DECISIONS

COMMISSION DECISION

of 13 July 2011

on levies for Interbev

(notified under document C(2011) 4923)

(Only the French text is authentic)

(2012/131/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular the first subparagraph of Article 108(2) thereof [1],

Having invited interested parties to submit comments in accordance with the first subparagraph of Article 108(2) TFEU, and having regard to those comments,

Whereas:

I. **PROCEDURE**

(1) In the light of the information received regarding the measure in question, the European Commission asked the French authorities a number of questions by letter of 2 October 2001. The Permanent Representation of France to the European Union replied to the Commission by letter of 9 November 2001.

(2) Since the measure was applied without prior authorisation by the Commission, it was entered in the register of non-notified aid under number NN 39/03.

(3) The Commission initiated the procedure provided for in Article 108(2) TFEU with respect to the aid measure in question by letter No C(2003) 2057 final on 9 July 2003.

(4) The decision to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission invited the other Member States and interested third parties to submit their comments on the aid in question. The Commission did not receive any comments from third parties. The French authorities sent their comments by letters of 8 and 10 October 2003 and 13 September and 29 November 2005.

(5) On 25 February 2011, a request for further information was sent to France, and a meeting took place on 29 March 2011.

(6) The French authorities replied by letter of 24 May 2011.

II. **DESCRIPTION OF THE MEASURE IN QUESTION**

1. *LEVIES FOR INTERBEV*

1.1. INTER-BRANCH ORGANISATIONS (IPO) AND THE COMPULSORY VOLUNTARY LEVIES SCHEME

(7) Inter-branch organisations (IPO) are umbrella groups that bring together, by farm sector, the different professions which are the most representative of agricultural production, and, if appropriate, processing, marketing and distribution, and which are recognised as inter-branch organisations by the competent administrative authority. Their existence, missions and operation are governed by Articles L. 631-1 et seq. of the Rural Code. In order for this type of organisation to be recognised, the competent authorities must check to ensure that they meet various criteria, in particular that their statutes comply with the legislation (Article L.632-1 of the Rural Code), and that their constituent organisations are representative.

(8) The mission of the IPO is to act in the interests of all the players in a sector, and they can conclude agreements for that purpose. These agreements and the collection of voluntary levies intended to fund the measures provided for in these agreements can be made compulsory ('be extended') by joint ministerial decree to all the stakeholders in the sector, whether or not they belong to a professional organisation which is an IPO member, so long as they comply with objectives laid down in legislation. The main aim of these agreements is to promote market awareness, inter-professional relations, quality and products. The Rural Code only authorises the extension of the agreements where there is 'a common interest' based on measures 'in line with the general interest and compatible with the rules of the Common Agricultural Policy' (cf. Article L.632-3 of the Rural Code).

[1] With effect from 1 December 2009, Articles 87 and 88 of the EC Treaty have become Articles 107 and 108 TFEU, respectively. The provisions of the respective articles are identical in terms of substance. For the purposes of this Decision, references to Articles 107 and 108 TFEU should be understood as references to Articles 87 and 88 of the EC Treaty, where appropriate.

[2] Commission Decision C(2003) 2057 final of 9 July 2003 (OJ C 189, 9.8.2003, p. 21).

(9) The arrangements with regard to the collection and distribution of compulsory voluntary levies are governed individually by each IPO agreement.

1.2. THE ROLE OF THE STATE

(10) Although the IPO are legal persons governed under private law and their funding is guaranteed by contributions from the sector concerned, the functioning of the compulsory voluntary levy system requires State intervention, particularly with regard to the following:

(a) prior to any extension request, the IPO must be recognised by the public authorities and comply with the objectives of national agricultural policy and the common agricultural policy (cf. recitals 7 and 8);

(b) once it has been recognised, the IPO can ask the State to make their agreements compulsory by issuing a joint ministerial decree on the extension. In this way, every operator in the production zone in question becomes subject to the compulsory voluntary levy collected by a representative IPO (cf. recital 8);

(c) pursuant to Article L.632-8-1 of the Rural Code, the competent authorities receive activity reports from each IPO and a summary of the implementation of each extended agreement.

2. *OBJECTIVE OF THE AID*

(11) The aid's objective is to promote research and development, technical assistance and advertising for the benefit of the livestock industry.

2.1. LEVIES INTRODUCED BY INTERBEV

(12) Two types of inter-branch levies, which were made compulsory by the public authorities, are the subject of this Decision. The first relates to the levy on meat and offal of bovine animals and sheep intended for human consumption and on live bovine animals and sheep dispatched to EU countries or exported ('the meat levy') and the second relates to the levy for the benefit of the National Livestock Fund ('the FNE levy').

(13) The inter-branch agreements introducing the levies for Interbev that are the subject of this Decision are as follows:

Meat levy		FNE levy	
IPO Agreements	Extending Decree	IPO Agreement	Extending Decree
25.7.1995	18.12.1995	15.6.1994	18.12.1995
12.6.2001	19.9.2001		19.4.2001

(14) The National Inter-Branch Livestock and Meat Association (Interbev) is the French inter-branch organisation for the livestock and meat sector. It was set up on 9 October 1979 on the initiative of the organisations representing the livestock and meat sectors handling bovine animals, sheep and equine animals and was recognised by Decree of 18 November 1980 ([3]). Its role is to defend and advance the common interests of the livestock sector and the sector's industrial, skilled trades' and marketing activities. Interbev was recognised in 1980 as the inter-branch organisation for the livestock and meat sector. Interbev comprises thirteen national organisations representing the different professions in the livestock and meat sector: producers, live animal traders, slaughterers, wholesalers, processors and distributors.

(15) Its two main missions are the establishment of inter-branch agreements and reciprocal communication. It also supports meat research programmes in the meat sector. The inter-branch agreements signed within the framework of the association lay down the rules governing the sector's activities. These agreements may be submitted to the public authorities under the extension procedure. Once the extension has been officially declared in a joint decree issued by the Ministers for Agriculture and Economic Affairs, the measures laid down in an inter-branch agreement are binding on all operators in the sector.

2.2. MEAT LEVY

(16) Under the inter-branch agreement of 25 July 1995, which was extended by Decree of 18 December 1995 ([4]), Interbev introduced a levy on the meat and offal of bovine animals and sheep intended for human consumption and on live bovine animals and sheep dispatched to EU countries or exported.

(17) The levy was imposed on three categories of meat and/or animal:

(a) meat and offal of animals slaughtered in France intended for human consumption, set at 0,084 French francs (FRF)/kg ([5]) of carcase and paid by the physical or legal person who owned or co-owned the animal at the time of its slaughter;

(b) meat introduced or imported for consumption in France, set at FRF 0,042/kg and paid by the physical or legal person who first owned or co-owned the meat on the national territory;

([3]) Information taken from www.interbev.asso.fr
([4]) *Official Journal of the French Republic* No 299 of 27 December 1995.
([5]) FRF 1 = EUR 0,15.

(c) live bovine animals or sheep dispatched to EU countries or exported, set at FRF 7/head and paid by the physical or legal person who last owned or co-owned the animals on the national territory.

(18) The inter-branch agreement of 25 July 1995 was replaced by another inter-branch agreement of 12 June 2001, which was extended by Decree of 19 September 2001 ([6]). Article 1 of the Decree establishes that the agreement is extended for a period ending three years after the Decree's publication date, i.e. on 30 September 2004.

(19) The inter-branch agreement of 12 June 2001 maintained the categories of meat and/or animals to which levies were applied and increased the amount of contributions to: FRF 0,1574 (EUR 0,024) for meat and offal of animals slaughtered in France intended for human consumption; FRF 0,0656 (EUR 0,010) for meat imported for consumption in France; and FRF 11,15 (EUR 1,7) for live bovine animals or sheep dispatched to an EU country or exported.

(20) The inter-branch agreement of 12 June 2001 also introduced the possibility of a partial refund of the meat levy at the time of dispatch to an EU country or export to a third country. The refund rate was FRF 0,0656/kg (EUR 0,010).

(21) The prolongations in 1995 and 2001 did not apply to the levy on meat imported for consumption in France. Therefore the compulsory voluntary meat levy is not imposed on these products.

2.3. FNE LEVY

(22) Under an inter-branch agreement of 15 June 1994, extended by Decree of 18 December 1995 ([7]) and by Decree of 19 September 2001 ([8]), Interbev introduced a levy for the National Livestock Fund. The latter Decree establishes that the extension period for the agreement ends three years after the Decree's publication date, i.e. on 30 September 2004.

(23) This professional fund, managed in the framework of the National Livestock Confederation (CNE), was set up to meet two key objectives. Firstly, to provide an incentive for organisations to restructure and promote their adjustment to the future needs of a falling number of livestock farmers trying to cope with Community production management policies, and secondly, to contribute to the continued development of genetic resources and applied research, which in future will continue to be key factors in the competitiveness of livestock farming.

(24) A levy to service this fund is borne by physical or legal persons who are owners or co-owners of bovine animals and sheep slaughtered in France. Based on the latest data submitted by the French authorities, this levy was set at FRF 0,02/kg (EUR 0,003) of slaughtered meat net (or FRF 7/head for adult bovine animals, FRF 2,40/head for veal and FRF 0,36/head for sheep — EUR 1,05, EUR 0,36 and EUR 0,054 respectively).

(25) According to the French authorities, the revenue from this levy is used for genetic improvement, the genetic information system, biotechnology and economic studies.

