COMMISSION DECISION

of 9 April 2014

on State aid scheme SA.23257 (12/C) (ex NN 8/10, ex CP 157/07) implemented by France (interbranch agreement concluded under the auspices of the French Association for developing the horticultural and landscaping sectors and their products — 'Val'Hor')

(notified under document number C(2014) 2223)

(Only the French text is authentic)

(2014/416/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,

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

Whereas:

I. PROCEDURE

(1) By letter of 9 May 2007 the Commission received a complaint concerning the extension of the interbranch agreement concluded under the auspices of the French Association for developing the horticultural and landscaping sectors and their products ('Val'Hor'). The case was registered under No CP 157/07. On 4 February 2010, this measure was listed under No NN 8/10 as non-notified State aid.

(2) In connection with complaint CP 157/07, the Commission received comments from the complainant on 26 October 2009 and 16 May 2011.

(3) By letters of 13 July 2007, 10 December 2007, 26 June 2008, 22 February 2010, 16 December 2010 and 13 October 2011 the Commission asked the French authorities to provide additional information regarding possible State aid in the horticulture sector. France sent that information by letters of 17 October 2007, 7 April 2008, 1 September 2008, 2 April 2010, 22 February 2011 and 15 November 2011.

(4) By Decision C(2011) 10053 of 11 January 2012 the Commission initiated the procedure provided for in Article 108(2) of the TFEU.

(5) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* [1]. The Commission asked interested parties to submit their comments on the measure in question.

(6) The Commission received comments from interested parties. The Commission forwarded them to France, giving France the opportunity to comment on them.

(7) By e-mail of 20 January 2012 the Permanent Representation of France to the European Union forwarded to the Commission a letter from the French authorities requesting an additional period of one month in which to submit their comments on the initiation of the procedure. That extension was granted by fax of 26 January 2012.

(8) By e-mail of 14 March 2012 the Permanent Representation of France to the European Union forwarded the French authorities' comments on the initiation of the procedure provided for in Article 108(2) of the TFEU.

(9) By e-mail of 10 July 2012 the Permanent Representation of France to the European Union forwarded the French authorities' response to the comments submitted by interested parties.

[1] OJ C 66, 6.3.2012, p. 32.

II. **DESCRIPTION**

PRESENTATION OF THE INTERBRANCH ORGANISATION 'VAL'HOR'

(10) The French Association for developing the horticultural and landscaping sectors and their products ('Val'Hor') is a recognised interbranch organisation within the horticultural sector in France. Its structure and operation are regulated by Articles L. 631-1 et seq. of the Rural Code.

(11) The association 'Val'Hor' was set up in 1997 and recognised by the public authorities as a national interbranch organisation, within the meaning of Article L.632-1 of the French Rural Code, for the horticultural and landscaping sector on 13 August 1998. Its Articles of Association were approved at a General Meeting on 25 March 2004.

(12) 'Val'Hor', like other recognised interbranch organisations, is able to conclude agreements and collect, from all the members of the trades constituting the organisation, voluntary contributions intended to fund those agreements. Those agreements may be made compulsory by Interministerial Decree ('extended' agreements) for all operators in the sector, whether or not they are members of the interbranch organisation 'Val'Hor' subject to the conditions laid down by the French Rural Code. The Rural Code authorises the extension of the agreements only where they are directed towards 'a common interest' based on measures 'in accordance with the general interest and compatible with the rules of the common agricultural policy' (cf. Article L.632-3 of the Rural Code).

(13) On 12 November 2004 'Val'Hor' adopted the interbranch funding agreement, which was amended by amendment No 1 of 14 September 2006. Article II of that agreement lays down that each member, whether a natural or legal person, of a trade represented within the interbranch organisation 'Val'Hor' is liable to pay an annual contribution.

(14) The interbranch funding agreement concluded under the auspices of 'Val'Hor' was extended for the first time on 12 April 2005 by Decree of the Ministry of Agriculture, Food, Fisheries and Rural Areas, published in the Official Journal of the French Republic on 12 May 2005, for a one-year period. The agreement was extended for the second time for a one-year period by Decree of 16 November 2006, published in the Official Journal of the French Republic on 8 December 2006.

