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NEWSLETTER ON THE COMMON AGRICULTURAL POLICY

COMPETITION POLICY IN AGRICULTURE

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COMPETITION POLICY IN AGRICULTURE

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I. INTRODUCTON

Agriculture is one of the fundamental activities in the Community, and therefore has a major place in the EEC Treaty.

The negotiators of the Treaty had no intention of isolating this industry from the rest of the economy; they thus worked out rules ensuring its proper integration. The competition policy in agriculture is one of the instruments whereby such integration can be achieved.

II. IMPLEMENTATION OF A COMPETITION POLICY IN AGRICULTURE

A. Objectives

Given the fundamental approach provided by the Treaty itself, the policy pursued with regard to national aids to agriculture has never been separated from general agricultural policy. The essential objectives of the competition policy in this field are:

- to underpin the proper operation of the EEC market organizations by preventing the payment of national aids "topping up" or differing from those provided for under the market organizations;

- to support the Community's policy on structures in respect of individual holdings, by authorizing aid schemes strengthening this work;

- to intensify modernization of processing and marketing structures in close relation with the requirements of the policy on markets and prices, while promoting the development of this sector in deficit areas and curtailment and rationalization of production capacity for surplus products;

- to avoid hampering national policies on schemes for the improvement of product quality, technical progress and the conservation of the environment, and for rescuing farms that have run into short-term difficulties.

In the pursuit of these objectives, the Commission enjoys a great deal of discretionary authority. Over the years, it has worked out appropriate measures for individual sectors under Article 93(1) of the Treaty, supplemented when it has made its comments on new aid schemes set up by the Member States and notified to the Commission under Article 93(3) of the Treaty.[1]

[1] All the Commission's comments on agricultural aid schemes are listed in the monthly Bulletin of the European Communities, under "Agricultural policy, Competition".

B. Framework

The framework for the policy on national aids to agriculture is set by Article 42 of the Treaty, which states that "the provisions of the Chapter relating to rules on competition shall apply to production of and trade in agricultural products only to the extent determined by the Council within the framework of Article 43(2)(3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 39".

When the market organizations were set up, the EEC Treaty provisions on competition were declared also applicable to agricultural production and trade in agricultural products. Since then, agriculture, too, is normally subject to the requirements of the EEC Treaty on aids granted by the States.[1]

However, the applicability of these EEC Treaty articles on competition is not unconditional. In accordance with Article 42 of the EEC Treaty, it cannot prevail over certain provisions of secondary agricultural law.

[1] For the few items not yet covered by market organizations (alcohol and alcohol vinegar, honey, bananas, fresh pineapples, coffee, chicory roots, cork, horsemeat, potatoes - except potatoes for starch-making), the competition rules are applicable under Regulation No 26 of 4 April 1962, which, however, states that only "the provisions of Article 93(1) and of the first sentence of Article 93(3) of the Treaty shall apply to aids granted for production of or trade in the products listed in Annex II to the Treaty".

1. Rules established under the market organizations

The rules of the market organizations include particular rules relating to national aids or actually prohibit them as regards specific areas of agricultural production; in any case, the Member States must refrain from any action liable to entail waivers to or encroach on the regulations setting up a market organization. Any interference by a Member State in the market mechanisms other than as specifically provided for in the Community regulations, in particular the payment of "topping up" or differing aids in an area clearly governed by a market organization may both hamper the operation of the organization and distort competition by discriminating in favour of some enterprises or types of product and against others.

(a) Aids incompatible with the market organizations

The general Treaty ban on aid schemes of the kind described in Article 92(1) applies essentially to all schemes conflicting with the objectives of the common agricultural policy.

The main ones are as follows:

- aids to income: under present rules, farm incomes must be solely ensured by the prices set under the market organizations and certain provisions relating to the less-favoured areas;

- operating aids, which relieve the costs the farm or firm has to bear without any permanent structural improvement in production conditions; these are, in particular, schemes granting aid without other special conditions and related to prices, quantities of products, or production units (areas, fruit trees, dairy cows, etc.);

- aids to the disposal of agricultural products on the Community market or those of non-member countries (export refunds, which may be granted only under market management rules); an exception in this connection is that, within certain limits, aids to advertising are allowed;

(b) Incompatible aids authorized by the Council

However, at the request of a Member State, the Council may decide, under the third subparagraph of Article 93(2), that an aid scheme of the type described above can rank as compatible, notwithstanding Article 92, if exceptional circumstances justify such a decision. The decision must be a unanimous one.