2.4. THE MEASURES FUNDED

(26) The Interbev resources generated by meat levies are used for three types of measure:

(a) communication and promotion for the benefit of the sector;

(b) technical assistance;

(c) research and experimentation.

(27) Communication and promotion involves the financing of campaigns on various topics relating to quality meat products, more general beef and veal campaigns on television and radio, and public relations measures. Promotion measures on external markets are also financed, including participation in trade fairs and promotions.

(28) Technical assistance measures cover certification and qualification of farms, in particular to overcome the obstacles faced by operators dealing with these procedures. Interbev also draws up joint specifications for the sector and is involved in the distribution and implementation of the charter on best livestock-farming practice and the code of best meat practice. It is also involved in improving transactions throughout the sector.

(29) Research and experimentation measures are geared to the needs of the sector and focus on food safety, quality management and animal welfare.

(30) The Interbev resources generated by the FNE levy are used for the following measures:

(a) genetic improvement;

([6]) *Official Journal of the French Republic* No 227 of 30 September 2001.
([7]) *Official Journal of the French Republic* No 299 of 24 December 1995.
([8]) *Official Journal of the French Republic* No 227 of 30 September 2001.

(b) genetic information system on livestock;

(c) applied research programmes;

(d) economic studies;

(e) various activities.

3. *DURATION OF THE MEASURE*

(31) This Decision covers the period from 1996 to 2004, the year in which the last inter-branch agreement which is the subject of this procedure expired.

4. *BENEFICIARIES*

(32) The beneficiaries of the aid measure in question are farmers of bovine animals and sheep.

(33) The aid measure is envisaged to benefit mainly agricultural producers, processors and distributors as final beneficiaries. It is provided for that certain activities can be carried out by private companies on behalf of distributors.

(34) This Decision is without prejudice to the Commission's position regarding the compatibility of the selection procedure for the service providers that Interbev has chosen to carry out its activities with public procurement rules.

5. *GROUNDS FOR INITIATING THE PROCEDURE* ([9])

(35) Firstly, the Commission noted that these levies were made compulsory by the French government under an extension procedure for inter-branch agreements. The agreements are extended by means of decrees published in the French Official Journal. It follows that this type of contribution therefore requires an official act in order to take full effect. Consequently, when the procedure was initiated the Commission regarded the levies as parafiscal charges, i.e. public resources and therefore illegal aid as notification had not been given.

(36) According to point 194 of the Community's guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([10]) (hereinafter: the agricultural guidelines), any unlawful aid must be evaluated in accordance with the rules and guidelines in force at the time the aid is granted. The agricultural guidelines have applied since 1 January 2007. The previous guidelines, the Community guidelines for State aid in the agricultural sector (2000-2006) ([11]), had applied since 1 January 2000. Any aid granted after that date must be assessed in the light of the 2000 guidelines. By contrast, any aid granted before that date must be assessed in the light of the rules and practice applicable before 1 January 2000. The aid in question has been granted since 1996.

(37) Since this is State aid funded by means of parafiscal charges, the measures funded by this aid and the funding of the aid itself must be assessed by the Commission.

5.1. THE AID MEASURES

5.1.1. ***Promotion measures***

(38) The Commission has recalled that the compatibility of the aid granted before 1 January 2002 must be assessed in the light of the rules on State aid for advertising of agricultural products and certain products not covered by Annex II to the EEC Treaty ([12]) and that the compatibility of aid granted after that date must be assessed in the light of the Community guidelines applicable to State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I ([13]) products. Essentially, those two texts are based on the same principles in that they lay down negative and positive criteria to be met. As regards the ceiling on the aid, the sector must fund at least 50 % of the cost of these measures. In this case, the measures are funded entirely out of parafiscal charges and by definition the levy paid by operators in the sector reaches that level. Therefore when the Commission initiated the procedure, it considered that the conditions had been met.

5.1.2. ***Technical assistance measures***

(39) The Commission has recalled that the compatibility of the aid granted before 1 January 2000 must be assessed in the light of Commission practice based on the proposal for the appropriate measures relating to aids granted by Member States in the livestock and livestock products sector ([14]) and, in the case of aid granted after that date, in the light of the agricultural guidelines. Essentially, Commission practice prior to 2000 and the agricultural guidelines are based on the same principles. Thus, aid covering 100 % of eligible expenditure is authorised for this type of aid. Also, the aid must be accessible to all potentially interested operators in the sector. Therefore the Commission considered that the conditions have been met.

([9]) For a complete overview of the Decision, see Commission Decision C(2003) 2057 final of 9 July 2003, previously referred to in footnote 2.

([10]) OJ C 319, 27.12.2006, p. 1.

([11]) OJ C 28, 1.2.2000, p. 2.

([12]) OJ C 302, 12.11.1987, p. 6.

([13]) OJ C 252, 12.9.2001, p. 5.

([14]) Commission letter to Member States No S/75/29416 of 19 September 1975.

5.1.3. ***Research and experimentation measures***

(40) The Commission has recalled that the compatibility of this aid must be assessed in the light of the Community framework for State aid for research and development ([15]) and the Commission communication amending that framework ([16]). Thus, aid intensities of up to 100 % are compatible with the common market provided that the four conditions laid down in the framework are met: the aid must be of general interest to the sector, the information must be published in the appropriate journals, the research findings must be made available on an equal basis in terms of both cost and time, and the aid must meet the international trade criteria to which the EU has committed itself. Therefore when the Commission initiated the procedure, it considered that the conditions had been met.

5.1.4. ***Measures funded by the FNE levy***

(41) The Commission was unsure about the precise nature of the measures funded by the FNE levy, the aim of which is to provide an incentive for organisations to restructure and promote their adjustment to the future needs of livestock farmers, as well as to contribute to the continued development of genetic resources and applied research. According to the French authorities, the revenue from this levy is used for genetic improvement, the genetic information system, biotechnology and economic studies. This information is not sufficient to allow the Commission to conclude whether or not the measures are compatible with any Community provisions that may apply. Therefore at this stage the Commission is unable to arrive at a conclusion as to whether the measures funded by the FNE levy are compatible with the EC Treaty ([17]).

5.2. FUNDING OF THE AID

5.2.1. ***Meat levy***

(42) From 1 January 1996 this levy is imposed on, inter alia, live bovine animals and sheep dispatched to other Member States and bovine meat and sheep products dispatched to other Member States, although a partial refund of the levy was introduced in 2001 for the latter. According to a ruling of the Court of Justice of the European Union (hereinafter: the Court of Justice) ([18]), a charge constitutes a breach of the prohibition of discrimination laid down by Article 110 TFEU if the advantages accrued, from the use of the revenue generated by the charge, particularly benefit the taxed national products, which are processed and marketed on the national market, by partially offsetting the burden borne by these products and placing exported national products at a disadvantage.

(43) At the investigation stage of the procedure, the Commission considered that the advantage accrued from imposing the charge on products and animals dispatched to other Member States to finance the promotion, technical assistance, research and experimentation measures carried out by Interbev could be incompatible with the internal market under the Treaty and particularly Article 107, and that the State aid so financed could be incompatible with the Treaty. The charge could disadvantage the production of these animals as regards their exportation to other Member States because the allocation of the revenue was, by its very nature, likely to encourage national production marketed in France to the detriment of exported national production, and the level of the charge did not take into account differences in profit generated by national products depending on whether they are marketed internally or externally.

5.2.2. ***FNE levy***

(44) On the basis of the information available at this stage, the Commission did not have reason to believe that this levy had been imposed on animals imported from or dispatched to other Member States.

6. *COMPATIBILITY OF COMPULSORY LEVIES WITH THE SYSTEM OF COMMON ORGANISATION OF MARKETS*

(45) With regard to the compatibility of compulsory levies with the system of common organisation of markets (hereinafter: CMO), the Commission considered that in this case, based on the Case C-355/00 Freskot [2003] ECR I-5263 ([19]), compulsory levies did not interfere, directly or indirectly, with the price of the end products concerned as the contributions did not influence product prices, which were determined by the free market. Therefore, the burden on meat products and livestock is neutralised by the advantage accrued from the funded activities. Consequently, the effects of the contribution on prices can be considered to be very limited or inexistent.

III. **COMMENTS FROM FRANCE**

(46) By letters of 8 and 10 October 2003, the French authorities submitted their comments on the Commission's decision to initiate the procedure provided for in Article 108(2) TFEU in respect of the aid measure in question.

(47) By letters of 13 September and 29 November 2005, the French authorities submitted other comments in response to the Commission's requests for additional information.

([15]) OJ C 45, 17.2.1996, p. 5.
([16]) OJ C 48, 13.2.1998, p. 2.
([17]) France sent information after the initiation of the formal investigation procedure, as indicated in section III (Comments from France).
([18]) Case C-234/99, *Nygård* [2002] ECR I-3657.
([19]) [2003] ECR I-5263.

(48) Following the Commission's request for additional information sent on 25 February 2011 and the meeting on 29 March 2011, the French authorities submitted other comments by letter of 24 May 2011.

(49) The French authorities note that the Commission regards the revenue from these compulsory voluntary inter-branch levies as comparable to parafiscal charges that could lead to distortions of competition in the internal market. The French authorities also stated that the measures should have been notified. They went on to make the following remarks:

1. *SCOPE OF THE COMMISSION'S INVESTIGATION ACCORDING TO THE FRENCH AUTHORITIES*

(50) With regard to the contributions levied pursuant to the inter-branch agreements of 15 June 1994 for the National Livestock Fund and of 18 December 1995 for Interbev, the French authorities considered that the Commission opened its investigation by letters of 16 January 1995 (aid NN 34/95) and 18 March 1996 and closed it by letter (SG(96) D/6396) of 15 July 1996, concluding that 'the measures under investigation fall exclusively within the scope of Council Regulation (EEC) No 2328/91 and must be investigated on the basis of that Regulation. Article 35(2) of that Regulation excludes the application of Articles 92 and 93 TFEU'.

