COMMISSION

COMMISSION DECISION
of 31 January 2001
on the State-aid scheme proposed by Greece for fruit and vegetable growers

(notified under document number C(2001) 323)

(Only the Greek text is authentic)

(2001/259/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,

After having given the parties concerned the opportunity to submit their comments, in accordance with the first subparagraph of Article 88(2) of the Treaty, and in view of those comments,

Whereas:

I

Procedure

(1) By letter dated 16 February 1998, recorded as received on 23 February 1998, the Greek authorities notified an aid scheme under which Greece intended granting aid to fruit and vegetable growers whose crops had been damaged by field mice in the summer of 1997. Requests for further information were sent on 25 March and 7 August 1998. The Greek authorities replied by letters of 9 June and 8 September 1998.

(2) The Commission initiated the procedure provided for in Article 88(2) of the EC Treaty in respect of the aid concerned by letter SG(98) D/9449 of 10 November 1998.

(3) The Decision initiating the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited the other Member States and parties concerned to submit their comments on the aid in question. The Commission has not received any comments from the parties concerned. The Greek authorities sent their comments by letter of 16 December 1998.

[1] OJ C 396, 19.12.1998, p. 2.

II

Description

(4) The measure notified concerned a draft interministerial decision approving financial aid for growers in the prefecture of Thessaloniki whose watermelon and melon crops had been damaged by field mice during the summer of 1997.

(5) The recipients were to be full-time growers, 30 % or more of whose crops had been damaged. The percentage was calculated by comparing their output in 1997 with their average output over the three previous years. The aid was to amount to 30 % of the value of the lost production. Recipients were to be selected on the basis of the damage they had suffered individually. Compensation would be granted for 1998 and 1999 and the cost of the measure was to total GRD 90 million (around EUR 265 000).

(6) According to the Greek authorities, the damage caused by field mice to the watermelon and melon crops in one municipality and three communes in the prefecture of Thessaloniki in the summer of 1997 was considerable (50 % to 70 %). A larger than usual population of field mice had taken up residence in standing cereal crops and reproduced there.

(7) The field mice had not been detected in time and action had not been taken speedily enough. Once it became apparent that considerable damage had been done, the area was declared infested and control measures were taken, but it was not possible to contain the damage.

(8) Around 65 % of the area in question is given over to cerealgrowing. The cereal crops provided the field mice with a place of refuge and feeding and did not suffer any serious damage. After harvesting had taken place the field mice attacked the watermelon and melon crops.

They also attacked tobacco plantations and vines, but to a lesser extent. The watermelon and melon crops suffered the most serious damage and some of them were said to have been destroyed totally.

(9) According to the Greek authorities, the pest situation is monitored by the prefectoral authorities who, if there is a serious problem, apply control measures with the result that damage is usually insignificant. However, detecting a rise in the field mice population may not be easy in situations where crops occupy the major part of an area.

(10) The Commission, when initiating the review procedure and in the light of its established practice regarding compensation for damage caused by natural disasters and inclement weather [2], expressed doubt about whether the invasion of field mice in the watermelon and melon crops affected could be regarded as an exceptional occurrence.

(11) The Commission considered in particular that where a farmer loses livestock as a result of an epizootic or other disease or his crops are affected by a plant disease, this does not normally constitute a natural disaster or exceptional occurrence within the meaning of the Treaty. In such circumstances, compensation or aid intended to prevent loss may be authorised by the Commission only on the basis of Article 87(3)(c) of the Treaty, which provides that aid to facilitate the development of certain economic activities may be considered compatible with the common market.

(12) Concerning the criteria applicable to plant diseases which may qualify for the above exception, the Commission stated that only infections (including their observation and eradication) which are of concern to the public and for which it is provided under Community or national rules that the competent public authorities must take action to prevent the disease in question should be covered. Situations in which farmers are reasonably required to take their responsibilities and assume the normal risks associated with farming do not qualify for aid measures. The measures should be preventive, compensatory or a combination of the two and must not give rise to compensation in excess of the damage sustained.

