COMMISSION DECISION

of 9 November 2005

concerning the aid scheme that France plans to implement in favour of producers and traders of liqueur wines: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura

(notified under document number C(2005) 4189)

(Only the French text is authentic)

(2007/55/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 the above provision [1],

Whereas:

I. PROCEDURE

(1) By letter dated 23 June 2003, the French Permanent Representation to the European Union notified the Commission under Article 88(3) of the EC Treaty of an aid scheme that it planned to implement in favour of producers and traders of liqueur wines: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura. Further information was sent by letters dated 9 August, 24 and 28 November 2003 and 17 and 24 February 2004.

(2) By letter dated 20 April 2004, the Commission informed France that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited interested parties to submit their comments on the aid in question.

(4) The Commission has received no comments from interested parties.

(5) By letter dated 11 June 2004, recorded as received on 14 June 2004, France submitted its comments to the Commission.

II. DESCRIPTION

(6) The aids notified are a continuation of those previously notified to and approved by the Commission in connection with state aids Nos N 703/95 [3] and N 327/98 [4] and involve publicity and promotion measures, research and experimentation measures, technical assistance measures and measures to promote the production of quality products.

(7) The Court of Justice annulled the Commission decision on state aid N 703/95 in a judgment detailed below.

(8) Seven instalments were paid under the two aid schemes 703/95 and 327/98, which were initially planned to run for five years from 1995/96, the final instalment covering the period from May 2001 to April 2002. However, because of budget constraints imposed by the Government, the final payments are still frozen today. The expiry date of the previous scheme was extended to 30 April 2002.

(9) As regards the products covered, changes were made from the previous schemes. The spirit-drinks sector (Armagnac, Calvados, Cognac) did not ask for the scheme to be extended. Consequently, the French authorities decided to restrict it to liqueur wines with a registered designation of origin.

(10) For all the inter-branch organisations targeted and all the aid measures described below, the total budget planned is EUR 12 000 000, broken down as follows: EUR 9 360 000 for Pineau des Charentes, EUR 2 040 000 for Floc de Gascogne, EUR 360 000 for Pommeau de Normandie and EUR 240 000 for Macvin du Jura.

(11) The research, technical assistance and quality-product development measures will be financed solely by the Member State from the budget. The publicity and promotion measures will be financed partly by the Member State and partly by the inter-branch organisations concerned by means of obligatory voluntary levies (CVO) charged to their members. For publicity measures within the European Union, the Member State will contribute up to a maximum of 50 %.

[1] OJ C 42, 18.2.2005, p. 2.

[2] See footnote 1.

[3] Letter No SG(96) D/9957 to the French authorities dated 21 November 1996.

[4] Letter No SG(98) D/6737 to the French authorities dated 4 August 1998.

(12) The CVO applies to the volumes of liqueur wines with a registered designation of origin marketed by winegrowers, professional distillers, traders and wholesalers located within the production area of the registered designation of origin concerned.

(13) In 2002, the CVO was EUR 12,96/hectolitre for Pineau des Charentes, EUR 0,25/bottle for Floc de Gascogne, EUR 30,79/hectolitre for Pommeau de Normandie and EUR 2,75/hectolitre for Macvin de Jura.

1. **Publicity and promotion measures**

(14) The French authorities explained that the planned programmes will be carried out on certain European Union markets, including the French market, and on markets of non-member countries. The purpose of the planned publicity measures is to encourage the development of purchasing intentions by improving knowledge of liqueur wines, without promoting just the products of specific companies. The products concerned will all be registered destinations of origin: Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura.

(15) These measures benefit all organised producers of liqueur wines who, according to the French authorities, could not alone carry out equivalent measures to improve the marketing of their products.

(16) Steps will be taken to ensure that the publicity campaigns do not aim to dissuade consumers from buying products from other Member States or to disparage those products.

(17) The programmes will involve publicity, information and communication campaigns, comprising a range of measures, including advertising in the media, the creation and distribution of other promotional materials and publicity campaigns at points of sale. They may be accompanied by promotion measures such as public relations measures, participation in fairs, seminars and events, information brochures and documentation and studies of the product's image in the eyes of consumers and the relevance of the campaigns.

(18) The French authorities promised to submit originals or copies of the publicity material to be used for the campaigns.

(19) The aid planned by the above inter-branch organisations for publicity will be limited to 50 % for measures within the European Union including France and 80 % for measures in non-member countries.

(20) The estimated aid in euro for the planned measures is:

	EU	Non-member countries	Total
Floc de Gascogne	1 490 000	212 500	1 702 500
Pineau des Charentes	6 956 000	1 000 000	7 956 000
Pommeau de Normandie	360 000	—	360 000
Macvin du Jura	175 000	—	175 000
Total	8 981 000	1 212 500	10 193 500

2. **Research measures**

(21) According to the French authorities, the purpose of the aid for research and experimentation is exclusively to support general research that is useful to the sector as a whole.

