneficiaries over any consecutive 12-month period does not involve more than 3 % of the total annual production of such products in that country, the Commission, subject to compliance with all other conditions, will waive the capacity reduction requirement (recitals 26 and 27).

(58) The Commission has no objections regarding the data provided with regard to the measure for recent investors. However, those relating to the measure concerning the carry-over of social-security contributions relate solely to the proportion of the aid as compared with the figure of 3 % of total national production. The important point for the exemption referred to in point 57 is the quantity of products to which the aid applies as compared with annual production. The data provided do not specify, however, the number of animals covered by the aid. Given this lack of information, the Commission is not in a position to verify compliance with this condition.

(59) Even if one were to agree that in purely arithmetical terms, and in the light of the figures that France may submit, this condition is likely to be met, the Commission is not always in a position to waive this requirement because the conditions referred to under (a) and (b) are not met.

(d) *One time, last time principle*

(60) Even assuming that the condition under (a) is met, any failure to comply with the condition in (b) puts observance of this principle in jeopardy. The lack of a plan for restoring viability raises doubts as to the long-term recovery and viability of the undertakings, all the more so as the implementation of schemes notified in a climate of overall, cyclical crisis in the pig-farming sector provides no guarantee that in the future the same holdings will not be faced once more with situations of short-term financial difficulty that could induce the State to come to their assistance again.

(e) *Aid must be in proportion to the costs and benefits of restructuring.*

(f) *Full implementation of the restructuring plan and annual report to the European Commission*

(61) Any failure to meet the conditions in points (a), (b) and (d) makes an assessment of compliance with these two conditions pointless. As regards point (e) more specifically and in order to limit the amount and rate of the aid to what is absolutely necessary, the Commission points out that the aid beneficiaries must make a significant contribution to the restructuring plan by mobilising their own resources or through external financing obtained at market conditions. This point is not raised by the French authorities. On the other hand, the French authorities' undertaking to meet the condition in point (f) calls for their compliance with the other conditions mentioned as a precondition for acceptance.

(62) As regards the compliance of the scheme under consideration with the principles outlined, the Commission considers that the French authorities have not satisfactorily demonstrated the 'difficulty' of the economic situation facing all the holdings targeted. Even had they, despite the Commission's requests at no point in the procedure did they submit a plan for the recovery of the undertakings concerned. As a result, the aid could only temporarily relieve certain producers' lack of liquidity, without ensuring that the measures necessary to ensure their long-term competitiveness were taken. The impact on competition is not offset by the existence of any clear plan for the future. The Commission has also not been apprised of the size of the undertakings covered by the measure for the carry-over of social-security contributions. This conclusion regarding the scheme does not prejudge the assessment of any individual cases, not notified by the French authorities, that meet the requirements of the Guidelines.

(63) Furthermore, as regards the French authorities' comment in recital 19, the Commission points out that the positive decision of 27 July 1994 (Aid NN 116/93, later C 9/94) was adopted on the basis of criteria [1] that ceased to apply to the agricultural sector on 1 January 1998 [2] for purposes of determining whether this type of aid is compatible with the common market.

(64) The French authorities are of the opinion that the criteria in the Guidelines are fulfilled while they emphasise the measure's slight impact in terms of distortion of competition.

(65) However, in accordance with the Community Guidelines, the basic principle governing this type of aid is to authorise restructuring aid only in cases where it can be shown that granting such aid is not contrary to the Community interest. This will only be possible on the basis of strict criteria and the assurance that any distortion of competition will be offset by the benefits arising from the survival of the undertaking and, where appropriate, by sufficient compensation for the competitors.