(51) In reply to the Commission, which pointed out that at the time it had not expressed its views on the other Interbev measures (as aid NN 34/95 only covered investments to restructure the production of suckler cows), the French authorities stated that their reply to a Commission letter of 18 March 1996 was as follows: 'the National Livestock Fund is intended […] to improve livestock selection and to support research, particularly genetic research […]' (letter of 13 September 2005).

(52) The French authorities therefore consider that the Commission was fully informed of the existence of communication, promotion, research and experimentation measures funded by Interbev and that it could have requested additional information from the French authorities in connection with this case. Since the Commission took no further action in response to this letter, the French authorities concluded that the Commission was satisfied with the information it had received.

(53) In a subsequent letter to the Commission, which referred to a request for additional information sent (30 May 1996) following the above-mentioned letter, the French authorities stated that they had never received a request for additional information and that the failure of the Commission to act between 30 May 1996 and 2 October 2001 constituted implicit acceptance of the compatibility of the measures of which it had been notified.

(54) Moreover, the French authorities state that the Commission was aware of Interbev's communication measures as a result of Case C18/95 on measures for the sheep sector.

(55) Consequently, as the Commission did not continue with its investigation of these agreements, the French authorities believed that they had legitimate grounds for considering that the Commission did not oppose their implementation.

(56) In view of this, the French authorities believed that this procedure only covered the inter-branch agreement of 12 June 2001.

(57) In their letter of 24 May 2011 and at the meeting of 29 March 2011, the French authorities finally submitted information on the entire period to the Commission.

2. *GROUNDS JUSTIFYING THE NON-NOTIFICATION OF THE AID ACCORDING TO THE FRENCH AUTHORITIES*

(58) As regards the measures carried out using the revenue from levies from the new inter-branch agreements dating from 12 June 2001, for the benefit of Interbev and the FNE, the French authorities did not believe it was necessary to notify them because they were funded solely from the private contributions of the sector concerned.

3. *INTERBEV MEASURES*

(59) With respect to the measures carried out by Interbev, the French authorities note that the Commission considers that they are compatible with the Community guidelines on State aid in agriculture (2000-2006) and the Community guidelines on State aid for advertising of agricultural products and certain products not covered by Annex I, based on the analysis of the information submitted to it by letter of 9 November 2001. They confirm that during, the period covered by this Decision, Interbev funded its measures on advertising, technical assistance, research and experimentation in the same way as set out in the letter of 9 November 2001.

4. *FNE RESEARCH AND TECHNICAL ASSISTANCE MEASURES*

(60) As regards the FNE, the French authorities submitted the following explanations by letter in reply to the decision to initiate the procedure (8 and 10 October 2003).

(61) The revenue from the FNE levy is used to fund technical assistance and applied research. The French authorities have confirmed that the measures were devised in compliance with points 14 and 17 of the Community guidelines on State aid in agriculture (2000-2006).

(62) Firstly, it is explained that the revenue from the FNE levy was used to fund the following measures:

(a) genetic improvement;

(b) genetic information system on livestock;

(c) applied research programmes;

(d) economic studies;

(e) various activities.

4.1. GENETIC RESEARCH

(63) The FNE's involvement in genetics is strictly limited to supporting certain joint measures under the national genetic improvement programme, as defined by the National Commission for Genetic Improvement (CNAG), which includes representatives of the French government, the profession itself, research and teaching.

(64) FNE funds mainly support work by the genetic department of the Livestock Breeders Institute whose primary mission is to: support organisations on the ground that contribute to the genetic improvement of ruminants; draw up, maintain and develop specifications setting out procedures on the ground; check the development and recording procedures for data in joint information chains that is required for the genetic evaluation of reproducers; adapt indexing procedures in partnership with INRA, implement international data sharing procedures and distribute official indices in France.

4.2. MODERNISATION AND DEVELOPMENT OF LIVESTOCK INFORMATION SYSTEMS

(65) As part of its support for the modernisation and development of livestock information systems, the FNE contributes to updating the genetic information system (SIG). Modernisation began in 1995 and was needed to improve and standardise an information system set up over 20 years ago in order to ensure more efficient management of genetic data, integrate the new functions required for indexation and to cut costs.

(66) The FNE also took part in an economic, technical and legal feasibility study for a livestock information system for professionals (SPIE) that aims to provide and develop official identification data and other data at a professional and inter-branch level.

4.3. APPLIED RESEARCH MEASURES

(67) The FNE has funded several applied research programmes and is committed to supporting studies of general interest to the livestock sector, for example, programmes on applied research and transfer in reproductive biotechnologies (embryo transfer, sexing, in-vitro fertilisation and cloning). This research involves new embryology techniques, which are of particular interest in view of the future use of molecular markers and marker-assisted selection. The programme has resulted in a significant improvement in the yield from traditional embryo transfer, the development and optimisation of the French method for embryo sexing, the development of ultrasound-guided oocyte retrieval and the improvement of the in vitro fertilisation technique.

(68) The FNE also participated in a pilot research project on homologous recombination. This INRA-led project uses transgenic technology and involves the controlled modification of the genome of animals by targeting the introduction of a transgene to a specific site in the DNA. Gene targeting is intended to enable the replacement of one gene by another without using genetically-modified organisms.

(69) The FNE participated in the IDEA programme on the electronic identification of bovine animals and sheep. It also funded national projects in the framework of the EU's IDEA programme, which seeks to improve the reliability of animal identification by harnessing new techniques of electronic use.

4.4. ECONOMIC STUDIES

(70) The FNE has helped to fund economic studies that are critical to livestock organisations, enabling them to meet the challenges posed by successive CAP reforms, enlargement, recent crises and international developments.

(71) All these studies have been conducted under the aegis of the Livestock Economic Group (GEB), managed by the Livestock Breeders Institute, which guarantees the coherence of the different research programmes requested by the profession and their complementarity with existing studies.

(72) Work has resulted in the monitoring of the current situation for the milk and meat sectors in France and Europe, in-depth monthly economic analyses on animal production in France, Europe and the world, specific monitoring of prices and production costs and negotiations at EU and WTO level.

(73) The GEB's economic observatory offers a practical understanding of farm operations, as used by the livestock networks, and the synergy between a macro and micro economic approach.

4.5. VARIOUS MEASURES

(74) Occasionally the FNE is called on to support the launch of new inter-branch projects intended to facilitate the sector's adaptation to socioeconomic developments, such as the drawing up of the charter on best livestock

farming practice that is the most important initiative of its kind in Europe, and the launch of a communication project on the livestock profession, in the aftermath of the second BSE crisis, in order to restore confidence between producers and consumers.

4.6. COMMUNITY GUIDELINES

(75) The French authorities emphasised that all the funding measures were of general interest to bovine animal and sheep producers and were never limited to the benefit of individual or particular groups of operators.

(76) FNE funds most often accounted for less than 50 % of the cost of programmes and research. Funds can be higher for certain one-off projects, but the amount never exceeds 100 % of the cost.

4.6.1. ***Technical assistance***

(77) Funding for economic studies is allocated on the basis of an aid ceiling of EUR 100 000 per producer per three-year period and the rule stipulating that results must be accessible to all the producers.

4.6.2. ***Applied research***

(78) The French authorities confirmed that the definitive results from each economic study, like the data from each research programme, are widely distributed. The findings from all the FNE funded research are systematically published and distributed so that producers and their organisations on the ground can benefit from and have equal access to them.

(79) Two main distribution channels are used, namely the professional livestock organisations and the Livestock Breeders Institute, through which technical and economic publications are sent out to producers and technicians.

(80) Given the general interest character of the research, no commercial use of the results is planned. The real beneficiaries of the measures are truly the producers of bovine animals and sheep to whom the theoretical and practical findings are released.

(81) The research funded does not give rise to any direct payments to producers or processors.

5. *LEVIES ON IMPORTED ANIMALS AND MEAT*

5.1. INTERBEV LEVIES

(82) With regard to the levy on meat from livestock imported from other Member States or third countries to France, on the basis of information submitted by the French authorities on several occasions, the Commission has noted that the scope of the joint ministerial decrees extending the inter-branch agreements of 1995 and 2001 has always excluded the levies on imported meat.

5.2. FNE LEVY

(83) The Commission noted that the FNE levy could be imposed on animals reared outside France but imported into France for slaughtering.

(84) In their letter of 6 October 2003, the French authorities recognised the pertinence of this objection from a Community guidelines viewpoint. As a result, they agreed to modify the text of the agreement with a view to excluding any levy on animals reared outside the national territory, but imported into France for slaughtering. The French authorities offered to submit the new text to the Commission as soon as the new agreement had been formalised and signed.

(85) They added that none the less in practice the imports of live animals were uncommon and did not run the risk of distorting competition. According to the customs service, there were 24 933 and 22 250 head of adult finished livestock imported into France in 2001 and 2002 respectively. National slaughterings amount to 4 million head; therefore, imports of live animals only represent 0,58 % of the total amount slaughtered. Moreover, more than 70 % of imports are of high conformation and high price animals, destined for a niche market that is specific to northern France. Based on the average import prices for these animals (EUR 1,50/kg of live animal, i.e. equivalent to EUR 2,5/kg net according to customs office figures), the FNE levy on these animals must have been approximately a thousandth of the value of the animal.