(13) The Commission noted that the information provided by the Greek authorities indicated that the aid was compensatory and would not exceed the losses sustained by the farmers. The losses, furthermore, were deemed to have exceeded the maximum of 30 % of average output for the three preceding years, which was used by the Commission as a criterion for authorising aid intended to offset losses caused by exceptional weather conditions.

(14) The Commission was doubtful, however, about the application of these criteria by analogy to damage caused by pests such as field mice. It considered that unlike damage caused by plant diseases or poor weather conditions, which by its nature is difficult to predict, that caused by pests constitutes a normal, ongoing risk inherent in farming against which farmers can reasonably be expected to take precautions.

(15) The Commission believed that even if field mice, like other crop pests, were monitored using warning systems, there were no Community provisions and there seemed to be no Greek provisions requiring the Greek authorities to take action to protect crops against field mice. Farmers often only needed to be advised to take the necessary precautions.

(16) From the description of the events provided by the Greek authorities at the time, it seemed that the field mice began by infesting the cereal crops and presented a serious problem for melons and watermelons after the cereals were harvested. Control measures necessary to protect the crops appear not to have been taken in time because the infestation was not detected early enough. However, the Commission considered that there was nothing fundamentally unusual in the fact that melons and watermelons are grown and stored side-by-side with field crops. Similarly, the Commission considered that the operative event for the aid was not a natural disaster, in itself difficult to predict, but the absence of measures to control pests, which are a permanent threat to crops.

(17) The Commission took the view therefore that the compensation for melon and watermelon growers must be regarded as an operating aid, which is prohibited by the Treaty. It considered it necessary therefore to initiate the procedure provided for in Article 88(2) of the Treaty.

III

Comments submitted by Greece

(18) By letter dated 16 December 1998, the Greek authorities submitted their comments on the Commission Decision initiating the procedure provided for in Article 88(2) in respect of the aid that had been notified.

(19) The Greek authorities did not share the view of the Commission that there do not appear to be any Greek provisions requiring them to take action to protect crops against field mice. They stated that control was a matter for the State, and more specifically, for the local agricultural departments. This was evident from Law 6281 of 10 to 15 September 1934 codifying and replacing Law 512 of 20 to 27 December 1914 concerning damage caused by field mice and locusts.

[2] See earlier aid schemes, for example: N 259/97, N 267/97, N 613/97, N 732/97, N 734/97, N 57/98 and NN 72/98.

(20) Under that Law, the Governor of Thessaloniki issued Decision No 12/13639 of 14 July 1997 declaring agricultural areas in the municipality of Epanomi and the communes of Mesimeri and Skholari to be infested with field mice. The decision was valid for a year. The Greek authorities also provided legislation showing that the State had provided for protection against field mice as far back as 1893.

(21) The comments by the Commission to the effect that the operative event for the aid was not a natural disaster but instead the absence of measures to control pests, which are a permanent threat to crops, were considered to be unfounded. According to the Greek authorities, it is clear from the documents provided, such as Document No 12/24313 of 25 November 1998 issued by the Directorate for Agricultural Development of the Prefecture of Thessaloniki — the local department responsible for monitoring and controlling field mice — that the 1997 attacks on melons and watermelons were not at all comparable with the usual annual invasions. Farmers control these themselves using standard methods and compensation was never awarded for the damage they cause. In 1997, according to the Greek authorities, the population of field mice was 500 times or even 1 000 times larger than usual. The Greek authorities considered that it was an exceptional invasion which could not have been foreseen scientifically. In addition, the damage appeared to have been perpetrated in a short three to four-day period following the arrival of the field mice. The Greek authorities used the most effective chemical products available to control the invasion, with the result that the hoped-for effects only began to become apparent six or seven days following application, once the damage had been done.