(22) For Pineau des Charentes: microbiology, bacterial deterioration and consequences (identifying the factors promoting the development of lactic bacteria in Pineau des Charentes, perfecting tests for contamination and methods to solve the problem); ageing methods (identifying analytical criteria characteristic of oxidation phenomena and the factors responsible for ageing); constituting an analytical database (general analyses — rate of vinifiable alcohol, sugars, pH, any chemical or bacteriological contamination, metals, cations, volatile compounds, plant-protection product residues).

(23) For Floc de Gascogne: studies of vine varieties and blends, with the aim of optimising the harmonisation of blends of varieties to increase the freshness and fruitiness of Floc de Gascogne (aiming to achieve high sugar contents, intense colour and consistent total acidity); study of Armagnac suitable for producing Floc de Gascogne (analysis — copper, ethanol and ethyl acetate contents, alcoholic strength, improvement of the Armagnac used); study and development of a Floc de Gascogne suited to targeted consumption types, qualitative and quantitative tests, storage.

(24) For Macvin du Jura: technical development (monitoring the maturity of groups of Jura vine varieties in order to determine the state of maturity and the vine varieties best suited for the production of Macvin du Jura); selection and evaluation of vineyards; quality of musts and pressing (effects of extraction methods — enzymage and cold pressing — and of pellicular maceration of musts on the aromatic quality of Macvin du Jura); impact of the quantity of SO_2 during settling; clarification and treatment for bottling (comparison of different methods to ensure that Macvin du Jura is and remains limpid after bottling).

(25) The full cost of the planned research work will be financed. The estimated allocation of aid for this research measure over the five years, including computer and bibliographical expenditure and expenditure on all the means for disseminating the results of the measures implemented to all operators, is: Pineau des Charentes, EUR 912 600; Floc de Gascogne, EUR 118 000 and Macvin du Jura, EUR 65 000.

3. Technical assistance measures

(26) The French authorities described the planned technical assistance measures, which will consist primarily of technical training to improve and control production processes at all levels (primary production, wine-making, tasting) and of measures to disseminate knowledge.

(27) The full cost of this work will be financed, subject to the abovementioned ceiling. The estimated allocation of aid for this work over the five years is: Pineau des Charentes, EUR 280 800 and Floc de Gascogne, EUR 169 000.

4. Aid for the production of quality products

(28) Aid for the production of quality products is planned for Pineau des Charentes and Floc de Gascogne. The following measures are planned: HACCP and traceability (development and dissemination of a reference framework in accordance with the technical and regulatory requirements); technical and economic studies to encourage quality-improvement measures.

(29) The estimated allocation of aid for these measures over the five years is: Pineau des Charentes, EUR 210 600 and Floc de Gascogne, EUR 50 500.

III. INITIATION OF THE PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY

(30) As regards the nature of, the conditions for granting and the method of financing the planned aid, the preliminary examination of the measures did not raise any substantive doubts, although, in the case of the aid for publicity measures, the Commission took the view that France must make an explicit undertaking that any reference to the national origin of the products concerned would be secondary.

(31) The Commission initiated the procedure provided for in Article 88(2) of the Treaty because of doubts concerning the compatibility of the aid with other provisions of Community law, in particular Article 90 of the Treaty.

(32) It should be pointed out that the Commission Decision concerning state aid No N 703/95, of which the notified measure is an extension, was annulled by the Court of Justice ([5]).

(33) In its judgment, the Court recalled that during 1992 and 1993 ([6]) the French government had introduced a differentiated system of taxation for liqueur wines and naturally sweet wines. Thus, from 1 July 1993 an excise duty was fixed of FRF 1 400 per hectolitre ([7]) for liqueur wines and FRF 350 per hectolitre for naturally sweet wines.

(34) During 1993/94, certain French producers refused to pay the additional excise duty on liqueur wines. When that excise strike was suspended in June 1994, the President of the *Confédération nationale des producteurs de vins de liqueur AOC* (National Confederation of Producers of Liqueur Wines with a Registered Designation of Origin; CNVDLAOC) justified that suspension by reference to the fact that, according to him, the French Government was planning to pay French producers of liqueur wines an annual indemnity and compensation for the years 1994 to 1997 in order to compensate for the difference in taxation.

(35) In 1995, the *Associação de Exportadores de Vinho do Porto* (Association of Port Wine Exporters; AEVP) sent two complaints to the Commission. It claimed that there was a link between the difference in taxation between liqueur wines and naturally sweet wines and certain aid paid to French producers of liqueur wines. According to the AEVP, the aid was intended to compensate French producers of liqueur wines for the higher level of taxation, which meant that only foreign producers of liqueur wines had to pay the higher tax. They claimed that this discriminatory taxation infringed Article 95 (now Article 90) of the Treaty.

(36) The Court established that part of the aid in question appeared to favour a category of producers that broadly coincided with the category of French producers of liqueur wines fiscally disadvantaged by the system of taxation and that the possible existence of a link between the system of taxation and the proposed aid scheme in question represented a serious difficulty in determining whether that scheme was compatible with the provisions of the Treaty.

(37) The Court stressed that, under those circumstances, only by initiating the procedure provided for in Article 93(2) of the Treaty (now Article 88(2)) would the Commission have been in a position to appreciate the issues raised in the complaints lodged by the AEVP.