(15) By Decree of 31 March 2008, published in the Official Journal of the French Republic on 11 April 2008, the provisions of the interbranch agreement of 21 February 2008 were extended for the period 1 July 2007 to 30 June 2008 to all the members of the trades making up the association. By Decree of 16 September 2008, published in the Official Journal of the French Republic on 25 September 2008, the provisions of the interbranch agreement of 22 July 2008 were extended until 30 June 2010. By Decree of 27 May 2010, published in the Official Journal of the French Republic on 8 June 2010, the provisions of the interbranch agreement of 22 July 2008 were extended for the 1 July 2010 to 30 June 2011 marketing year. Lastly, by Decree of 3 October 2011, published in the Official Journal of the French Republic on 15 October 2011, the provisions of the interbranch agreement of 12 September 2011 were extended until 30 June 2014.

(16) According to the information submitted by the French authorities on 17 October 2007, the compulsory voluntary contribution (*sic*) introduced for businesses in the ornamental-plant sector originating from horticulture and nurseries and the landscaping sector was intended to make it possible to implement the measures and provide the means needed to collectively promote horticulture, floristry and landscaping, their products and trades on internal and external markets; knowledge of supply, demand and market mechanisms; improving market operation, control and transparency; product quality; organising and improving interbranch practices and relations in the sector; carrying out training, applied-research, experimentation and development programmes; and the association's operation.

THE STATE'S ROLE

(17) By Decree of 13 August 1998 the French State recognised 'Val'Hor' as an interbranch organisation within the meaning of Article L.632-1 of the French Rural Code.

(18) The operation, tasks and composition of 'Val'Hor' are governed by its Articles of Association. So that this interbranch organisation could be recognised, the relevant authorities had to check that various criteria were met, in particular that the Articles of Association complied with the law (Article L.632-1 of the Rural Code), and that the organisations concerned making up 'Val'Hor' were representative and complied with national and Community policy objectives. Its existence, tasks and operation are governed by Articles L. 631-1 et seq. of the Rural Code.

(19) According to the French authorities, until 2007 the compulsory voluntary contributions (*sic*) paid by the members of the trades brought together in 'Val'Hor' were the interbranch organisation's only funding. Although 'Val'Hor' is a private-law legal entity funded by contributions from the sector concerned, operating the compulsory voluntary contributions (*sic*) system requires State intervention. A Decree or a Ministerial Decree is therefore needed in order to make the compulsory voluntary contributions (*sic*) mandatory for the whole interbranch organisation.

(20) 'Val'Hor' may be consulted regarding the guidelines and measures falling under the sectoral policies relating to it (Article L. 632-2-1 of the Rural Code).

NATIONAL LEGAL BASIS

(21) Rural Code, sixth Volume, Title III (Articles L. 631-1 to L. 632-13). Interministerial Decrees on extending the interbranch agreements (see points 13-14); interbranch agreements (see points 10-12).

THE MEASURE

(22) The income from the compulsory voluntary contribution (*sic*) is used to carry out measures for the benefit of the horticultural sector, measures which may be placed in the following three categories: promotion measures, research and development measures and technical assistance measures.

(23) The French authorities maintain that the funding is never intended to cover expenditure by businesses in any sector, but only collective operations.

III. **GROUNDS FOR FORMALLY INITIATING THE INVESTIGATION PROCEDURE**

(24) The Commission initiated the procedure provided for in Article 108(2) of the TFEU because it considered that the contributions collected constituted parafiscal charges, i.e. public funding, and that the interbranch organisations' measures were chargeable to the State. The Commission based itself in particular on its interpretation of the 'Pearle' judgment ([1]), and considered that the measure did not satisfy all the conditions stipulated by the Court in that case, in particular because government approval in the form of recognising the interbranch organisation constituted a precondition for introducing contributions and that, in order to have full effect ([2]), the contributions themselves required a public-authority instrument (the Interministerial Decree).

IV. **THE FRENCH AUTHORITIES' COMMENTS ON FORMALLY INITIATING THE PROCEDURE**

(25) In their letter forwarded by e-mail on 14 March 2012 the French authorities challenged the position adopted by the European Commission, which considered that the measures taken by 'Val'Hor' by means of the revenue from the compulsory voluntary contributions (*sic*) are chargeable to the State and funded by State resources within the meaning of Article 107(1) of the TFEU.