(86) The French authorities state that, firstly, the compulsory voluntary levies collected have been minimal, as non-payment for imported animals was common and later became systematic, and secondly, the amount of the compulsory voluntary levy in question was so low in relation to the value of the animals that it could not have distorted competition. In their letter of 24 May 2011, France provided printed copies of the levy calculations and company statements showing that refunds might have been made in certain cases, but that this practice was not compulsory.

(87) By the letters of 13 September 2005 and 24 May 2011, the French authorities confirmed that, from 2003, the FNE levy was only imposed on animals reared and slaughtered in France ([20]).

([20]) Circular of 2 February 2005: 'It is recalled that the Interbev and FNE levies only apply to slaughtering operations for animals reared and slaughtered in France. Consequently, animals born and reared outside of France are exempted […] at the time of slaughter'.

6. *LEVIES ON ANIMALS AND MEAT DISPATCHED TO OTHER MEMBER STATES*

6.1. INTERBEV LEVIES

(88) Concerning the levy imposed on meat dispatched to other Member States, the Commission referred to the risk of discrimination in a levy system that did not take into account the dispatch outside the national territory of certain products subject to levy and fears that such a measure favours national production marketed in France.

(89) As set out in recitals 16 et seq., meat dispatched to other Member States was subject to a compulsory voluntary levy of EUR 0,0126/kg and, under the inter-branch agreement of 12 June 2001, a compulsory voluntary levy of EUR 0,024/kg. Moreover, under that agreement a refund of EUR 0,010/kg was provided for.

(90) In relation to the compulsory voluntary levies imposed on animals dispatched to other Member States, in their letter of 24 May 2011 the French authorities provided explanations to show that these levies were proportional to the advantages accrued from the measures funded by the levies.

(91) The French authorities explained that the live animals dispatched were bovine store cattle. As set out in recitals 17 et seq., these animals were subject to the compulsory voluntary levy which was calculated per head and not per kilogram of meat.

(92) The French authorities then provided a calculation allowing the evaluation of equivalence between weight per head and per kilogram. Under the inter-branch agreement of 25 July 1995 the compulsory voluntary levy for slaughter was FRF 0,084/kg of carcase, and the compulsory voluntary levy for the dispatch of live animals was FRF 7 per head of adult bovine animal (Article 4). However, one live store animal weighs approximately 250 to 280 kg, which amounts to an average weight in meat (ratio of 65 %) of 163 kg. Therefore, the levy of FRF 7 per head was equivalent to a levy of FRF 0,042/kg, comparable to half of the levy imposed on meat.

(93) The inter-branch agreement of 12 June 2001 had maintained this system of equivalence. The amounts (in euro) were as follows: compulsory voluntary levy at slaughter of EUR 0,024/kg of carcase (Article 2) and a compulsory voluntary levy at dispatch of live animals of EUR 1,7/head of adult bovine animal (Article 4). Therefore, the levy of EUR 1,7/head of adult bovine animal was equivalent to a levy of EUR 0,0104/kg, comparable to half of the meat levy.

(94) The French authorities consider that the total revenue (EUR 38 136 670) generated by the compulsory voluntary levy on products dispatched to other Member States (live animals and meat) represented 15 % of the total amount of the revenue generated by all the compulsory voluntary levies collected by Interbev between 1995 and 2004 i.e. (EUR 252 855 282). Based on an overview of the period from 1995 to 2004, the French authorities believe that the amount of revenue generated was proportionate to the advantage accrued to products dispatched to other Member States as a result of the measures undertaken.

(95) Furthermore, the French authorities indicate that the animals and meat dispatched outside of France benefited from the measures undertaken outside the national territory, representing EUR 21 490 848, as well as the measures of use to all animals and products irrespective of their intended use. They state that of all the measures of use to animals and products, which amounted to EUR 91 231 075, it is fair to consider that only EUR 28 280 000 funded measures undertaken outside the national territory.

(96) The measures that specifically concerned exported animals and products related to advertising (for example international trade fairs, professional information and public relations campaigns, International Green Week in Berlin, training on cutting held abroad). The measures that had an impact on animals and products as a whole, regardless of their markets, in France and outside France included publicity campaigns on high-quality European beef, offal, beef breeds, and a number of research activities on food safety, animal welfare, quality management, product characterisation, and the certification and traceability procedures for bovine meat, the results of which were widely circulated in France and abroad.

(97) The French authorities believe that the benefits accruing to the exported products as a result of inter-branch measures amounted to EUR 49 770 000. This sum should be compared to the compulsory voluntary levy imposed on the products that amounted to EUR 38 136 670. The share of the compulsory voluntary levy paid by French export products during the period from 1995 to 2004 was balanced in relation to the advantages accrued from the measures funded by Interbev.

6.2. FNE LEVY

(98) In their letter of 13 September 2005, the French authorities confirmed that the exported products were not subject to a specific FNE levy.

IV. **ASSESSMENT OF THE AID**

(99) Articles 107 and 108 of the TFEU apply to all the agricultural products listed in Annex I to the Treaty subject to a common organisation of the market (all agricultural products except horse meat, honey, coffee, alcohol of agricultural origin, vinegar made from alcohol and cork) in accordance with the different regulations governing respective common organisations of markets.

1. *EXISTENCE OF AID WITHIN THE MEANING OF ARTICLE 107(1) TFEU*

(100) Article 107(1) TFEU states that 'Save as otherwise provided in the Treaties, 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 internal market.'

(101) Articles 107 to 109 TFEU were rendered applicable in the bovine meat sector at the material time by Article 40 of Council Regulation (EC) No 1254/1999 ([21]) on the common organisation of the market in beef and veal. Before the adoption of the latter, these articles were rendered applicable in the same sector by Article 24 of Regulation (EEC) No 805/68 of the Council of 27 June 1968 on the common organisation of the market in meat and veal ([22]). They were rendered applicable in the sheepmeat and goatmeat sectors by Article 23 of Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat ([23]). Prior to the adoption of the latter, the articles in question were rendered applicable in the same sector under Article 22 of Council Regulation (EC) No 2467/98 of 3 November 1998 on the common organisation of the market in sheepmeat and goatmeat ([24]) and, prior to the adoption of that Regulation, by Article 27 of Council Regulation (EEC) No 3013/89 of 25 September 1989 on the common organisation of the market in sheepmeat and goatmeat ([25]).

(102) Articles 107 to 109 TFEU are applicable today, for the sectors mentioned in recital 32 et seq. of this Decision, by Article 180 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ([26]) ([27]).

1.1. EXISTENCE OF A SELECTIVE ADVANTAGE

(103) According to the Court of Justice, measures which, whatever their form, are likely directly or indirectly to favour certain undertakings or are to be regarded as an economic advantage which the recipient undertaking would not have obtained under normal market conditions are regarded as aid ([28]). In this case, the support granted has favoured certain undertakings in the cattle and sheep farming sector by implementing measures likely to benefit producers in, or parts of, the sectors represented by Interbev.

(104) Moreover, according to the case-law of the Court of Justice, measures which, in various forms, mitigate the charges which are normally included in the budget of an undertaking and which, therefore, without being subsidies in the strict sense of the word, are similar in character and have the same effect are also considered to be aid ([29]).

(105) In terms of the existence of an advantage, such an advantage must be demonstrated in relation to the potential beneficiaries of the measures to the benefit of the meat sector and the inter-branch levies in question and their financing. In this case, the support granted has favoured certain undertakings in the cattle and sheep farming sector by implementing measures likely to benefit producers in the industry.

1.2. AID GRANTED BY THE STATE OR THROUGH STATE RESOURCES

(106) According to the case-law of the Court, for a benefit to qualify as State aid, it must first be awarded directly or indirectly through State resources and, secondly, it must be attributable to the State ([30]).

(107) As regards the nature of the levies in question (compulsory voluntary levies), the Commission considers that the levies constitute parafiscal charges, i.e. public resources. The Commission's assessment is based on the following considerations.

(108) Firstly, it must be recalled that, according to settled case-law, and paragraph 139 of the Salvat ([31]) judgment in particular, the distinction between private and public organisations is not 'a determining factor for the application of the rules of the Treaty on State aid'. In addition, the Ladbroke judgment ([32]) categorically states that Article 107(1) TFEU 'covers all the financial means by which the public sector may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Consequently, even though the sums (…) are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State aid and for the measure to fall within Article 107(1) of the Treaty.'

([21]) OJ L 160, 26.6.1999, p. 21.
([22]) OJ L 148, 28.6.1968, p. 24.
([23]) OJ L 341, 22.12.2001, p. 3.
([24]) OJ L 312, 20.11.1998, p. 1.
([25]) OJ L 289, 7.10.1989, p. 1.
([26]) OJ L 299, 16.11.2007, p. 1.
([27]) Derogation (without consequences for this Decision) from Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006 and (EC) No 378/2007, and repealing Regulation (EC) No 1782/2003 (OJ L 30, 31.1.2009, p. 16).