2. Rules fixed under the policy on structures

(a) The application of Articles 92 to 94 to agricultural production is also dependent upon the instruments governing policy on agricultural structures. Regulation (EEC) No 797/85 on the improvement of the efficiency of production structures[1] contains a code of aid schemes for the creation or modernization of viable farms that may qualify for Community co-financing, a code of aid schemes for holdings not meeting the criteria which would make them eligible for such financing, and a code of aid schemes for the financing of various parallel operations;

(b) A set of structural schemes is also being operated in liaison with the market organizations. The relevant regulations contain rules on national aid schemes.

These are mainly regulations on producers' groups, milk non-marketing and dairy herd conversion premiums, a scheme encouraging winegrowers to switch to other crops, improvement of production and marketing of Community citrus fruits, the abandonment of certain areas under vine and agreement not to replant, etc.;

(c) under Regulation (EEC) No 355/77, on common measures to improve the conditions under which agricultural products are processed and marketed[2], a set of implementing criteria had been worked out; these criteria are also complied with when aids granted in this context at national level are examined.

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[1] OJ No L 93, 30.3.1985.
[2] OJ No L 51, 23.2.1977.

C. The rules of competition in detail

Apart from the legal exception in Article 92(2) of the Treaty, Article 92(3) allows certain aid schemes to be ranked as compatible even if they are caught by Article 93(1).

In the agricultural sector, the derogation conceded in Article 92(3)(c) is the one most often used.

Under this clause, any aid scheme designed to facilitate the development of certain economic activities or of certain economic areas, where it does not adversely affect trading conditions to an extent contrary to the common interest, may qualify for the waiver in Article 92(1) of the Treaty. It is for the Commission to define the "common interest" when particular cases are under scrutiny.

It is generally established that the advantages sought by the payment of a given aid must not have an offsetting negative aspect for the other competing economies exceeding what can be regarded as tolerable in terms of the common good, as set out in Article 2 of the Treaty of Rome.

Article 2 states that the Community's task is to promote throughout the Community the harmonious development of economic activities, steady and balanced growth, increased stability, faster improvements in living standards and closer relations between the Member States.

It is in this field that the Commission enjoys the discretionary powers referred to above. Using them, it has authorized, within restricted limits, aid schemes contributing to the achievement of the objectives of the common agricultural policy.

(a) Schemes assisting farms

Regulation (EEC) No 797/85 provides for the application of Articles 92 to 94 within clear limits, spelled out in Articles 8 and 31 of the regulation.

(aa) Investments (Article 8(1) to (5))

As regards aids to investments in farms, a distinction is made between:

- farms implementing a material farm improvement plan,

- other farms.

The Council gave a special status to the first kind of farm where the starting situation lies below a reference threshold by providing for a Community co-financing system for aids to investment and authorizing the Member States to add, on their own account, national "topping up" aids relating to investments intended for,

- the construction of farm buildings,

- the relocation of farm buildings in the public interest,

- land improvement work,

provided always that the national arrangements qualify under Articles 92 and 93 of the Treaty (Article 8(1)).

These "topping up" aids are normally in line with the criteria defined in Article 92(3)(c) and allow of harmonious development of the agricultural sector.

Investments on other farms not complying with the criteria for Community financing normally qualify only for aids in amounts 25% below those for mixed aids for which farms meeting the criteria do qualify (Article 8(2)). Some exceptions are allowed (e.g. achievement of energy savings, protection of the environment, and for small farms).

Compliance with these criteria and conditions is ensured under a procedure specific to Regulation (EEC) No 797/85.

Article 8(4) concerns the prohibition of aids to investments.