(26) According to the French authorities, the measures taken by the interbranch organisation in question comply with the Pearle judgment's requirements and do not therefore constitute State aid. The association 'Val'Hor' is a private-law legal entity governed by the Law of 1 July 1901 on contracts of association. It set itself up freely on 28 May 1997 at the instigation of the organisations most representative of the production, marketing and development of ornamental plants from the horticultural and landscaping sectors. Pursuant to Article L. 632-1 of the Rural Code, the association was recognised by Decree of 13 August 1998, published in the Official Journal of the French Republic on 3 September 1998. In order to grant that recognition, the administrative authority confined itself to verifying that the branch organisations which formed the basis for setting up 'Val'Hor' are representative and that the interbranch organisation's purpose is to carry out collective measures in the economic interest of the sector's private businesses.

([1]) Judgment of 15 July 2004, Case C-345/02.
([2]) Judgement of 20 September 2007, Case T-136/05, Commission/Salvat.

(27) The French authorities added that, pursuant to Articles L. 632-3 and L. 632-6 of the Rural Code, the interbranch agreements concluded by 'Val'Hor' on the basis of unanimity among its constituent branch organisations may be made compulsory for all the people working in the sector and funded by the compulsory voluntary contributions (*sic*), where they provide for common measures or are directed at a common interest. The administrative authority confines itself to checking that the agreement complies with the national and European rules and that the revenue collected from the compulsory voluntary contributions (*sic*) duly funds the measures laid down by the interbranch organisation itself for the benefit of the whole sector. Thus the administrative authority does not play any part in setting up, organising or operating 'Val'Hor'. 'Val'Hor' therefore has the utmost latitude as regards determining the interbranch measures which it wishes to carry out.

(28) The French authorities therefore concluded that the interbranch measures which 'Val'Hor' carries out do not serve as instruments for implementing a State policy, because at no stage does the State have the power to direct the use of the compulsory voluntary contributions (*sic*) in order to fund those measures.

(29) Regarding the Commission's position on the extent to which the compulsory voluntary contributions (*sic*) and the use of the revenue which they generate involves discrimination against exported or imported products, and on the question of whether that mode of funding does not risk adversely affecting competition among the Member States, the French authorities pointed out that, to the extent that the basis for assessing the contributions set by the interbranch organisation 'Val'Hor' depends solely on the firm's area or number of employees, compulsory voluntary contributions (*sic*) are not charged on imported or exported products. Funding interbranch measures by means of the compulsory voluntary contributions (*sic*) therefore does not give rise to any discrimination between national products and imported or exported products and does not cause any distortion of competition.

(30) Lastly, the French authorities pointed out that in any case, in so far as the compulsory voluntary contributions (*sic*) are not levied on imported products, they consider that the measures which they fund fall within the scope of Commission Decision C(2008) 7846 of 10 December 2008 by which the latter acknowledges that the notified aid scheme is compatible with the internal market.

V. **INTERESTED PARTIES' COMMENTS ON THE INITIATION OF THE PROCEDURE**

(31) On 4 April 2012 the Commission received an interested third party's comments on the initiation of the procedure.

(32) In those comments, the interested party questions the setting-up of systems in which the interbranch organisation 'Val'Hor' would not only initiate, but also lay down the rules for and collect payments. These questions stem from reading the interbranch organisation's Articles of Association, which laid down detailed rules on trade-union representation by restricting access to the interbranch organisation solely to those representing a minority of fairly large businesses.

(33) On 5 April 2012 the Commission received a second interested party's comments on the initiation of the procedure.

(34) In those comments, the interested party fully agrees with the Commission's analysis regarding the qualification of the compulsory voluntary contributions (*sic*) and considers that they are contrary to Article 110 of the TFEU. The interested party draws the Commission's attention to the totally unlawful nature of the compulsory voluntary contributions (*sic*) and the national courts' role as regards penalising that unlawfulness, specifically by recognising the right to full reimbursement of the compulsory voluntary contributions (*sic*) paid.