(38) The Court also found that the Commission Decision was devoid of any statement of reasons, i.e. that the Commission had not explained why it had concluded that the complaint lodged by the AEVP claiming a possible infringement of Article 95 (now Article 90) of the EC Treaty was unfounded.

(39) The Court therefore concluded that the contested decision was unlawful, as a result both of the failure to initiate the procedure under Article 93(2) (now Article 88(2)) of the Treaty and of the breach of the duty to state reasons, as provided for in Article 190 (now Article 253) of the Treaty.

([5]) Judgment of the Court in Case C-204/97, *Portuguese Republic v Commission of the European Communities*, [2001] ECR I-03175.

([6]) Rectifying Finance Act No 93-859 of 22 June 1993.

([7]) FRF 1 = EUR 0,15.

(40) Given this judgment, the Commission regarded it essential to make a detailed examination in the light of Article 90 of the Treaty of the notified aid scheme, which is an extension of the scheme approved in the Decision annulled by the Court.

(41) As part of its preliminary examination of the measure, the Commission therefore asked the French authorities whether the state aid concerned was not, in practice, a partial reimbursement, exclusively to French producers of liqueur wines, of the tax provided for in Article 402(a) of the General Tax Code.

(42) In its answers during this first phase, France stressed that there had been no link in the past and there was no link today between the proposed support measures and excise duties, for the following reasons:

(43) According to the French authorities, the amount allocated for the aid (EUR 2,4 million per year, EUR 12 million over five years) is tiny compared with what the sector pays back in excise duties. Thus, the 150 000 hectolitres of liqueur wines with a registered designation of origin marketed, on which an excise duty of EUR 214/hl is imposed, brings in more than EUR 32 million per year in excise revenue.

(44) With this special rate of EUR 214/hl imposed on liqueur wines, compared with EUR 54/hl for natural sweet wines, this sector paid an extra EUR 24 million in excise duties. According to France, this sum was also out of all proportion to the proposed level of aid.

(45) According to the French authorities, no provision had ever been implemented providing for the use of funds collected under Article 402a of the General Tax Code for the benefit of French producers of liqueur wines. Thus, between 1 January 1995 and 31 December 2000, the revenue collected was paid to the *fonds de solidarité vieillesse* (Old-Age Solidarity Fund). Between 1 January 2001 and 31 December 2003, it was paid to a fund intended to finance the reduction of working hours. Since 1 January 2004, this revenue has been paid into the national budget.

(46) After examining this information, the Commission was of the opinion that it did not categorically dispel the doubts regarding the existence of a link between the tax collected and the aid.

(47) The Commission took the view that the fact that the amount of aid (EUR 2,4 million) did not tally with the revenue from excise duties on liqueur wines (EUR 32 million) or with the additional excise duties imposed on liqueur wines compared with natural sweet wines (EUR 2,4 million) did not constitute reasonable proof of the absence of a link between the tax and the aid. It could not therefore be ruled out, at this stage of the procedure, that the aid could, at least in part, be used to provide compensation to French producers of liqueur wines that other Community producers could not receive.

(48) The Commission also took the view that it should comply with the Court's wish to allow third parties to put forward their arguments concerning a possible infringement of Article 90 of the Treaty.

(49) In the decision to initiate the procedure provided for in Article 88(2) of the Treaty, the Commission therefore asked France to provide information and additional figures in support of its position.

(50) Initially, France was asked to specify whether the national authorities had already made an undertaking to producers of French liqueur wines to provide compensation, even partial, for the impact of the introduction of the tax in 1993.

(51) The Commission then asked France to provide figures for the sums collected under the tax on liqueur wines from French products and imported products respectively and for the sums collected, broken down by product (French or Community).

(52) Noting that Pineau des Charentes was, by far, the principal beneficiary of the notified aid, receiving 78 % of the total, followed by Floc de Gascogne with 17 %, then Pommeau de Normandie with 3 % and, finally, Macvin du Jura with 2 %, the Commission asked France to explain if these percentages coincided, for each of these products, with those for the revenue that the State received from the tax on liqueur wines.

(53) Since most of the aid is for publicity measures, France was asked to explain whether this was representative of French Government policy in other agricultural sectors, in particular as regards quality products.

(54) The Commission asked France to provide the budget for aid for publicity campaigns in France for each of the four products concerned.

(55) France was also asked to provide explanations concerning any link between the revenue from the CVO and the resources from the national budget used to finance the aid.

IV. COMMENTS SUBMITTED BY FRANCE

(56) By letter dated 10 January 2005, France submitted the following information and comments:

(57) As regards publicity measures (see recital 30), the French authorities promised that the financing would not be provided for measures placing the emphasis on the French origin of the liqueur wines concerned.

(58) As regards the link between the tax on liqueur wines and the aid, France again underlined that there was no correlation between the revenue from excise duties and the amount of aid from the national budget. The revenue

from excise duties, including that from liqueur wines, is paid into the general state budget. According to the French authorities, the public authorities take decisions on aid for certain economic sectors completely independently. In this case, the aid is intended to remedy a number of structural handicaps affecting these wines, in particular a lack of awareness of the products among consumers, the small size and the dispersal of production facilities and the lack of means to improve market position.