Investment aids liable to boost the production of surplus products can be curtailed or banned outright. On proposals from the Commission, the Council will decide what action is to be taken and will name the relevant products.

Thus, milk, pigmeat and poultry production have been bound by specific restrictions or in some cases schemes have been prohibited altogether.

Article 8(5) stipulates that:

- aid schemes for purchasing land,
- subsidized management credit the duration of which does not exceed one farm year,
- State guarantees for loans contracted, including interest,

do not come within the scope of the regulation.

Such aid schemes must be examined under Articles 92 to 94 of the Treaty.

(ab) Other schemes assisting farms

Regulation (EEC) No 797/85 also does not affect the Member States' right to adopt, within the area of the Regulation, above and beyond the investment aids referred to above at (aa) and the annual income compensatory allowances, additional aid measures with conditions or rules of qualification differing from those laid down in the Regulation or with amounts exceeding the ceilings laid down therein (Article 31).

This includes:

aids to the keeping of accounts (Article 9), aids to the start-up of mutual aid groups (Article 10), farm relief services (Article 11), and farm management services (Article 12).

Such additional aid must be vetted under Articles 92 to 94 of the Treaty. The Commission has endorsed a number of schemes of this kind (e.g. aids to the keeping of accounts or aids to the start-up of mutual aid groups, farm relief services and farm management services): these schemes, through more rational use of the means of production, help to erode production costs on a permanent basis.

(ac) Aids relating specifically to the environment

Article 19 of Regulation (EEC) No 797/85, which contains provisions for farms operating under constraints with regard to the environment, provides only for aid schemes financed entirely by the Member States; such schemes must be vetted for compliance both with the Regulation on the one hand and Articles 92 and 93 of the EEC Treaty on the other.

These rules authorize national aid schemes in areas which are sensitive from the point of view of the environment, to compensate farmers agreeing not to exploit all of their productivity potential. Thus, this is a new category of schemes contributing to the threefold objective of the new agricultural policy:

- control of production, especially milk production;

- conservation of the environment;

- further action as regards mountain and hill and less favoured areas and, as a result, support for the incomes of a class of farm which still has an important role to play, since such farms constitute a barrier to desertification of certain areas of the countryside.

(b) Policy as regards quality

(ba) Schemes for the improvement of quality

Lastly, the Commission supports national policies for aid schemes where the purpose of these is to improve the quality of crop or livestock products, whether the schemes are concerned with plant health, veterinary work, or quality control. The schemes are mainly concerned with breeding (such as the purchase of breeding animals, artificial insemination, protection of genetic assets, breeding of disease-resistant plants, and aids for health or quality inspection of finished products). The Commission also believes that under a policy for quality, actual production can be brought more closely into line with the desiderata of consumers and users: there is a tendency among the latter to prefer agricultural products of good nutritional and taste quality, notably "biological" products. Production of superior quality would also help to curb the quantitative expansion of production, in that quality can very often be achieved only at the expense of lower yields, whether of livestock or of crop products.

(bb) Publicity

As, in our society, the consumer is constantly exposed, through a wide range of media, to publicity promoting food, often competing with traditional agricultural products, the Commission takes the view that publicity campaigns conducted by the Member States using public funds are to be encouraged provided they do not interfere with trading conditions to an extent conflicting with the common interest. Publicity campaigns are deemed to be in line with the "common interest" where they are concerned, in particular, with schemes not conflicting with Article 30 of the EEC Treaty[1] or where they do not concern only a single firm. But publicity schemes are acceptable where they concern operations for disposal of surplus products or the encouragement of new products for which there are outlets within the Community, and schemes promoting the products of regions among the least favoured or products of high nutritional or taste quality. The Commission has accordingly drafted appropriate instruments, and these are still being discussed by the Member States in the working group on conditions of competition.

(c) Aid schemes related to disasters

In order to protect farmers as far as possible against the loss of livestock following epidemics or of harvests as a result of natural disasters or merely exceptionally bad weather (hail, frost, low temperatures), the Member States are increasingly encouraging their farmers to take out insurance against these risks by themselves paying part of the premiums. Such schemes relieve the Member States concerned of any obligation to pay compensation when disasters do occur, insofar as the damage is covered by insurance; from this angle, the insurance covers the Member State itself as much as it does the farmer.