([28]) Case C 280/00, *Altmark Trans and Regierungspräsidium Magdeburg* [2003], ECR I-7747; and Joined Cases C-34/01, C-35/01, C-36/01, C-37/01 and C-38/01 [2003] ECR I-14243.
([29]) Case C-355/00 [2003] ECR I-5263.
([30]) Case C-303/88 *Italy* v *Commission* [1991] ECR I-1433, paragraph 11, Case C-482/99 *France* v *Commission* [2002] ECR I-4397, paragraph 24, and Case C-126/01 *GEMO* [2003] ECR I-13769, paragraph 24.
([31]) Case T-136/05, *Salvat and Others* v *Commission* [2007] ECR II-4063.
([32]) Case C-83/98, *France* v *Ladbroke Racing and Commission*, ECR I-3271, paragraph 50

(109) Firstly, in the light of this case-law, the Commission considers that the fact that the compulsory voluntary levies in question consist of contributions from the private sector and are not at the permanent disposal of the State does not constitute sufficient grounds for concluding that they fall outside the scope of Article 107(1) TFEU. In this context, the Commission must also examine the level of control exercised by the State in relation to the income derived from the compulsory voluntary levies in question and the State's capacity to redirect the resources to finance the aid measures.

(110) In this case, the Commission notes that the government's approval, in the form of the recognition afforded to Interbev, is a prerequisite for the introduction of compulsory voluntary levies. Therefore, although Interbev is an entity under private law, its capacity to introduce compulsory voluntary levies in its business sector is subject to State approval of its operation and objectives (cf. recital 14 of this Decision).

(111) In addition, it is stipulated under France's Rural Code that the levies become compulsory for all members of the branches in question by virtue of being extended by joint ministerial decree (cf. recital 10 of this Decision). This type of levy therefore requires an official act in order to take full effect ([33]).

(112) On the basis of these facts, the Commission considers that the compulsory voluntary levies examined can be considered to be under the control of the State and to constitute State resources.

(113) Secondly, the use of the revenue generated by the compulsory voluntary levies is determined by the objectives and operational context of the inter-branch organisation as defined in the Rural Code (cf. recitals 7-10). Consequently, the State has the ability to channel the revenue derived from the compulsory voluntary levies to finance the aid measures carried out by Interbev. The benefits afforded by Interbev can thus be considered ascribable to the State.

(114) It is also recalled that, in case C-345/02 Pearle ([34]), the Court of Justice identified a series of aspects which serve to determine whether parafiscal charges should be considered State resources ascribable to the State when they are essentially collected by an inter-branch organisation for the benefit of its members.

(115) In accordance with the test proposed by the Court of Justice in this case, compulsory levies collected by an intermediary organisation representing the undertakings of certain economic sectors are not considered to be State resources if all the following conditions are met:

(a) the measure in question is established by the professional body that represents the undertakings and employees of the sector and does not serve as an instrument for the implementation of State policies;

(b) the objectives of the measure in question are fully financed by the contributions of the undertakings in the sector;

(c) the financing method and the percentage/amount of the contributions are established within the professional organisation by representatives of the employers and employees without State intervention;

(d) the contributions are obligatorily used for the financing of the measure, without the possibility for the State to intervene.

(116) It is clear, however, that the contested measure does not fulfil all the conditions of the Pearle judgment. Firstly, the existence, role and operation of Interbev are regulated by national legislation (cf. recitals 10 and 14) and its financing by the compulsory voluntary levy requires State intervention (cf. recital 10). Moreover, Article 632-2-1 of the Rural Code stipulates that inter-branch organisations contribute to the implementation of national and European Union economic policies and may enjoy priority status in the allocation of public aid. Interbev may therefore be considered as an instrument for the implementation of a policy supported by the State carrying out activities in the general interest of the inter-branch organisation (cf. recitals 40 and 61). Furthermore, as set out in Interbev's statutes, the budget of the inter-branch organisation may be supplemented by a direct subsidy from the State. Lastly, in view of the general interest of the research activities financed (cf. recital 10), it cannot be claimed with certainty in this case that the beneficiaries of the aid are always the parties subject to the charges.

(117) In the light of the considerations set out above, the Commission concludes that the measures in question are ascribable to the State and financed by State resources.

1.3. IMPACT ON TRADE AND DISTORTION OF COMPETITION

(118) In order to fall within the scope of application of Article 107(1) TFEU, aid must also affect competition and trade between Member States. This criterion is based on the assumption that the beneficiaries of the aid engage in an economic activity.

(119) Lastly, in order to establish whether the aid in question falls within the scope of Article 107(1) of the TFEU, it must be established whether it is liable to affect trade among Member States and distort competition.

(120) The Court has ruled that when State financial aid strengthens the position of a category of undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid ([35]), which is sufficient to demonstrate distortion of competition.

([33]) *Salvat and Others* v *Commission*, referenced under footnote 31 above.
([34]) Case 345/02, *Pearle and Others* [2004] ECR 2004 I-7139.
([35]) Case C-730/79, *Philip Morris* v *Commission* [1980] ECR 2671.

(121) The existence of trade between Member States in the meat sector is sufficiently demonstrated by the existence of a common organisation of the market in the sector ([36]). By way of example, intra-Community trade in meat products in France represented around 15 % of total trade in the Union in the products in question ([37]).

(122) The aid granted is therefore likely to affect trade between the Member States since it favours domestic production to the detriment of production in other Member States. At the material time to which this Decision relates, the meat sector was extremely open to competition at Community level and, therefore, highly sensitive to any measure in favour of production in any Member State.

1.4. CONCLUSIONS ON THE NATURE OF 'AID' WITHIN THE MEANING OF ARTICLE 107(1) OF THE TFEU

(123) The Commission considers, in the light of the considerations set out above, that the measures implemented in this case to the benefit of the beneficiaries provide them with an advantage which cannot be enjoyed by other operators and distort or threaten to distort competition by favouring certain undertakings and the production of certain goods since they are likely to affect trade between Member States.

(124) For these reasons, the Commission concludes that the measure in question falls within the scope of Article 107(1) TFEU and constitutes State aid.

2. *EXAMINATION OF THE COMPATIBILITY OF THE AID*

2.1. SCOPE OF THE DECISION

(125) The French authorities consider that the Decision in question should relate only to the inter-branch agreement of 12 June 2001, as explained above (cf. recital 56).

(126) In the context of aid NN 34/95, the Commission did not have any information relating to the FNE levies, nor to the system for the financing of aid in this context ([38]). In addition, its position only related to aid for investments in favour of certain farmers, particularly in the context of first acquisition of animals. The Commission did not adopt positions either with regard to the compulsory voluntary levy system, aid for genetic improvement, the genetic information system, biotechnology and economic studies, or the promotion, technical assistance and research and experimentation measures financed by the Interbev levies, which were not notified in accordance with Article 108(3) TFEU.

(127) These measures were mentioned by France in its letter of 29 April 1996 in the context of case NN 49/96, but only with regard to measures relating to the FNE.

(128) In response to that letter, the Commission requested additional information in a letter dated 30 May 1996 (VI/021559) in order to clarify the nature and scope of the financial instruments facilitating the restructuring of the livestock organisations involved in the identification and selection of animals and the development measures. The Commission also requested that a fact sheet be completed. However, the French authorities did not reply to the letter and the Commission did not adopt a position on the compatibility of the measures in question with the internal market. The Commission opened the procedure provided for in Article 108(2) TFEU, in relation to the aid in question, by a letter dated 9 July 2003 ([39]).

(129) The inter-branch agreements of 15 June 1994 to the benefit of the livestock fund and of 18 December 1995 to the benefit of Interbev, as well as the State aids financed by these agreements, therefore still have to be examined in the light of the rules on State aid since they have not been approved by the Commission.

(130) Consequently, this Decision also concerns the agreements of 15 June 1994 to the benefit of FNE and 18 December 1995 to the benefit of Interbev. In its analysis of these agreements, the Commission did not comment on the measures financed by the above inter-branch levies.

(131) As indicated in recital 57, the French authorities implicitly accepted this interpretation.

2.2. APPLICATION OF ARTICLE 107(3) TFEU

(132) There are exceptions to the general principle of the incompatibility of State aid with the TFEU pursuant to Article 107 of the TFEU, whilst it is clear that some are not applicable to the case in point, notably the exceptions under paragraph 2. These were not cited by the French authorities.

(133) As regards the exceptions provided for in Article 107(3), they must be strictly interpreted when examining any regional or sectoral aid programme or any individual aid under general aid schemes. In particular, they can only be granted in cases where the Commission can establish that the aid is necessary to achieve one of the stated aims. Granting the benefit of the aforementioned exceptions for aid without such consideration would amount to allowing trade between Member States to be damaged and competition distorted, which would be unjustifiable with regard to Community interests, and by the same token, would allow undue advantage for the operators of certain Member States.

([36]) 'Agriculture in the European Union, statistical and economic information 2002', Directorate-General for Agriculture, European Commission.

([37]) *Source:* Eurostat.

([38]) Joined Cases C-261/01 and C-262/01, *Van Calster and Cleeren* [2003] ECR I-12249, paragraphs 51 and 52: '51. […], the Member State is required, in order to comply with that obligation, to notify not only the planned aid in the narrow sense, but also the method of financing the aid inasmuch as that method is an integral part of the planned measure. 52. Since the obligation to notify also covers the method of financing the aid, the consequences of a failure by the national authorities to comply with the last sentence of Article 93(3) of the Treaty must apply also to that aspect of the aid'.

([39]) OJ C 149, 9.8.2003, p. 21.

(134) The Commission considers that the contested aid 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 107(3)(a). It is also not intended 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 107(3)(b). Nor is it intended to promote culture and heritage conservation within the meaning of Article 107(3)(d).