(22) The Greek authorities considered, in the light of the above, that it was not possible, from both a scientific and a practical point of view, to contain the field mice attack and that it should be considered an exceptional occurrence within the meaning of the Treaty.

IV

Evaluation

(23) According to Article 87(1) of the EC-Treaty, save as otherwise provided therein, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertaking or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

(24) The measure notified by the Greek authorities is State aid within the meaning of the Treaty because it obtains for recipients an economic advantage to which other sectors are not entitled.

(25) The aid is liable to affect trade between Member States in that it favours national production at the expense of the production of other Member States [3]. The fruit and vegetables sector is very open to competition at Community level and sensitive therefore to any measure favouring production in one or other Member State.

(26) The table below shows the level of trade between Greece and the other Member States and third countries with regard, in particular, to melons:

	Fresh melons — Total	
1999	Tonnes	EUR
Exports — Intra-Community	210	61 200
Exports — Extra-Community	831,1	235 200
Total exports	1 041,9	296 400 (*)
Imports — Intra-Community	91,3	107 000
Imports — Extra-Community	485,5	673 300
Total imports	576,8	780 300 (*)

(*) The average price for exports was EUR 0,20/kg and for imports EUR 1,35/kg.

(27) There are exceptions to Article 87 of the Treaty however. Article 87(2)(b) provides in particular that aid to make good the damage caused by natural disasters or exceptional occurrences may be considered compatible with the common market.

(28) The Community guidelines for State aid in the agriculture sector [4] contain provisions on aid intended to compensate for damage caused to agricultural production or means of agricultural production. Point 23.3 provides, however, that the Commission will apply the guidelines to new State aid, including pending notifications from Member States, with effect from 1 January 2000.

[3] Greek production of melons and watermelons taken as a whole accounted for almost one fifth of total output of fresh vegetables in Greece in 1998 and 1999. It represented, in turn, one fifth of Community production of melons and watermelons. Total Greek production of fresh vegetables accounts for around one tenth of Community production.

[4] OJ C 28, 1.2.2000, p. 2.

(29) While the case under consideration concerns a State aid scheme on which the Commission has yet to rule definitively that was notified before 1 January 2000, it is important to note that it initiated the review procedure under Article 88(2) in 1998 and that the assessment contained in it was made in the light of the provisions in force at the time. Consequently, in order not to undermine the rights of defence of the parties, the Commission considers that the measure must continue to be examined in the light of the rules that applied before 1 January 2000.

(30) According to its established practice which applies in the case under consideration [5], the Commission believes that this provision of the Treaty covers national aid intended to compensate for material damage of all kinds caused by earthquakes, flooding, avalanches or landslides. Exceptional occurrences, such as wars, domestic upheaval or strikes and, subject to certain reservations, nuclear disasters and fires (depending on their scale) must be treated in the same way in the view of the Commission. All these occurrences, irrespective of the extent of the damage they cause, justify payment of compensation to individuals.

(31) The Commission considers on the other hand that weather conditions, such as frost, hail, ice, rain and drought, cannot be regarded as natural disasters within the meaning of the Treaty, unless the damage suffered by the aid recipient represents not less than 30 % of normal production (20 % in less-favoured regions as defined in Community legislation). The Commission has always applied this policy in the past when dealing with cases involving compensation for damage caused by natural disasters and inclement weather [6].

(32) In the present case, the Commission doubts whether the invasion of field mice in the melon and watermelon crops described above can be considered an exceptional occurrence in the light of its above policy.

(33) The Commission, as it indicated already when initiating the review procedure, considers that, where a farmer loses livestock as a result of an epizootic or other disease or where his crops are affected by a plant disease, the situation does not normally constitute a natural disaster or exceptional occurrence within the meaning of the Treaty.

(34) The Commission notes furthermore that attacks by field mice are a recurring phenomenon in Greece and farmers have means of combating them at their disposal. It can be concluded therefore that they are not exceptional and their scale does not in itself change their nature, which moreover is well known to the Greek authorities.