(59) France confirmed that there is no legal text allowing compensation for the excise duties paid by producers of liqueur wines (see recital 50).

(60) As regards the revenue from the release to the market of French liqueur wines and of imported liqueur wines (see recital 51), France first of all explained that the tax statistics (which are broken down by excise duty tariff) do not differentiate between French products and those from other Member States.

(61) In any event, according to the figures produced by the customs authorities, excise duties levied in 2003 on natural sweet wines and liqueur wines of all origins amounted to EUR 142,5 million, broken down as follows: EUR 25,2 million from natural sweet wines, subjected to a duty of EUR 54/hl on a volume of 467 000 hl, and EUR 117,3 million from liqueur wines, subjected to a duty of EUR 214/hl on a volume of 548 000 hl.

(62) In this latter figure, it is possible, on the basis of harvest declarations, to isolate liqueur wines produced in France. These break down as follows: 94 477 hl of Pineau des Charentes, 2 091 hl of Macvin du Jura, 5 680 hl of Pommeau and 6 057 hl of Floc de Gascogne.

(63) France submitted a table showing the distribution of the planned aid between the four inter-branch organisations and the breakdown by volume of liqueur wines produced (see recital 52).

Designation	Volumes produced	Percentage of production	Percentage of planned aid
Pineau des Charentes	112 436 hl (2001)	87 %	78 %
Floc de Gascogne	8 413 hl (2003)	7 %	17 %
Pommeau	5 111 hl (2002)	4 %	3 %
Macvin du Jura	2 717 hl (2002)	2 %	2 %

(64) France noted that the share of each liqueur wine in total production and the percentage of planned aid are close, although they do not coincide totally. It stressed that the distribution of planned aid was the result of discussions between the beneficiary inter-branch organisations and had not been imposed by the public authorities.

(65) As regards the Commission's question about the budget for publicity measures (see recital 53), France provided figures showing that, particularly for quality wines psr, the sums devoted to publicity measures represent between 50 % and 74 % of the overall budget available to the inter-branch organisations.

(66) France forwarded, for each of the four inter-branch organisations concerned, the share of the budget assigned to publicity campaigns in France. The authorities stated that this allocation would remain unchanged if the aid scheme were approved and was the result of a free choice by the inter-branch organisations concerned.

Liqueur wines with a registered designation of origin	2003 promotional budget (EUR)	Promotion in France	Planned aid (EUR 2,4 million/year) (EUR)	Promotion in France
Pineau	1 671 000	74 %	1 872 000	74 %
Floc	279 000	64 %	408 000	64 %
Pommeau	166 000	100 %	72 000	100 %
Macvin	22 600	100 %	48 000	100 %

(67) As regards the possible relation between the revenue from the CVO and the resources from the national budget used to finance the aid, France provided the following table:

Designation of origin	Volume (hl)	Rate of CVO	Revenue from the CVO allocated for promotion (EUR)	Aid from the national budget for promotion (EUR)
Pineau	112 436	EUR 12,96/hl	1 457 000 EUR	1 591 000 EUR
Floc	8 413	EUR 0,25/bottle	279 000 EUR	340 000 EUR
Pommeau	5 111	EUR 30,79/hl	157 000 EUR	72 000 EUR
Macvin	2 717	EUR 2,75/hl	75 000 EUR	35 000 EUR

(68) The revenue that can be used for publicity is not restricted to the amounts collected by means of the CVO. In particular, inter-branch organisations can draw on other resources, for example revenue from the provision of services and the sale of advertising material and from other sources. France confirmed that the publicity measures would receive private financing covering at least 50 % of eligible costs.

(69) For the purposes of comparing planned aid and revenue from excise duties, estimated on the basis of volumes harvested ([8]), France provided the following figures:

Designation	Estimated revenue from excise duties/year (EUR)	Planned aid (EUR)	Aid/excise duties
Pineau des Charentes	20 218 078	1 872 000	9,3 %
Floc de Gascogne	1 296 198	408 000	31,5 %
Pommeau	1 215 520	72 000	5,9 %
Macvin du Jura	447 474	48 000	10,7 %

(70) France stressed that this latter table was particularly significant, because it showed that the aim was not to compensate for the burden of excise duties by means of aid, since there was no quantitative correlation between the two.

V. ASSESSMENT

1. Nature of the aid. Applicability of Article 87(1) of the Treaty

(71) According to Article 87(1) of the Treaty, *save as otherwise provided in this Treaty, 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 undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market*.

(72) For a measure to fall within the scope of Article 87(1) of the Treaty, the following four conditions must all be met: (1) the measure must be financed by the state or through state resources, (2) it must selectively concern *certain* undertakings or production sectors, (3) it must involve an economic advantage for the beneficiary undertakings, (4) it must affect intra-Community trade and distort or threaten to distort competition.

(73) In this case, the Commission considers that these conditions are met:

1.1. *State resources*

(74) The research, technical assistance and quality-product development measures will be financed entirely by the state from its budgetary resources.

(75) On the other hand, the promotion and publicity measures will be financed partly by the state and partly (minimum of 50 %) by the trade organisations concerned from resources drawn primarily from the 'compulsory voluntary levy' (CVO) imposed on their members.