(135) Article 107(3)(c) does however provide that aid intended 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 internal market. To qualify for the exception referred to in the aforementioned Article, the aid must contribute to the development of the sector in question.

2.3. IDENTIFYING THE GUIDELINES APPLICABLE TO THE NON-NOTIFIED MEASURES

(136) In accordance with point 194 of the Community guidelines for State aid in the agriculture and forestry sector and the Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([40]), all unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 ([41]) must be assessed in accordance with the texts in force at the time when the aid was granted ([42]).

(137) Specific guidelines have applied for the agriculture sector since 1 January 2000. Any aid granted after that date must therefore be assessed in the light of the guidelines applicable to the period concerned. Between 1 January 2000 and 31 December 2006, the Community guidelines for State aid in the agriculture sector applied. With effect from 1 January 2007, the Community guidelines for State aid in the agricultural and forestry sector 2007-2013 have applied.

(138) Conversely, any aid granted before that date must, where appropriate, be assessed in the light of the measures and practice applicable before 1 January 2000.

2.4. COMPATIBILITY OF THE COMPULSORY VOLUNTARY LEVIES WITH THE CMO SYSTEM

(139) With regard to the question of the compatibility of the compulsory voluntary levies with the CMO system, against the background of Case C-355/00 Freskot ([43]) the Commission considers that, in the present case, the compulsory voluntary levies do not interfere, directly or indirectly, with the price of the end products concerned since the levies do not have an impact on product prices, which are determined by the free market. The levy on meat products and animals reared is therefore offset by the benefit represented by the measures financed. Consequently, it can be considered that the impact of the levies on prices is very limited.

(140) In the light of the information provided, the financing of this scheme does not give rise to any objections.

2.5. ANALYSIS IN THE LIGHT OF THE APPLICABLE RULES

2.5.1. ***Measures funded by the meat levies***

2.5.1.1. **Promotion**

(141) As regards the aid for promotion, the compatibility of the aid granted prior to 1 January 2002 must be assessed in the light of the rules on State aid for advertising of agricultural products and certain products not covered by Annex II to the EEC Treaty ([44]) and, for aid granted after that date, in the light of 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 ([45]).

(142) The 1987 rules and the 2002 guidelines apply, for the most part, the same principles. They set out negative and positive criteria which must be complied with by all national aid schemes. Accordingly, the measures in question must not be advertising measures which conflict with the provisions of Article 34 TFEU or secondary Community law, nor measures for the benefit of specific undertakings. According to the information provided by the French authorities, it is possible to conclude that the objectives of these measures are compliant with several of the positive criteria set out in the aforementioned rules and guidelines since some relate to the objective of reducing excess agriculture production and others to the objective of developing high-quality products and healthy eating.

(143) The French authorities have also explained that the messages conveyed by the advertising measures will not seek to dissuade consumers from buying products from other Member States or denigrate those products, nor will they benefit the brand of a particular undertaking or an individual producer.

(144) As regards the ceilings on aid, 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, either in the form of voluntary

([40]) Communication from the Commission, C(2002) 458 of 25 February 2002.
([41]) OJ L 83, 27.3.1999, p. 1.
([42]) Extract from the Commission's Communication: '[the Commission] shall always assess the compatibility of unlawful State aid with the common market in accordance with the substantive criteria set out in any instrument in force at the time when the aid was granted'.

([43]) ECR [2003] I-5263.
([44]) See footnote 12.
([45]) See footnote 13.

contributions or by the levying of parafiscal charges or compulsory contributions. In the present case, the measures are entirely financed by parafiscal charges, where the professionals' financial contributions to the campaigns correspond by definition to 50 % of costs.

(145) The Commission considers that the public aid paid to finance the promotion measures in question complied with the criteria established under the Community legislation applicable in this area.

2.5.1.2. **Technical assistance**

(146) The compatibility of the aid granted prior to 1 January 2000 must be assessed in the light of Commission practice based on the proposal for appropriate measures relating to aids granted by Member States in the livestock and livestock products sector ([46]) and, in the case of aid granted after that date, in the light of the agricultural guidelines ([47]).

(147) Essentially, Commission practice prior to the year 2000 and the agricultural guidelines adopted in that year are based on the same principles. Thus, aid covering 100 % of eligible expenditure is authorised in particular for technical assistance measures based on information and accounting support, measures to spread new techniques, and measures relating to the training of farm workers.

(148) A new condition was introduced with the adoption of the guidelines in 2000 when it was stipulated that the aid must be accessible to all eligible parties operating in the area in question under objectively defined conditions, and that the total amount of aid granted cannot exceed EUR 100 000 per beneficiary per three-year period or, in the case of SMEs, 50 % of eligible expenditure, whichever is greater. The French authorities have explained that the criterion of access to the work carried out by all potentially interested professional parties is fully respected. The Commission considers, on the basis of the information provided by the French authorities relating to the very high number of beneficiaries in particular, that the criterion relating to the aid ceiling is respected.

(149) The Commission considers that the public aid paid to finance the technical assistance measures in question complies with the criteria established by the Community rules applicable in this area.

2.5.1.3. **Research and experimentation**

(150) With regard to research and development measures, the compatibility of aid granted before 1 January 2000 must be verified in the light of the Community framework for State aid for research and development and the Commission Communication amending that framework, and for aid granted after that date, in the light of the agriculture guidelines, which refer to the framework under point 17.

(151) In accordance with the Community framework, a level of aid up to 100 % may be compatible with the internal market, even where research and development is carried out by firms, subject to fulfilment in each case of the following four conditions:

(a) the aid is of general interest to the sector concerned, without causing undue distortion of competition in other sectors;

(b) information must be published in appropriate newspapers with at least national circulation and not limited to the members of individual organisations to ensure that any operator potentially interested in the work can easily find out 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 on a date not later than any information given directly to members of individual organisations;

(c) the results of the work will be provided for exploitation by all parties interested, including the beneficiary of the aid, on an equal basis in terms of both cost and timing;

(d) the aid fulfils the conditions laid down in Annex II 'Domestic support: the basis for exemption from the State aid reduction commitments' to the Agreement on Agriculture concluded during the Uruguay Round of Multilateral Trade Negotiations ([48]).

(152) The French authorities have explained in this regard that Interbev's research and technical experimentation measures are carried out to the benefit of all stakeholders in the sector. In addition, the association shares the knowledge acquired and the technical recommendations by organising training sessions and providing documentation, notices, summaries and information brochures, including in electronic format. Any farmer, slaughterer, butcher, processor or vendor in the bovine and sheep sector can obtain information on the results and access summaries of the research on request without discrimination and at the same time as any other party. The French authorities have also given an assurance that the measures financed do not involve any direct payment to producers or processors and that they satisfy the international trade criteria to which the European Union has committed itself.

(153) The Commission considers that the public aid paid to finance the research and experimentation measures in question complied with the criteria established in Community legislation applicable in this area.

([46]) See footnote 14.
([47]) See footnote 11.
([48]) OJ L 336, 23.12.1994, p. 1.

2.5.2. ***Measures funded by the FNE***

2.5.2.1. **Technical assistance**

(154) As regards aid for technical assistance, the compatibility of the aid granted prior to 1 January 2000 must be assessed in the light of Commission practice based on the proposal for appropriate measures relating to aids granted by Member States in the livestock and livestock products sector ([49]) and, in the case of aid granted after that date, in the light of the agricultural guidelines ([50]).

(155) Commission practice prior to 2000 and the agricultural guidelines are essentially based on the same principles. Thus, aid covering 100 % of eligible expenditure is authorised, in particular for technical assistance measures based on information and accounting support, measures to spread new techniques, and measures relating to the training of farm workers.

(156) A new condition was introduced with the adoption of the guidelines in 2000 when it was stipulated that the aid must be available to all those eligible in the area concerned based on objectively defined conditions and that the total amount of aid granted may not exceed EUR 100 000 per beneficiary per three-year period or, in the case of SMEs, 50 % of eligible expenditure, whichever is greater.

(157) The French authorities have emphasised that all the measures financed are of a general interest for all bovine and sheep farmers; the benefits derived from the measures are never limited to individual operators or specific groups of operators.

(158) The FNE's financial participation accounts for less than 50 % of the cost of the work and research in most cases. It may account for more than 50 % for some isolated projects, but the aid level never exceeds 100 %.

(159) The economic studies are financed with due heed to the limit of EUR 100 000 per farmer per three-year period, on the one hand, and to the rule according to which all farmers must have access to the results, on the other.

(160) The Commission considers that the public aid paid to finance the technical assistance measures in question complies with the criteria established in Community legislation applicable in this area.

2.5.2.2. **Research and experimentation**

(161) With regard to research and development measures, the compatibility of aid granted before 1 January 2000 must be verified in the light of the Community framework for State aid for research and development and the Commission Communication amending that framework, and for aid granted after that date, in the light of the agriculture guidelines, which refer to the framework under point 17.

(162) In accordance with the Community framework, a level of aid up to 100 % may be compatible with the internal market, even where research and development is carried out by firms, subject to fulfilment in each case of the following four conditions:

(a) the aid is of general interest to the sector concerned, without causing undue distortion of competition in other sectors;

(b) information must be published in appropriate newspapers, with at least national circulation and not limited to the members of individual organisations, 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 on a date not later than any information given directly to members of individual organisations;

(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 timing;

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

(163) In the case at hand, the data pertaining to each economic study, as well as the results obtained at the end of each research programme once they are definitive, are widely disseminated. The results of all work supported by the fund are systematically published and disseminated to ensure discrimination-free access for farmers and their organisations in the field, thereby enabling them to benefit from the results.

