

GREEN EUROPE

NEWSLETTER ON THE COMMON AGRICULTURAL POLICY

STATE AIDS AND THE COMMON AGRICULTURAL POLICY



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State aids and the common agricultural policy

The intention of the French Government to provide over FF 5 000 million to support French farmers in 1982 has aroused concern in the other Member States. There are fears that the income supplements French farmers will be receiving will distort competition. The scale of the assistance is also causing farmers' unions in the other Member States to cast an envious and watchful eye at developments in France in the hope of claiming similar treatment.

There have been calls for the Community institutions to intervene, although no-one is quite sure what is to be done in France. There are, after all, many ways in which Member States can give a helping hand to their farmers, and it would be quite wrong to think that every measure of this kind is prohibited. Indeed, the Commission estimates conservatively that total national expenditure by the Member States is already about double Community spending on agriculture. A considerable proportion of this national expenditure goes on implementing Community structural directives under which both the Community and the Member States make financial contributions. By far the greatest share is spent on social security for the farming population, although this is only true when all Member States are taken together; there are variations between countries in the scale of such expenditure and the form in which individual governments contribute to financing social security schemes. This type of spending is hardly ever criticized, although there is no doubt that it, too, can distort competition.

These few examples are enough to show that generalizations can be misleading and that every scheme introduced by a Member State must be judged in its own economic and social context. This means first of all looking at the details of such measures.

The relevant provisions of the EEC Treaty are Articles 92 to 94, which apply without restriction to products coming under common marketing organizations, and which stipulate that Member States must notify all forms of national aid to the Commission and may not activate a scheme until the Commission has given its approval. However, for agricultural products not covered by common marketing organizations (essentially alcohol, potatoes, vinegar and some kinds of fruit), only notification is required.

What exactly constitutes an aid scheme? First of all, the term excludes all measures which the Member States are required to introduce under Community aids, which the Member States only implement. Much the same applies to measures introduced under Community provisions on the improvement of agricultural structures; here again there are separate Community review procedures. Another major exception is what are called "general measures". These are State schemes which benefit the economy as a whole rather than individual firms or sectors. General measures qualify as instruments of macro-economic management and are hence outside the scope of the rules on State aids, coming instead under Article 103 of the EEC Treaty, which gives the Member States a wide degree of discretion. One quite controversial example of a general measure is the Investment Account Act ("NIR") in the Netherlands, some of the provisions of which (basic premiums) have drawn criticism. There are a number of other government activities similar to general measures, particularly those designed to improve infrastructure, such as the construction of roads and dykes, river control, etc, which are not regarded as aid schemes where they do not secure specific advantages for certain beneficiaries.

Leaving aside these exceptions, any form of support ranks as State aid, including subsidies to capital, reduced interest rates, special scales of charges, the provision of goods and services, price reductions, the waiving of rights to benefits, etc. The essential criterion is that the assistance must derive from the public authorities either directly or indirectly (e.g. via a State or local authority undertaking).

It is the Commission's job to assess whether measures of this kind are compatible with the common market or not. This is done by judging them against Article 92 of the Treaty, which states that aid schemes are incompatible with the common market if they affect trade between Member States and distort or threaten to distort competition. A number of exceptions are made to this basic principle. The Treaty itself indicates types of aid which are compatible with the common market, namely:

- aid of a social character granted to individual consumers, provided it is granted without discrimination related to the origin of the products concerned;
- aid to make good the damage caused by natural disasters or exceptional occurrences;
- aid granted within areas of the Federal Republic of Germany adjoining the East-West border.

Other types of scheme, while in principle prohibited, may be accepted by the Commission as compatible on certain conditions. A final category of compatible aid consists of schemes designated as such by the Council, although this has only rarely happened.

In the case of the great majority of aid schemes, therefore, it is up to the Commission to ascertain whether a measure ranks as an aid and whether it can be considered compatible with the common market. Generally speaking, there is a presumption that any kind of State subsidy will affect trade between Member States and distort competition. There are cases, however, in which for example the geographical area in which a product is produced and consumed is confined to one Member State so that the question of whether an aid scheme is incompatible cannot arise. In general the assessment of compatibility comes down to deciding whether a scheme can be considered compatible by way of exception. This involves above all consideration of the development potential of a region or sector, and of living standards and employment levels. An absolute condition is that aid schemes must not be against the Community interest. This means specifically in agriculture that, for example, aids which are in breach of the common organizations of markets can never be considered compatible because it must be presumed that a market organization reflects the Community interest.

Nevertheless, there remain a large number of State aids in agriculture which can be considered as compatible with the common market. These include all aid schemes which serve to improve the structure of agriculture (if they are not already covered by individual provisions) such as the consolidation of land holdings, drainage and irrigation projects, construction of farm roads, connection to utility services, soil improvements; protection against natural disasters; "intellectual" investment such as fundamental and applied research, information and consultancy services, basic and advanced training, retraining, and genetic improvement of livestock. With certain restrictions, investment projects may also be supported which are not covered by the Directive on the modernization of farms (assistance to individual farms) such as capital investment in the environmental field or in energy conservation. There are other types of aid often involving regional policy considerations, which are permitted but which cannot be given here because they would require highly detailed description.

Looking at this incomplete list of permissible aid schemes, it is immediately obvious that there are two types which are not mentioned but which are the first one thinks of in connection with financial assistance. These are direct income subsidies and subsidies towards the purchase of equipment and supplies. These have always been regarded as incompatible with the common market because they lead to direct distortions of competition; but they are the types of assistance which Member States most readily resort to when they believe their agricultural sectors face such major difficulties that government subsidies are the only remedy.