(35) Regarding the exceptions contained in Article 87(3), some clearly do not apply and have not been relied on by the Greek authorities.

(36) Consequently, the exceptions laid down in Article 87(3) must be interpreted strictly when any regional or sectoral aid programme or any individual application of a general aid scheme is being examined. In particular, aid may be granted only where the Commission can establish that it is needed to attain one of the objectives in question. Granting the benefit of the exceptions to aid which does not offer such a reciprocal concession would amount to permitting trade between Member States to be adversely affected and distortions of competition which are unjustified having regard to the Community interest and, at the same time, undue advantages for operators in certain Member States.

(37) The Commission considers that the aid in question is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment within the meaning of Article 87(3)(a). It is not intended either to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b). Nor is intended to promote culture and heritage conservation within the meaning of Article 87(3)(d).

(38) Compensation or aid intended to prevent losses of that kind may be authorised by the Commission only under Article 87(3)(c) of the Treaty, which states that aid to facilitate the development of certain economic activities may be considered compatible with the common market. Only the criteria applicable to plant diseases may be applied in the case under consideration because, while it is true that attacks by field mice do not constitute a plant disease, their effect is the same, that is to say, the destruction of agricultural production by living outside agents. By analogy, therefore, these criteria must be applied.

(39) According to Commission working paper VI/5934/86 [7]:

[5] Commission working paper on national aids in the event of damage to agricultural production or means of agricultural production, and national aid schemes covering part of the premiums for insuring against these risks (VI/5934/86, 10.11.1986).

[6] See footnote 2.

[7] See footnote 3.

1. only infections which are of concern to the public (observation and eradication included) and for which Community or national rules provide that the competent public authorities must take action to control the disease in question should be covered. Situations in which farmers are reasonably required to take the responsibilities and assume the normal risks associated with farming do not qualify for aid measures;
2. the aid measures should be preventive, compensatory or a combination of the two;
3. the aid must not give rise to compensation in excess of the damage sustained.

(40) After the review procedure had been initiated, the Greek authorities provided the information the Commission needed in order to be able to assess the measure notified They were able to show, for example, that they are concerned about the occurrence in question and that national legislative arrangements for the monitoring and control of field mice have been in place for some considerable time — originally the Law of 13 to 17 February 1893 on the control of field mice and locusts and now Law 6281 of 10 to 15 September 1934 on the destruction of field mice and locusts.

(41) The extent of the invasion and the fact that on 14 July 1997 the competent authorities had declared the area affected as being infested with field mice appear to indicate that the farmers were in effect faced with a situation that went beyond the normal risks associated with farming which they would be able to assume. The information provided shows that speedy action by the competent authorities and the use of appropriate chemical products did not contain and eliminate the attacks or prevent major damage to the production of melons and watermelons. Compensation for the resulting losses seems to be justified therefore.

(42) The Commission already had noted, when initiating the procedure, that the information provided by the Greek authorities indicated that the aid was compensatory and would not exceed the losses sustained by the farmers. The Commission can only confirm that finding.

(43) The Commission notes, in the light of the above, that the requirements imposed by its established practice are met in the case under consideration, and for that reason it concludes that the measure notified is compatible with the Community rules of competition and, in particular, with Article 87(3)(c) of the Treaty.

V

Conclusion

(44) The measure granting aid to fruit and vegetable growers whose crops were damaged by field mice during the summer of 1997 qualifies for the exception provided for in Article 87(3)(c) of the Treaty since it satisfies the requirements laid down by Community rules. It is compatible with the Treaty therefore and may be put into effect,

HAS ADOPTED THIS DECISION:

Article 1

The State aid scheme proposed by Greece for fruit and vegetable growers whose crops were damaged by field mice in the summer of 1997 is hereby deemed compatible with the common market under Article 87(3)(c) of the Treaty.

The measure may therefore be implemented.

Article 2

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 31 January 2001.

For the Commission

Franz FISCHLER

Member of the Commission