Accordingly, the Commission has worked out guidelines establishing a framework for national aid schemes against damage affecting agricultural production or production facilities and national aid schemes in the form of payment of part of the insurance premiums against risks of this kind. This framework also concerns aids paid in connection with the drive to control epidemics and crop diseases. The framework is now being discussed with the Member States in the working group on conditions of competition in agriculture.

[1] See Judgments of the Court in Cases 249/81 ("Buy Irish") and 222/82 ("Apple and Pear Development Council"), and OJ No C 272/3, 28.10.1986.

(d) Investments in processing and marketing

The Community has also followed up the efforts made with regard to production by concerted action to improve the processing and marketing of agricultural products. Regulation (EEC) No 355/77[1] targets these objectives. Articles 92 to 94 remain applicable to the investment aid schemes concerned. However, criteria, worked out in connection with the implementation of this regulation, must be met before there can be a Community contribution to the financing of the relevant investments implemented under programmes established by the Member States and endorsed by the Commission. These criteria have been very fully complied with in those cases in which - e.g. because of the lack of a programme or lack of funds at Community level - the financing is entirely national and in which the criteria set out in Article 92 are thus the only ones to be applied.

The maximum rate of national aid to investments authorized by the Commission is normally 35%. However, as regards investments in processing and marketing, further to Council decisions regarding investments qualifying for Community financing, the following maximum rates have been accepted:

	Mezzogiorno, Greece West of Ireland, Overseas Departments, Portugal/Spain[2]	Southern France Spain[3]	Other countries
Projects forming part of a programme	75	65	50
Projects without programme	50	50	35

[1]Regulation on common measures to improve the conditions under which agricultural products are processed and marketed (OJ No L 51, 23.2.1977).
[2]For the areas listed at the second indent of Article 17(2)(a) of Regulation (EEC) No 355/77 as amended by Article 2 of Regulation (EEC) No 2224/86 of 14 July 1986, OJ No L 194, 17 July 1986, p. 4.
[3]For the areas listed at the first indent of Article 2(2)(a) of the same Regulation.

For sugar and isoglucose, all investment aids have been prohibited, with the exception of aids to the reorganization of the sugar industry in Italy. The same attitude had been adopted for milk. At the present time, measures are being discussed with the Member States which allow certain investment aids provided there is no increase in processing capacity. For other surplus product groups (such as wine), no other limitation has so far been imposed. For wine, the Commission does, nonetheless, reserve the right, when examining particular cases of aid schemes, to review its position later under Article 93(1) of the EEC Treaty (existing aid schemes).

(e) Short-term or emergency aids

The new restrictive policy on the pricing of agricultural products has forced a large number of farms into serious difficulties. The Member States have therefore set up rescue schemes in the form of cash aids, which the Commission has approved, on an exceptional basis, to ensure that modernization efforts made are not wasted.

These aids are essentially a result of the general difficulties Community farmers now have to contend with (structural surpluses, disposal difficulties, frozen prices). They are always cash aids, but with varying specific objectives:

- aids to help through their difficulties farms which normally can fend for themselves and/or submit restructuring plans; generally, this type of farm is encumbered by over-borrowing for investment purposes,
- aids intended to obviate the need for farmers to sell off assets.

However, in this field, the Commission has adopted an extremely cautious attitude: the schemes can cover a large number of farmers, so that their impact may go beyond the objectives strictly defined.

(f) Aids linked to social security schemes

The Commission is drafting instruments relating to aids granted in connection with the social security schemes operated in agriculture; it has, in particular, established general criteria enabling a distinction to be made between measures coming under Articles 92 to 94 of the Treaty and those which do not do so.