([8]) Volumes may differ from the volumes released for consumption).

(76) The Commission considers that the budget allocated to promotion and publicity measures is made up entirely of state resources, on the basis of the arguments set out below.

(77) The Commission has always taken the view that compulsory contributions from undertakings in a sector that are allocated to funding financial support measures are parafiscal charges and therefore constitute state resources when those contributions are imposed by the state or when the proceeds of those contributions pass through a body established by law.

(78) In this case, the French Government made the levies compulsory as part of an extension of inter-trade agreements. The agreements were extended by means of a decree published in the *Journal officiel de la République française*. These levies therefore require an act adopted by the public authorities to take their full effect.

(79) However, case law of the Court of Justice suggests that, when the nature of a state aid is being assessed, it must also be decided whether the *state is responsible for the measure concerned* ([9]). Recent case law ([10]) has provided a framework that should be examined here.

(80) The Court declared that certain measures financed by the members of trade organisations through resources levied from their members did not fall within the scope of Article 87(1) of the Treaty, since (a) contributions were compulsorily allocated to financing the measures; (b) neither the organisation nor the public authorities had power, at any time, freely to dispose of those resources; (c) the members of the trade organisation concerned had exclusive responsibility for the measure, which did not form part of government policy.

(81) This case law implies that, when the role played by the state is purely and simply that of an intermediary, because it does not intervene in policy choices made by the trade and at no time disposes of the resources collected, which are compulsorily allocated to the measures in question, the criterion of state responsibility is not met. The measures can therefore be considered not to be state aid.

(82) Nevertheless, this case does not meet the criteria stipulated in the Pearle judgment. In particular, the fact that the state contributes 50 % to the financing of these promotion/publicity measures clearly shows that they form part of government policy, and, consequently, the funds used to finance them should be regarded, in their totality, as public resources allocated to measures for which the state is responsible.

1.2. *Selective nature*

(83) The measures benefit exclusively French producers of liqueur wines and are therefore selective.

1.3. *Existence of an advantage*

(84) Producers of liqueur wines enjoy an economic advantage in the form of funding for various measures (research projects, technical assistance, the development of quality products, promotion and publicity). This advantage improves the competitive position of the beneficiaries. According to consistent case law of the Court of Justice, the improvement of the competitive position of an undertaking resulting from state aid implies, as a general rule, a distortion of competition with respect to other undertakings not receiving the same support ([11]).

1.4. *Impact on trade and distortion of competition*

(85) This aid is likely to affect trade between Member States insofar as it promotes national products to the detriment of the products of other Member States. Indeed, there is very open competition in the Community wine sector, as is well shown by the existence of a common organisation of the markets in the sector.

(86) The following table shows, by way of an example, the level of intra-Community and French trade in wine products over the years 2001, 2002 and 2003 ([12]).

Wine (1 000 hl)				
Year	EU imports	EU exports	French imports	French exports
2001	39 774	45 983	5 157	15 215
2002	40 453	46 844	4 561	15 505
2003	43 077	48 922	4 772	14 997

(87) Some of the planned measures are intended to be carried out outside the European Union. However, in view of the interdependence of the markets on which Community undertakings operate, it cannot be ruled out that aid could distort intra-Community competition by strengthening the competitive position of certain operators ([13]), even though the aid benefits products for export outside the Community ([14]).

([9]) Judgment of the Court of Justice in Case C-482/99, *French Republic v Commission*, [2002] ECR I-4397, ground 24 and judgment in Case C-126/01, *GEMO*, [2003] ECR I-13769.

([10]) Judgment of the Court in Case C/345/02, *Pearle v Hoofdbedrijfschap Ambachten*, [2004] ECR I-7139.

([11]) Judgment in Case 730/79, *Philip Morris v Commission*, [1980] ECR 2671, grounds 11 and 12.

([12]) Agriculture in the European Union, Statistical and economic information 2004. Directorate-General for Agriculture, European Commission.

([13]) Judgment of the Court in joined Cases 6 and 11-69, *Commission v French Republic*, [1969] ECR 523, ground 20.

([14]) Judgment of the Court in Case C-142/87, *Belgium v Commission*, [1990] ECR 959, ground 35.

(88) In the light of the above, the measures in question fall within the scope of Article 87(1) of the Treaty and may be declared compatible with the Treaty only if they are eligible for one of the derogations provided for therein.

2. **Compatibility of the aid**

(89) The only possible derogation at this stage is that provided for in Article 87(3)(c), which stipulates that aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest may be considered to be compatible with the common market.

(90) To be able to benefit from that derogation, the aid in question must comply with the rules on state aid. The Commission first of all checks the applicability of Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ([15]). If that Regulation does not apply, the Commission checks whether other legal bases, such as guidelines or Community frameworks, may apply.

(91) Since the planned aid is not restricted to small and medium-sized enterprises, Regulation (EC) No 1/2004 does not apply. The Commission therefore based its assessment on the following instruments: (a) the Community guidelines for State aid in the agriculture sector ([16]) (hereafter 'agricultural guidelines'); (b) the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ([17]) (hereafter 'guidelines on advertising') and (c) the Community framework for state aid for research and development ([18]) (hereafter 'framework').