(35) On 6 April 2012 the Commission received a third interested party's comments on the initiation of the procedure.

(36) In those comments, the interested party disputes the Commission's analysis and considers that the measures taken by 'Val'Hor' are attributable to the State and that its resources should be treated in the same way as State resources because the State monitors compliance only with the law and not with the policies implemented by the interbranch organisation.

(37) By letter of 10 July 2012 the French authorities commented on the interested third parties' comments, concluding that the latter comments do not call into question the French authorities' comments to the Commission.

VI. **ASSESSMENT**

(38) By way of introduction, the Commission notes that some of the horticultural advertising or promotion measures at issue here have been funded by subsidies from France-Agrimer ('FAM') under aid schemes notified to the Commission with the numbers N 671/07 and XA 220/07 (the latter number corresponding to exempted aid). This Decision is without prejudice to the appraisal already made regarding the State-aid nature of those subsidies. By the same token, this Decision will not give a ruling on the nature of aid to the sector comprising possible subsidies not allocated to a specific measure but paid into the budget of the 'Val'Hor' interbranch organisation.

(39) The Commission will therefore confine itself hereinafter to examining whether funding the measures in question by means of compulsory voluntary contributions (*sic*) constitutes State aid.

VI.1. **Existence of aid**

(40) Article 107(1) of the TFEU states that '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'.

(41) Therefore, in order to qualify as State aid, the measures examined must be attributable to the State and funded by State resources.

(42) As regards the interbranch system and the nature of the compulsory voluntary contributions (*sic*), in order to be able to determine whether the contributions may constitute State resources, the Commission has examined the measure in question, inter alia, in the light of the Court's judgment of 30 May 2013 in Case C-677/11 'Doux Élevage'.

The solution chosen by the Court in the 'Doux Élevage' judgment

(43) In the 'Doux Élevage' case, the Court answered a question referred for a preliminary ruling on the interpretation of Article 107(1) of the TFEU and, more particularly, of the concept 'State resources' in cases involving voluntary contributions which have been made compulsory.

(44) The Court delivered its judgment, concluding that a national authority's decision extending, to all those working in an agricultural sector, an agreement which, like the interbranch agreement principally at issue, introduces a contribution within the framework of an interbranch organisation recognised by the national authority and thus makes that contribution compulsory with a view to enabling the implementation of measures on communication, promotion, external relations, quality assurance, research and defending the interests of the sector concerned does not constitute State aid.

(45) In its judgment, the Court considered that the contributions in question come from private economic operators which carry out an activity on the markets concerned, which means that this mechanism does not involve any direct or indirect transfer of State resources. The funds created by the payments do not pass via the State budget or via another public entity and the State does not relinquish any resources in any form whatsoever (such as taxes, charges, contributions or other), which, under national legislation, should have been paid into the State budget.

(46) In the Court's view, the contributions at issue retain their private character throughout and the national authorities must not in fact use those resources mainly to support certain businesses. It is the interbranch organisations concerned which decide on the use of those resources, which are consequently entirely devoted to objectives determined by those organisations. Similarly, the resources are not constantly subject to public monitoring and are not available to the State authorities.

(47) As regards the possible influence which the State may exercise over the interbranch organisation's operation by deciding to extend an interbranch agreement to cover all those working in a sector, the Court is of the opinion that this does not alter the above findings. Indeed, the Court has stressed that the rules in question do not confer on the relevant authority the power to direct or influence the funds' administration.

(48) Moreover, under the case law of the relevant national courts, the provisions of the Rural Code governing the extension of an agreement introducing contributions in the context of an interbranch organisation do not authorise the public authorities to subject those contributions to a check other than one verifying correctness and compliance with the law. The public authorities act only as an 'instrument' in order to make compulsory the contributions introduced by interbranch organisations in order to pursue goals which they determine themselves. Moreover, the Court has stressed that private funds used by interbranch organisations do not become 'public resources' simply because they are used together with sums which may come from the public budget.

(49) Also, the Court has stated that neither the State's power to recognise an interbranch organisation in accordance with Article L.632.1 of the Rural Code nor that State's power to extend an interbranch agreement to cover all those working in a sector in accordance with Articles L.632-3 and L.632-4 of that Code constitutes sufficient grounds for concluding that the measures taken by the interbranch organisation are attributable to the State.