(g) Aid schemes to be examined under Article 93(1) of the EEC Treaty

For a few particular economically very important aid schemes, aspects of which may conflict with the objectives of the common agricultural policy, the Commission has reserved its right to adopt positions at a later date; this means that it is not opposing the implementation of the schemes but may express an opinion later under Article 93(1) of the Treaty as regards the aid already activated. The main cases are the following:

- aids in connection with taxation:

  Integration of economic policy has not yet gone so far as to interfere substantially with the Member States' power as regards taxation, except as regards VAT, which has been extensively harmonized in the Community. Also, the difficulty in determining what, in a taxation context, constitutes an aid or simply part of the tax system has so far made it difficult to establish clear rules. The Commission is planning to entrust a study of relative disparities in the systems to a group of experts;

- reduced-interest-rate management credit:

  Generally, as regards state aids to management credit, the Commission has reserved its right to comment at a later stage. However, aid granted in the form of reduced-interest-rate management credit is deemed to be incompatible with the common market where it is granted,

  - for a period exceeding the marketing year (12 months),

  - to only one product and for a single operation (e.g. storage of wine, purchase of cattle, etc.).

  This attitude is motivated by the fact that agricultural production, being necessarily cyclical in character, must be financed by specific methods.

- State guarantees for loans:

As regards this type of aid, the Commission will also comment at a later stage on all these measures, including the way in which State guarantees are executed.

(h) Special arrangements for existing aid schemes for agriculture in Spain and Portugal

Under Council Regulations (EEC) No 3773/85 and 3774/85,[1] Spain and Portugal have been authorized to maintain for the time being national aids that would otherwise be incompatible with the common market. The aids concern cereals, olive oil and seeds and reproductive material in Spain, and sugar, vegetable oils and fats and seeds in Portugal.

These schemes are to be phased out between 1987 and 1996 at rates set in the two regulations.

Where the payment of any of the aids listed in these regulations has the effect of substantially altering conditions of competition on the Spanish or Portuguese market as between products from the other Member States and home-produced products, the Council, using the procedure laid down in Article 89(14) of the Act of Accession, will take appropriate action to ensure equal access to the Spanish and Portuguese markets.

III. OUTLOOK

Commission analyses[2] have established the essential priorities for the agricultural policy to be conducted in the next decade. Specifically national action taken by the Member States must be consistent and avoid distorting the guidelines adopted at Community level. To qualify for the derogations laid down in the rules of competition of the Treaty, national aids must therefore support the new policy approach, by helping to:

- ease down the output of excess products and lighten the resulting burden for the taxpayer;

- promote the diversification and qualitative improvement of production, on the basis of internal market demand and consumer preferences;

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[1] OJ No L 362, 31 December 1987.

[2] "A future for European agriculture." The Green Paper and the Commission guidelines have been published in "Newsflash", "Green Europe", Nos 33 and 34.

- support farming in areas where it is indispensable as a matter of regional development, the maintenance of a social equilibria or the protection of the environment and the countryside;

- promote increased awareness among farmers of environmental problems;

- develop, within the Community, industries processing agricultural products, thus involving farmers in the major technical changes of our age.

It goes without saying that, under the rules of competition of the Treaty, the Commission will, as in the past, bear in mind at all times the need for the Member States to find solutions to economic problems arising from situations not yet covered by specific regulations governing the common agricultural policy.

This is the background to the proposal for a regulation which the Commission sent to the Council in April 1987 for the establishment of a framework system for national aids to farm incomes.

This legislation concerns income aids the Member States may be introducing to keep alive certain types of farm which are in danger of being forced out of the main stream of farming because of recent changes in the Common Agricultural Policy.

It is attached to two other proposals for regulations which the Commission has laid before the Council, the purpose of which is to set up Community aid schemes for farm incomes and a Community "pre-pension" scheme for farmers who are at least 55 years of age.

The framework system for national aid schemes to incomes has a twofold objective:

- it will help to channel national aids so that they do not interfere with structural change now taking place, and

- it should help to keep at work farmers forced out of the main stream of agriculture and who at the present time have no prospects of employment in other industries.

The regulations define the field of action of the Member States on the basis of derogations to Articles 92 to 94 of the Treaty.

However, potential beneficiaries and procedures for paying the aids have been defined on rigorous lines to avoid any inconsistency between the national schemes and Community objectives. The action taken by the member countries will be essentially restricted to social and welfare matters, without any significant impact on production.

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