(92) Since it is intended to finance the planned aid, at least in part, through compulsory contributions assimilated to parafiscal charges, the Commission also assessed the methods of financing the aid.

2.1. *The measures*

2.1.1. Aid for publicity and promotion

(93) The guidelines on advertising ([19]) lay down positive and negative criteria that all national aid schemes must meet. According to points 16 to 30 of the guidelines, advertising must not infringe Article 28 of the Treaty or Community secondary legislation and must not relate to particular undertakings.

(94) The French authorities explained that the measures will not benefit particular undertakings, that publicity will not disparage other Community products and that it will make no unfavourable comparison when referring to the national origin of products.

(95) References to national origin must be secondary to the principal message conveyed to consumers by the campaign and must not be the main reason it is suggested they buy the product. In this case, it is important that the French origin of the products concerned is not the main message of campaigns carried out on French territory.

(96) On the basis of the samples sent by the French authorities and the explicit undertaking made by France on this matter, it can be concluded that no particular emphasis will be placed on the national origin of the products concerned and that any reference to origin will be secondary to the principal message conveyed by the publicity campaigns.

(97) As regards the positive criteria, according to points 31 to 33 of the guidelines on advertising, products benefiting from publicity campaigns must concern one of the following: surplus agricultural products or underexploited species, new products or replacement products not yet in surplus, the development of certain regions, the development of small and medium-sized undertakings, or high-quality products, including organic products.

(98) The French authorities explained that the measures will aim to develop the regions of production concerned by ensuring the disposal of their typical products. The measures will fulfil the need to provide support for the network of small and medium-sized enterprises in the geographical areas concerned: the wine-sector undertakings concerned are essentially small, with few employees and often still family-owned. The measures will also aim to promote high-quality products (registered designations of origin).

(99) With regard, more particularly, to aid for advertising agricultural products bearing a protected designation of origin or a protected geographical indication registered by

([15]) OJ L 1, 1.1.2004, p. 1.
([16]) OJ C 232, 12.8.2000, p. 17.
([17]) OJ C 252, 12.9.2001, p. 5
([18]) OJ C 45, 17.2.1996, p. 5, subsequently amended with regard to its application to the agricultural sector, OJ C 48, 13.2.1998, p. 2.
([19]) OJ C 252, 12.9.2001, p. 5

the Community ([20]), in order to guarantee that aid will not be granted to individual producers, the Commission checks that all producers of the product covered by the registered designation of origin have the same entitlement to the aid. This means that publicity measures must refer to the registered designation of origin itself and not to any logo or label, unless all producers are entitled to use it. In the same way, when, for practical reasons, aid is paid to a producer group, the Commission requests assurances that the aid will actually benefit all producers, whether or not they are members of the group.

(100) The French authorities have given an undertaking that all producers of the products covered by the publicity campaigns and those involved in marketing them will benefit, without discrimination, by means of the measures implemented collectively, from the aid.

(101) As regards the ceilings on aid provided for in point 60 of the guidelines, up to 50 % of the financing for publicity measures may come from state resources and the balance must be provided by the trade bodies and inter-branch organisations that benefit from the measures concerned.

(102) The French authorities have given an undertaking that public financing will cover a maximum of 50 % of the publicity measures carried out within the European Union. The balance will have to be provided by operators in the agricultural sector concerned.

(103) The measures carried out outside the European Union can be financed at the rate of 80 %. This is in accordance with the position adopted by the Commission ([21]), according to which the participation of producers in part-financed measures of this type is provided for, in particular, by Council Regulation (EC) No 2702/1999 of 14 December 1999 on measures to provide information on, and to promote, agricultural products in third countries ([22]). With regard to measures the Community can carry out in non-member countries, Article 9 of the Regulation stipulates that, in the case of public relations, promotional and publicity measures for agricultural products and foodstuffs, part of the financing must remain the responsibility of the proposer organisations. Thus, in the case of measures lasting at least two years, as a general rule, the minimum contribution from those organisations is 20 % of the cost, with a maximum Community contribution of 60 % and a contribution from the Member State of 20 %. It follows that the beneficiaries of this type of measure should make a real contribution of at least 20 % of the cost in order to limit distortions of competition with respect to other Community products.

([20]) In accordance with Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs (OJ L 208, 24.7.1992, p. 1).

([21]) State aid No N 166/2002.

([22]) OJ L 327, 21.12.1999, p. 7.

(104) The French authorities sent the Commission examples of the material for promotion and publicity measures financed under the notified aid scheme, on the basis of which it can be confirmed that the commitments made by those authorities have been kept.

(105) The Commission concludes that the aid fulfils the conditions laid down at Community level.

2.1.2. Aid for research

(106) As regards the aid for research and experimentation measures and that for the dissemination of scientific progress, point 17 of the agricultural guidelines lays down that aid for research and development should be examined in accordance with the criteria set out in the applicable Community framework for State aid for research and development ([23]). The latter specifies that an aid rate of up to 100 % is compatible with the common market, even where research and development is carried out by firms, subject to fulfilment in each case of the four conditions laid down therein:

(a) The aid is of general interest to the particular sector concerned, without unduly distorting competition in other sectors.