(164) Two main distribution channels are used: professional farming organisations and the Livestock-Breeders' Institute, by means of technical and economic publications with high circulations among farmers and specialists in the field.

(165) 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 does not therefore arise. The real beneficiaries of the measures are all bovine and sheep farmers, to whom the theoretical and practical results of the work are sent.

([49]) Commission letter to Member States SG(75) D/29416 of 19 September 1975.
([50]) See footnote 11.

(166) The studies financed do not involve any direct payment to producers or processors. They satisfy the general and specific conditions 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.

(167) The Commission considers that the public aid paid to finance the research and experimentation measures in question complies with the criteria established in Community legislation applicable in this area.

2.6. FINANCING OF THE AID

(168) Since State aid financed by a parafiscal charge is involved (compulsory voluntary levies), the Commission must examine both the measures financed, i.e. the aid, and the way they are financed. According to the Court of Justice ([51]), where the method of financing the aid, in particular through compulsory contributions, forms an integral part of the aid measure, the Commission must take that method of financing into account when examining the aid.

(169) In order to define whether the measure forms an integral part of the aid measure, several elements should be taken into account: the revenue from the charge must be reserved exclusively for funding the aid and must necessarily be allocated to the financing of the aid ([52]), the charge must be hypothecated to the aid measure under the relevant national rules ([53]), and the amount of the charge should have a direct impact on the amount of State aid ([54]).

(170) The Commission takes note of the following points on the application of these criteria to the measures in question. Firstly, the legal basis of the measures in question, i.e. the inter-branch agreements, extended by decree, define the compulsory levies. This means that each levy is collected exclusively for the benefit of the fund in question, without being allocated to Interbev's general budget or that of the State. The levy must therefore be considered as being reserved for funding the aid and allocated for the financing of the aid, on basis of the national rules in force. Secondly, the aid measures are financed exclusively by the sectoral levies. Interbev does not make use of its other sources of funding to supplement the financing of the measures planned. It can therefore be concluded that the amount of the charge has a direct impact on the amount of State aid.

(171) On the basis of these elements, the Commission concludes that the method of financing the aid, in this case the compulsory voluntary levies, forms an integral part of the aid measure, and should therefore be taken into account by the Commission when examining the aid. As the method of financing the aid could infringe Article 110 TFEU, the Commission cannot state that the scheme was compatible if it discriminates between imported products and national ones ([55]), or between exported products and national ones ([56]).

(172) In this case, the levy was raised on domestic production, as well as on exported meat and animals (in the form of compulsory voluntary levies on meat) and imported meat and animals (in the form of the compulsory voluntary levies collected by the FNE).

(173) The Commission's examination relates to several aspects linked to the meat levy and the FNE levy since these levies could have an impact on intra-Community trade.

2.6.1. ***The meat levies (Interbev levies)***

2.6.1.1. **Imported meat**

(174) As set out under recital 82, the levy on imported meat was not mandatory under French legislation between 1996 and 2004. It therefore falls beyond the scope of this Decision since it does not constitute State aid as such. One of the decisive criteria cited under recital 10 — mandatory force — is not fulfilled. Consequently, and on the basis of the information set out above, the measures financed by the levy raised on imported products do not constitute State aid and, accordingly, do not fall within the scope of this Decision.

2.6.1.2. **Exported products**

(175) As set out in recitals 16 et seq. ([57]), with effect from 1 January 1996 the levy has been imposed on products exported to other Member States, although a partial refund of the levy was introduced in 2001. In the light of the case-law of the Court of Justice, this levy could result in discrimination in respect of exporters if the measures financed by the levy are not applicable to them and do not offset the expenses borne ([58]). It must therefore be demonstrated that the allocation of the revenue from this levy has not favoured domestic produce marketed in France to the detriment of domestic produce exported.

(176) The measures relating specifically to exported animals and products included promotion actions in particular (for example, international trade fairs, professional information and public relations activities, Green Week in Berlin, training on cutting held abroad).

([51]) Cases C-261/01 and C-262/01 [2003] ECR I-12249, paragraph 49.
([52]) Case C-174/02 [2005] ECR I-85, paragraph 26; Case C-526/04 [2006] ECR I-7529, paragraph 44.
([53]) Case C-174/02 [2005] ECR I-85, paragraph 26; Cases C-266/04 to C-270/04, C-276/04 and C-321 to C-325/04 [2005] ECR I-9481, paragraphs 46-49.
([54]) Case C-174/02 [2005] ECR I-85, paragraph 28; Joined Cases C-393/04 and C-41/05 [2006] ECR I-5293, paragraph 46.
([55]) Joined Cases C-261/01 and C-262/01 [2003] ECR I-12249, paragraph 48.
([56]) Case C-234/99 [2002] ECR I-3657.
([57]) See also recital 88 et seq.
([58]) Case C-234/99, referred to in footnote 56 above.

(177) Measures relating to all animals and products, irrespective of their markets, in France and outside France, included publicity campaigns on high-quality European beef, offal, beef breeds, and a number of research activities on food security, animal welfare, quality management, product characterisation, and the certification and traceability of bovine meat, the results of which were circulated widely in France and abroad.

(i) *Meat and animals exported to other Member States*

(178) According to the French authorities, measures which benefited products and animals exported to other Member States, exclusively or together with domestic products, were not the only measures financed by the compulsory voluntary levies.

(179) It must therefore be established on a year-by-year basis and in overall terms whether the products exported to other Member States benefited from the measures undertaken by the inter-branch organisation.

(180) The table below sets out the breakdown of revenue from the compulsory voluntary levies in euro for the different measures undertaken by Interbev year by year, as well as the percentage of measures intended exclusively for exported meat and animals and the percentage intended for measures including domestic products and animals.

Year	Measures intended for all products	Measures intended for products in France only	Measures intended for exported products only	Total measures per year	As a % of all measures financed (rounded)
1996	5 517 088,95	13 308 769,70	2 101 111,35	20 926 970,00	36
1997	9 244 861,43	8 723 278,25	2 104 379,32	20 072 518,99	56
1998	8 995 703,14	11 214 605,23	927 146,63	21 137 455,00	46
1999	9 780 064,41	10 308 559,00	1 058 778,36	21 447 401,76	50
2000	8 245 970,18	10 126 453,50	991 754,32	19 264 178,00	47
2001	9 447 359,23	15 115 169,26	1 720 267,50	26 282 796,00	42
2002	10 553 240,96	24 553 282,92	4 326 569,12	39 433 093,00	37
2003	12 626 096,22	21 010 195,68	3 761 566,70	37 398 458,60	43
2004	11 288 281,00	20 527 149,24	4 045 129,24	35 860 559,48	42

(181) The table indicates that, over the entire period considered, exported products benefited on average from around 44 % of all measures financed by the compulsory voluntary levy. It should be noted that the French authorities have indicated that, for the same period, total revenue from levies raised on exported products accounted for 15 % ([59]). The French authorities have also indicated that the 15 % figure is an average and have provided the figures for each year showing that the volume of levies raised on exported products was never more than 18 %.

(ii) *Compatibility with Article 110 TFEU*

(182) In view of the consequences of the Court's ruling in the Nygard ([60]) case and the fact that the measures financed by the charge constitute State aid within the meaning of Article 107 TFEU, and that the charge is not of a discriminatory nature in contravention of Article 110 TFEU, since it was also applied to exported products and animals which benefited proportionally from the resulting advantages, the Commission considers that the revenue from the charges on exported products intended to finance the measures implemented by Interbev constitute aid-financing compatible with the rules set out in the TFEU and Article 107 in particular and, consequently, that the State aid thus financed is compatible with the Treaty.

2.6.2. ***The FNE levy***

2.6.2.1. **Imported animals**

(183) According to the French authorities, until 2003 animals reared outside France but imported into France for slaughter were also subject to the levies collected to the benefit of the FNE.

(184) Following doubts expressed by the Commission, the French authorities confirmed that the text of the inter-branch agreement had been amended to exclude levies on animals imported into France. According to the French authorities, these levies apply exclusively to animals reared and slaughtered in France.

([59]) Cf. recital 94 *et seq.*
([60]) Case C-234/99, referred to in footnote 56 above.

(185) The amendments to the inter-branch agreement have not been submitted to the Commission. The only document provided was the circular of 2 February 2005 (cf. recital 87), which states that the levies to the benefit of the FNE apply only to meat from animals reared and slaughtered in mainland France.

(186) Consequently, between 1 January 1996 and 30 September 2004, the levy on meat was also raised on meat from animals reared abroad but slaughtered in France.

(187) The French authorities have not been able to demonstrate that the measures financed by these levies benefited farmers operating outside of France. Those who exported their products and were subject to the compulsory voluntary levies did not receive any refund or reduction in spite of the fact that they did not derive full benefit from the measures in question. Research and development and technical assistance measures can only benefit domestic products (meat from bovine animals reared and slaughtered in France) by definition.

(188) The fact that there were few imports of live animals at the time ([61]) and that only importers of live animals could declare tonnages of imported animals for deduction from the basis for the calculation of the levy and request a refund has no direct consequence as regards the Commission's detailed analysis. In addition, any discrimination, however minimal, falls within the scope of Article 110 TFEU.