(50) In its initiation Decision, the Commission expressly based its assessment as to the presence of State aid, and more particularly as to the involvement of State resources and the measures' attributability to the State, on arguments which the Court refuted in the abovementioned 'Doux Élevage' judgment.

Applying the 'Doux Élevage' case law to the case at issue

(51) Regarding the 'Val'Hor' interbranch organisation: As with the other interbranch organisations in France, the existence, tasks and operation of 'Val'Hor' are subject to recognition by a State authority. 'Val'Hor' nevertheless remains a private-law legal entity which does not form part of the public administration, as the State's role is confined to recognising 'Val'Hor' and extending the agreements which it is empowered to conclude, as is apparent from the information provided by the French authorities.

(52) Regarding the compulsory voluntary contributions (*sic*) mechanism: Under Article L. 632-6 of the Rural Code, notwithstanding the contributions' compulsory character they remain private-law receivables. They do not pass via the State budget, nor via a public entity, nor via a fund monitored by the public authorities. Indeed, it is apparent from the Articles of the Rural Code that the State's role is confined to extending the agreements, while the interbranch organisation, in this case 'Val'Hor', remains responsible for setting the level of the contributions and determining the objectives for which they are to be used.

(53) As regards the above-mentioned objectives which the interbranch organisations must achieve, in particular by means of the measures taken, in the 'Doux Élevage' Case the Court noted that Article L. 632-3 of the Rural Code states in a very general and non-exhaustive way the objectives which an interbranch agreement must promote in order to be extended by the public authority, and does not therefore make extending such an agreement subject to the pursuit of specific objectives set and defined by the State authorities.

(54) It follows from the 'Doux Élevage' judgment that the national authorities must not in fact use the resources stemming from the contributions in question to support certain businesses. The interbranch organisation concerned decides how those resources are to be used; all of those resources are devoted to the objectives set by the interbranch organisation itself. By the same token, those resources are not constantly under public control and they are not at the State authorities' disposal. The rules in question do not confer on the relevant authority the power to direct or influence the funds' administration. As the Court also stated, the above findings are not altered by the possible influence which the State may exercise over the interbranch organisation's operation by deciding to extend an interbranch agreement to cover all those working in a sector.

(55) As the Court stressed that private funds used by interbranch organisations do not become 'public resources' simply because they are used together with sums which may come from the public budget, the mere fact that some of the measures concerned are also funded by means of FAM subsidies does not mean that the compulsory voluntary contributions (*sic*) in question may be described as State resources in the absence of evidence according to which those subsidies would have allowed the State to carry out sufficient monitoring of the funds resulting from collecting the compulsory voluntary contributions (*sic*).

(56) The Court has also stated that neither the State's power to recognise an interbranch organisation in accordance with Article L.632.1 of the Rural Code nor that State's power to extend an interbranch agreement to cover all those working in a sector in accordance with Articles L.632-3 and L.632-4 of that Code constitutes sufficient grounds for concluding that the measures taken by the interbranch organisation are attributable to the State.

(57) For the reasons cited in the above recitals, the Commission considers that the funding of the measures in question carried out by the 'Val'Hor' interbranch organisation by means of compulsory voluntary contributions (*sic*) does not come from State resources and nevertheless (*sic*) does not constitute State aid.

VII. **CONCLUSION**

(58) The outcome is that funding measures by means of compulsory voluntary contributions (*sic*) does not constitute State aid within the meaning of Article 107(1) of the TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The funding of measures relating to promotion, advertising, technical assistance and research and development carried out by the 'Val'Hor' interbranch organisation by means of compulsory voluntary contributions (*sic*) during the period 2005-2014 does not constitute State aid within the meaning of Article 107(1) of the TFEU, without prejudice to the question of whether or not State subsidies to an interbranch organisation constitute aid to the sector concerned or whether the subsidies allocated to those measures constitute State aid.

Article 2

This Decision is addressed to the French Republic.

Done at Brussels, 9 April 2014.

For the Commission
Dacian CIOLOȘ
Member of the Commission