(b) Information is published in appropriate journals, with at least national distribution and not limited to members of any particular organisation, to ensure that any operator potentially interested in the work can readily be aware that it is being or has been carried out, and that the results are or will be made available, on request, to any interested party. This information must be published no later than any which may be given to members of any particular organisation.

(c) The results of the work are made available for exploitation by all interested parties, including the beneficiary of the aid, on an equal basis in terms both of cost and of time.

(d) The aid fulfils the conditions laid down in Annex II, 'Domestic support: the basis for exemption from the reduction commitments', to the Agreement on agriculture concluded during the Uruguay Round of multilateral trade negotiations ([24]).

(107) The French authorities have given the following undertaking:

(a) The research will be of general interest to the sector concerned and intended for general use and dis-

([23]) See footnote 18.

([24]) OJ L 336, 23.12.1994, p. 22.

semination and will not affect trading conditions or unduly distort competition in other sectors.

(b) At the end of each programme, when the data gathered have been validated, they will be disseminated in those journals most accessible to those concerned. The results of research will be published and disseminated so as to provide information on and access to those results to all the producers and traders concerned, without discrimination, at the same time as everyone else and on request. The conclusions of the work or summaries will be published in the publications of the inter-branch organisations concerned intended for the general public, in the specialist publications of the technical bodies involved in carrying out the studies and research and in various brochures and other publications. They will be made available to those in the sector via the usual channels in agricultural sector or via the Ministry of Agriculture and Fisheries.

(c) In view of the general interest of the research, no commercial use of the results is planned. The question of the cost of rights of exploitation or of the conditions for access to rights of exploitation will therefore not arise.

(d) The French authorities have given an assurance that the measures financed do not involve any direct payments to producers or processors and that they satisfy the international trade criteria to which the European Union has committed itself.

(108) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.1.3. Aid for technical assistance

(109) Point 14 of the agricultural guidelines lays down that this type of aid is authorised, with an aid intensity of 100 %, where it is available to all those eligible in the area concerned based on objectively defined conditions and the total amount of aid granted does not exceed EUR 100 000 per beneficiary per three-year period or, in the case of small and medium-sized enterprises, 50 % of eligible expenditure, whichever is greater. The French authorities have undertaken to comply with those conditions.

(110) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.1.4. Aid for the production of quality products

(111) Point 13 of the agricultural guidelines lays down that this type of aid is authorised, with an aid intensity of 100 %, where it is available to all those eligible in the area concerned based on objectively defined conditions and the total amount of aid granted does not exceed EUR 100 000 per beneficiary per three-year period or, in the case of small and medium-sized enterprises, 50 % of eligible expenditure, whichever is greater. The French authorities have undertaken to comply with those conditions.

(112) The Commission concludes that this aid fulfils the conditions laid down at Community level.

2.2. *Financing of the aid*

2.2.1. The compulsory levy (CVO)

(113) In accordance with the case law of the Court of Justice ([25]), the Commission normally considers that the financing of state aid by means of compulsory charges may influence the aid by having a protective effect which goes beyond the aid as such. The levies in question (CVO) are compulsory charges. According to the same case law, the Commission considers that aid may not be financed by parafiscal charges that also apply to products imported from other Member States.

(114) The CVO applies to the volumes of liqueur wines with a registered designation of origin marketed by winegrowers, professional distillers, traders and wholesalers located within the production area of the registered designation of origin concerned. The French authorities also explained that, unlike the taxes collected under Community directives on excise duties on alcohol and alcoholic beverages, the inter-branch contributions, by definition, are imposed only on the liqueur wines covered by the registered designations of origin concerned, i.e. exclusively products in the regions specified in the regulations, which means that the CVO is not imposed on liqueur wines from other Member States.

(115) As regards more particularly wholesalers, it cannot be ruled out that they also market imported products. However, the French authorities specified that the inter-branch levy paid by wholesalers will apply only to volumes of the liqueur wines with a registered designation of origin referred to in the notification, i.e. Pineau des Charentes, Floc de Gascogne, Pommeau de Normandie and Macvin du Jura. Therefore, imported wine is excluded from payment of the levy.

(116) Since only the national liqueur wines with a registered designation of origin covered by the measure are subject to the levy it can be concluded that no imported product is taxed.

(117) As regards state aid financed by parafiscal charges, the Court has also established other criteria that should be examined here. In the Nygård case ([26]), the Court laid down

([25]) Judgment of the Court of Justice in Case 47/69 *Government of the French Republic v Commission of the European Communities*, [1970] ECR 487.

([26]) Judgment in Case C-234/99, *Niels Nygård v Svineafgiftsfonden*, [2002] ECR I 3657.

that a charge constitutes a breach of the prohibition of discrimination laid down by Article 90 of the Treaty if the advantage conferred by the use of the revenue generated by the charge benefits in particular those national products subject to it that are processed or marketed on the national market by partially offsetting the charge imposed on them, thus placing national products that are exported at a disadvantage.

(118) The aid for promotion and publicity, which is the only aid to be financed by means of the CVO, benefits the marketing sector and may not confer the same benefits on traders who are involved exclusively in sales outside France or outside the European Union.