(189) In view of the consequences of the Court's ruling in the Nygard ([62]) case and the fact that the measures financed by the charge constitute State aid within the meaning of Article 107 TFEU and that the charge is of a discriminatory nature in contravention of Article 110 TFEU, since it was also applied to exported products from other Member States which did not benefit fully from the resulting advantages, the Commission considers that the revenue from the charges on animals imported from other Member States to finance the measures implemented by the FNE constitute aid-financing which is incompatible with the internal market under the Treaty, in particular Article 107, and, consequently, that the State aid thus financed is incompatible with the Treaty.

2.6.2.2. **Animals exported**

(190) Since the FNE levy applies to animals reared or slaughtered in France, the Commission can conclude that exported products are not, as such, subject to a levy in respect of the FNE and are therefore outside the scope of this Decision.

3. *UNLAWFULNESS OF THE AID*

(191) As indicated in the decision to initiate the procedure, the Commission emphasises that France did not inform it, in accordance with Article 108(3) TFEU, of the decrees extending the scope of the voluntary levies by making them compulsory or of the measures financed therewith before their implementation (cf. recital 2 of this Decision).

(192) Article 1(f) of Regulation (EC) No 659/1999 clearly defines unlawful aid as new aid put into effect in contravention of Article 108(3) TFEU. The obligation to notify State aid is set out in Article 2 of that Regulation.

(193) With regard, firstly, to the nature of the contested levies, the Commission notes that they require an official act in order to take full effect. Consequently, the Commission considers that this is a case of parafiscal charges, i.e. public resources.

(194) To the extent that the compulsory voluntary levies are public resources (as indicated in recitals 106 et seq.) which are an integral part of an aid scheme (recitals 171 et seq.) and that these have been used to finance advantages to the benefit of undertakings in the meat sector, notification of such levies to the Commission is an obligation pursuant to Article 108(3) of the Treaty.

(195) As indicated in recitals 123 and 124, since the measures implemented by France contain elements of State aid, it constitutes new aid, not notified to the Commission, and therefore unlawful under the Treaty.

(196) The Commission notice on the determination of the applicable rules for the assessment of unlawful State aid ([63]) provides that all unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 must be examined in accordance with the texts in force at the time when the aid was granted.

V. **CONCLUSIONS**

(197) In the light of the above, the Commission considers that there are no objections to the financing of this scheme with compulsory voluntary levies in as far as they are applied to domestic products and exported products and animals (in the present case, the compulsory voluntary levies paid on meat between 1996 and 2004).

([61]) According to the figures provided by the French authorities (customs authorities), there were 24 933 and 22 250 head of adult finished livestock imported into France in 2001 and 2002 respectively. National slaughterings amount to 4 million head; therefore, imports of live animals only represent 0,58 % of the total amount slaughtered.

([62]) Case C-234/99, referred to in footnote 56 above.

([63]) OJ C 119, 22.5.2002, p. 22.

(198) To the extent that levies are also imposed on imported animals (in the present case, the levies on animals to the benefit of FNE between 1996 and 2004), it follows from the considerations set out above that the system of compulsory voluntary levies is incompatible with the internal market on account of the contravention of Article 110 TFEU, since France has not been able to demonstrate that imported products have benefited from the aid to the same extent as domestic products.

(199) In addition, the aid in question here was not notified to the Commission in accordance with Article 108(3) TFEU and therefore constitutes illegal aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999.

(200) The Commission regrets that France operated the above aid measures in contravention of Article 108(3) TFEU.

(201) It should be remembered that, in the case of aid measures implemented without awaiting the Commission's final decision, given the binding nature of the rules of procedure laid down in Article 108(3) TFEU, which the Court of Justice recognised as having direct effect in several rulings ([64]), the unlawfulness of the aid concerned cannot be regularised ex post facto ([65]).

(202) The Court of Justice recalled that where an aid measure, of which the method of financing is an integral part, has been implemented in breach of the obligation to notify, national courts must in principle order the reimbursement of charges or contributions levied specifically for the purpose of financing that aid. It also noted that it is for the national courts to uphold the rights of the persons concerned in the event of a possible breach by the national authorities of the prohibition on putting aid into effect, referred to in the last sentence of Article 108(3) TFEU and directly applicable. Such breaches cited by interested individuals and ascertained by national courts must result in the courts drawing the necessary consequences, in accordance with national law, with regard to both the validity of the acts giving effect to the aid and the recovery of financial support granted ([66]).

(203) The Commission considers appropriate in this case the adoption of a conditional decision in application of the possibility provided for by Article 7(4) of Regulation (EC) No 659/1999, according to which the Commission may attach to its decision conditions subject to which an aid may be considered compatible with the internal market and may lay down obligations to enable compliance with the decision to be monitored.

(204) In order to make good the breach of Article 110 TFEU and thus retrospectively remove the discrimination, France must refund that part of the charge imposed on imported products (levies on animals to the benefit of the FNE between 1996 and 2004) in proportion to the benefits of the aid which were not applicable to the products in question. Making good this breach will make the aid concerned compatible with Article 107 TFEU.

(205) The conditions to be met for the repayment will be laid down by the Commission. France must thus reimburse to the persons who paid the charge that part of the charge imposed on the aforementioned imported products from other Member States between the date when the charge first entered into force and 30 September 2004 in full compliance with the following conditions:

(a) if they can provide evidence that the compulsory voluntary levy was imposed on imported products, the persons who paid the charge can claim the repayment of a proportion of the revenue from the charge intended to fund services exclusively benefiting domestic products within a time limit set in accordance with domestic law and in no case less than six months from the notification of this Decision;

(b) France will establish the extent of any discrimination affecting imported products. To that end, France must check, during a reference period, the financial equivalence between the overall amounts levied on domestic products by way of the charge concerned and the advantages from which these products exclusively benefit;

(c) repayment must be made within a maximum time limit of six months from the submission of the request;

(d) the amounts repaid must include interest calculated as from the date on which they were levied up until the date of actual repayment. This interest is to be calculated on the basis of the Commission's reference rate laid down by the method for setting the reference and discount;

(e) the French authorities must accept any reasonable evidence provided by the payers of the charge of the amounts paid in respect of the charge imposed on products from other Member States;

(f) the right to repayment cannot be subject to other conditions, particularly that of the charge not having been passed on;

(g) where the charge has not yet been paid, the French authorities are to formally waive payment of the proportion of the charge imposed on products imported from other Member States in respect of which it is demonstrated that the amount in question is intended to finance the part of the aid which exclusively benefits domestic products. Any related interest on late payment is also to be waived by the authorities;

([64]) Case C-77/72 [1973] ECR 611; Case 120/73 [1973] ECR 1471; Case 78/76 [1977] ECR 595.

([65]) Case 354/90 *Fédération nationale du commerce extérieur des produits alimentaires and Others* v *France* [1991] ECR, I-5505; and Joined Cases C-261/01 and C-262/01 [2003] ECR I-12249.

([66]) Joined Cases C-261/01 and C-262/01 [2003] ECR I-12249.

(h) where the Commission so requests, France undertakes to submit a full report proving the proper implementation of the repayment measure;

(i) if a charge has been imposed in another Member State on the same products which have been subject to the charge in France, the French authorities undertake to reimburse those persons who have paid the charge for that part of it which affected products from that other Member State;

(j) France undertakes to make this decision known to all potential payers of the charge,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid for promotion, advertising, technical assistance and research and development unlawfully implemented by France contrary to Article 108(3) TFEU and financed by a parafiscal charge (compulsory voluntary levy on meat and live animals dispatched to other Member States between 1996 and 2004, and on live animals imported between 1996 and 2004) is State aid compatible with the internal market in accordance with Article 107(3)(c) TFEU in respect of the period between the date of implementation of the charge and 30 September 2004, provided that France complies with the conditions set out in paragraph 2 of this Article.

2. France shall thus reimburse to the persons who paid the charge that part of the charge imposed on imported products between the date when the charge first entered into force and 30 September 2004 in full compliance with the following conditions:

(a) if they can provide evidence that the compulsory voluntary levy was imposed on imported products, the persons who paid the charge can claim the repayment of a proportion of the revenue from the charge intended to fund services exclusively benefiting domestic products within a time limit set in accordance with domestic law and in no case less than six months from the notification of this Decision;

(b) France shall establish the extent of any discrimination affecting imported products. To that end, France must check, during a reference period, the financial equivalence between the amounts levied overall on domestic products by way of the charge concerned and the advantages from which these products exclusively benefit;

(c) repayment shall be made within a maximum time limit of six months from the submission of the request;

(d) the amounts repaid shall include interest calculated as from the date on which they were levied up until the date of actual repayment. This interest shall be calculated on the basis of the Commission's reference rate laid down by the method for setting the reference and discount;

(e) the French authorities shall accept any reasonable evidence provided by the payers of the charge of the amounts paid in respect of the charge imposed on products from other Member States;

(f) the right to repayment cannot be subject to other conditions, particularly that of the charge not having been passed on;

(g) where the charge has not yet been paid, the French authorities shall formally waive payment of the proportion of the charge imposed on products imported from other Member States in respect of which it is demonstrated that the amount in question is intended to finance the part of the aid which exclusively benefits domestic products. Any related interest on late payment shall also be waived by the authorities;

(h) where the Commission so requests, France shall undertake to submit a full report proving the proper implementation of the repayment measure;

(i) if a charge has been imposed in another Member State on the same products which have been subject to the charge in France, the French authorities shall undertake to reimburse those persons who have paid the charge for that part of it which affected products from that other Member State;

(j) France undertakes to make this decision known to all potential payers of the charge.

Article 2

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

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 13 July 2011.

For the Commission

Dacian CIOLOȘ

Member of the Commission