This tends increasingly to be the case when the national economy as a whole is faring badly. From the point of view of the common agricultural policy, such a situation has two implications. Firstly, farmers will naturally be feeling the effects of the current recession as much as the rest of the population. However, they will already have been lagging behind in income terms because the prices set annually for agricultural products are largely determined by constraints on the Community budget.

In such a situation, it is only natural to look to State aids to offset falling income from the sale of agricultural produce. While this is an understandable reflex, it is an inappropriate one. A misdirection of economic resources may occur if the effect of such measures is to keep non-viable farms in existence, to encourage production of surplus products or to prevent specialization within the agricultural economy. Such schemes usually impede the structural adjustment which macro-economic considerations would call for. Admittedly this is not the whole story. What may seem right for Community agriculture as a whole may well look different when regional and social factors are considered. This is the case, for example, where there is no alternative to continuing a farming operation, either because other employment is not available or because it is desirable to maintain some agricultural activity for countryside conservation, upkeep of the environment or to meet other non-agricultural goals. This is why the basic principle that income supplements and operating subsidies cannot be allowed, while it has never been fundamentally challenged, has always been subject to certain restrictions. Particularly at times when a general recession is causing a worsening of the climate in agriculture, there is a need to be less strict in applying the principle, although it must always remain clear that we are talking of exceptions and that the underlying rule is still valid.

Yet it is precisely the introduction of this kind of exceptional aid scheme in one Member State which leads to demands for similar aids in other Member States. It is a mistake, however, to conclude that a scheme in another Member State can best be answered by a comparable measure in one's own country. Both will have economic implications which will not be made less serious merely because they are implemented in more than one Member States. Furthermore, since such schemes are not likely to be completely identical between countries, new distortions could arise which may incite yet more "retaliatory" measures. There is a danger of this leading to an escalation of aid which will not only be bad for the general economy but will also undermine the common market in agriculture and possibly lead to its collapse. All parties would then be the losers, since a move to abandon the common agricultural policy would have far-ranging consequences for the European idea as a whole.

With these unwelcome possibilities in mind, it is obvious that State aids needs to be monitored closely so that any illegal measures can quickly be stopped. Article 93 of the EEC Treaty would seem to provide the necessary machinery by requiring Member States to notify new schemes, which may then only be put into effect once the Commission has approved them. However, this system presupposes that the parties concerned will follow it. First and foremost, this means that Member States must actually notify new aid schemes before activating them. Unfortunately, they do not always do so, particularly where the more important measures are concerned. Secondly, a measure must be withdrawn if the Commission is unable to accept it. Generally this causes no problems. The difficulties start when schemes which have not been notified are activated before the Commission can consider them. What can be done when this happens? The Court of Justice of the European Communities has ruled that Member States are entitled to recover national aid that has been improperly paid out, otherwise the Commission's powers to prohibit certain schemes would be pointless. The Commission has so far not tried to enforce this; it has been satisfied to have Member States recognize that they have broken Community rules and undertake to abide by them in future. Apart from the legal problems of recovering aid already paid out, there are of course also political considerations inhibiting an underly strict approach.

Another possibility does, however, exist. In some cases, national aid has been granted which is in breach of a common marketing organization. Where such a breach involves a specific measure eligible for Community financial support under the market organization rules, it is fair to presume that the national scheme runs counter to the spirit or at least the normal economic impact of the Community scheme. In such instances the Commission has seen fit to refuse Community financing. A number of cases of this kind have been brought before the Court of Justice, which has ruled in favour of the Commission. The financial consequences for the Member State concerned are usually very tangible and this approach seems to be more promising than the recovery of aid from beneficiaries. The essential thinking behind the judgments mentioned above, i.e. that a national aid interferes with the operation of a common marketing organization and thus puts Community financing of this organization at risk, could certainly be developed and applied in other, slightly different cases.

The Commission is not always able to come down either for or against a national aid scheme. The EEC Treaty provides sufficient criteria for assessing aid measures but it is not always opportune to do so. This is particularly true of measures forming part of the taxation system. Concessionary rates of tax, tax-free allowances and tax rebates are clearly to be classified as State aids if they are available only to specific undertakings or industries. Nevertheless, the Commission usually reserves its judgment in such cases, for a review of tax conversions out of their context would be a hold undertaking. In this connection it must be borne in mind that quite different measures may be used to achieve the same effects, and that a scheme which is confined to agriculture in one Member State may be a blanket operation applying to all industries in another. It is only possible to arrive at an objective assessment of the impact, negative or positive, in competition between Member States when the tax systems in each country are taken as a whole. Even then it is difficult to see how a final decision can be arrived at, since it is almost impossible to appraise state aids in an agriculture context and require changes to be made while at the same time excluding other sectors of the economy from the process. Instead of resolving problems, a narrow approach of this kind would risk creating new distortions. The Commission has therefore preferred to suspend its final pronouncement until the issues involved in harmonizing national legislation can be settled at Community level. In the tax field, this has so far been achieved only in respect of value-added tax. In view of the slow progress in harmonizing other taxes, it would be optimistic to expect early solutions in the field of State aids.

This far from complete survey of State aids in agriculture will have shown that not all issues have been satisfactorily resolved. It will have demonstrated, nevertheless, that national aid schemes cannot be assessed independently of a country's general economic situation; this is why the interpretation and application of the relevant Treaty provisions is flexible and still developing. It should be stressed, however, that in general, by their nature, State aids detract from the common market in agriculture. Accordingly, it is in the interests of the Community as a whole and of the individual Member States that exceptions should be allowed only for a restricted number of purposes which do not militate against these interests.

Of course the ideal situation would be for the Community itself to pursue such objectives and finance its own measures. This brings us back to budget constraints, of which we are all aware, but that is another subject.

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