(119) The French authorities however have given assurances that both the Pineau des Charentes National Committee and the Floc de Gascogne Inter-Branch Committee finance publicity and promotion measures both in France and in the European Union and non-member countries and stress that their decisions are taken fully independently by their management boards, on which all those involved in the sector are represented.

(120) On the other hand, the inter-branch organisation of cider designations and the inter-branch committee for the wines of the Jura are said not to be planning, for the moment, to finance measures outside the French market. However, according to the French authorities, the decision to concentrate measures on the French market was taken by the sector itself, which gives priority to consolidating its position on the national market, in the knowledge that the sale of these liqueur wines abroad has not yet become the norm in the trade. The French authorities affirm that this policy does not disadvantage any trader, because sales outside France remain marginal and there are no traders specialising in the export trade.

(121) In any event, the French authorities have given an undertaking that exported products will benefit from measures financed by means of the inter-branch levies to the same extent as products marketed in France.

(122) The Commission notes this undertaking and is of the opinion that there is nothing in the information provided by France that indicates that there is, at present, any discrimination against exported liqueur wines.

(123) However, the Commission draws the attention of the French authorities to the implications of the Nygård judgment as regards discrimination between exported products and products marketed on national territory. In particular, the Court ruled that it is up to the national courts to establish the extent of any possible discrimination against particular products. To that end, they must verify, during a reference period, the financial equivalence of the total amounts levied on national products marketed on the domestic market in connection with the charge in question and the advantages afforded exclusively to those products.

2.2.2. Compatibility with other provisions of the Treaty

(124) It should be recalled here that state aid, certain of whose conditions contravene other provisions of the Treaty, cannot be declared to be compatible with the common market. In the present case, the Commission examined whether the complaint lodged by the AEVP against aid N 703/95 concerning a possible infringement of Article 90 of the Treaty was well founded. The Commission also notes that the AEVP submitted no comments under the present procedure.

(125) Article 90 of the Treaty lays down that 'No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products'.

(126) In the present case, the rate of excise duty applicable to liqueur wines in France is the same for French wines and for wines from other Member States.

(127) If the tax paid by French producers were partially offset by the aid that is restricted to those same producers, meaning that only non-French producers were obliged to pay the full amount of the tax, this would constitute discriminatory internal taxation contrary to Article 90 of the Treaty.

(128) It should first of all be noted that taxes do not fall within the scope of the provisions of the Treaty on state aid unless they constitute the means of financing an aid measure and form an integral part of that aid.

(129) It follows that the tax on liqueur wines will only have an impact on the appraisal of the compatibility of the planned aid and therefore need be examined here *if there is a sufficiently close link between the tax and the aid measures.*

(130) The judgment of the Court of Justice of 13 January 2005 in the Streekgewest Westelijk North-Brabant case ([27]), handed down after the procedure provided for in Article 88(2) of the Treaty had been opened with respect to the aid covered by this Decision, clarified the circumstances in which a sufficiently close link must be considered to exist between a tax and an aid measure, meaning that the tax can be considered to form an integral part of the aid.

(131) Ground 26 of the above judgment stipulates in particular that, for a tax, or part of a tax, to be regarded as forming an integral part of an aid measure, it must be *hypothecated* to the aid measure under the relevant national rules, in the

([27]) Not yet published in the ECR.

sense that the revenue from the tax has a direct impact on the amount of the aid and, consequently, on the assessment of the compatibility of the aid with the common market.

(132) In the Streekgewest case, the Court ruled that even if, for the purposes of the budget estimates of the Member State in question, an increase in the amount of the tax is offset by the advantage given (aid), that fact is not sufficient in itself to show that the tax was hypothecated to the tax exemption ([28]).

(133) In this particular case, France indicated that the tax revenues are paid into the general state budget and that there is no law allowing compensation for excise duties paid by the producers of liqueur wines. None of the information in the possession of the Commission suggests the contrary. On the basis of this finding, the Commission can therefore conclude that the revenue from the tax on liqueur wines is not hypothecated to the aid granted to those products, without any need to demonstrate the absence of any quantitative link between the amounts levied by France and the amounts spent in the context of the aid measure.

(134) In the alternative case, the Commission also notes that the tables provided by France following the opening of the procedure provided for in Article 88(2) of the Treaty show that there is no quantitative correlation between the revenue from the tax for the various products and the aid granted for those products.

(135) Since there is no sufficiently close link between the tax and the planned aid, it is not necessary to assess the effects of this tax on the compatibility of the notified measures with the common market, in particular in the light of Article 90 of the Treaty, under the procedure on state aid provided for in Article 88 of the Treaty.

VI. **CONCLUSIONS**

(136) In the light of the above, the Commission concludes that the aid planned by France is eligible for the derogation provided for in Article 87(3)(c) of the Treaty and can be declared compatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The state aid that France plans to implement in favour of producers and traders of liqueur wines totalling EUR 12 000 000 is compatible with the common market under Article 87(3)(c) of the Treaty.

The implementation of this aid is therefore authorised.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 9 November 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

([28]) Ground 27 of the judgment.