(66) The measures proposed by the French authorities come in direct response to the crisis situation in the pig-farming sector following the collapse of pigmeat prices throughout the Community (recital 7). The Commission is of the opinion that in a situation of this sort, any measure favouring any particular undertaking is likely to create particularly serious distortion of competition in a sector as sensitive and subject to such permanent excess capacity as the pig-farming industry, and that other Community undertakings in the same situation could be especially affected. Accordingly, only measures adopted under the Community agricultural policy and, more specifically, under the common organisation of the market concerned could ensure that the overall interests of the players on that market are taken into account. In this connection it should be remembered that recourse by a State to Articles 87, 88 and 89 of the Treaty cannot take precedence over the Regulation governing the organisation of the market in question [3]. The application of those Articles continues to be subject to the provisions of the Regulations concerned. The Commission cannot approve aid measures which, by nature [4], are incompatible with the provisions governing the common organisation of a market or which hamper the proper operation of the market organisation concerned.

[1] Criteria applied by the Commission for financial charges on loans being paid off for investments already made (SG(89) 343/2, 7.3.1989).
[2] Date of entry into force, for this sector, of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.
[3] Judgment of the Court in Case 177/78 *Pigs and bacon Commission* v *McCarren and Company Limited* [1979] ECR-2161.
[4] See recital 69.

(67) Accordingly, in the light of the information available, bearing in mind the crisis situation under which the measure was taken and mindful of the pressures exerted on several Governments in the Community to take national measures to assist the sector, the Commission is of the opinion that the aid contemplated — is tantamount to a response to a call for help prompted by the crisis affecting the pig-farming industry and cannot be regarded as forming an integral part of a real restructuring plan for the undertakings concerned. As a consequence, the Commission must conclude that the measures contemplated cannot qualify under the derogation provided for in Article 87(3)(c), which provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest. As a consequence, the measures constitute operating aid that is not compatible with the Treaty.

VII

CONCLUSION

(68) The measure notified by France that consists in restarting the scheme of advances refundable to the Caisse professionnelle de régulation porcine (Stabiporc), under the conditions now contemplated by the authorities in that country, does not constitute State aid within the meaning of Articles 87, 88 and 89 of the Treaty.

(69) The aid schemes that consist in carrying over social-security contributions and granting aid for recent investors do not qualify under the derogation provided for in Article 87(3) of the Treaty, since they do not meet all the conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty. As a consequence, they are not compatible with the Treaty and cannot therefore be implemented.

(70) Where aid is not compatible with the common market, Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty [1] provides that the Commission is to decide that the Member State concerned is to take all necessary measures to recover the aid from the beneficiary. Such reimbursement, involving the cancellation of all the financial advantages from which beneficiaries of the aid granted unlawfully have benefited unduly since the date of granting of the aid, is necessary to re-establish the situation applying previously.

(71) However, since the measures notified have not been applied to date, as confirmed by the letter of 24 November 1999 from the French authorities stating, with regard to the measures taken in response to the pig-farming crisis, that the only measure finally decided was the aid for discontinuing activity, notified on 5 July 1999 (C 405/99) and that no rescue or restructuring aid was granted, no decision need be taken to recover the aid,

HAS ADOPTED THIS DECISION:

Article 1

1. The measure notified by France that consists in restarting the scheme of advances refundable to the Caisse professionnelle de régulation porcine, under the conditions contemplated by the authorities in that country, does not constitute State aid within the meaning of Articles 87, 88 and 89 of the Treaty

2. The aid schemes that consist in carrying over social-security contributions and granting aid for recent investors cannot qualify under the derogation provided for in Article 87(3) of the Treaty and as a consequence they constitute operating aid that is not compatible with the Treaty.

Article 2

France shall be required to cancel the aid schemes referred to in Article 1(2).

Article 3

1. France shall inform the Commission, within two months of notification of this Decision, of the measures that it has taken to comply therewith.

[1] OJ L 83, 27.3.1999, p. 1.

2. The French authorities shall send the Commission an annual report providing details of the way the scheme of advances refundable to the Caisse professionnelle de régulation porcine operates, including in particular the amounts paid in advance in the course of the financial year, the rates of interest applied, the amounts refunded and in arrears, the balances of the advances, etc. Those details must include the information needed by the Commission to ascertain that the undertakings that have benefited under the scheme are viable within the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

Article 4

This Decision is addressed to the French Republic.

Done at Brussels, 11 April 2000.

For the Commission

Franz FISCHLER

Member of the Commission