

## Newsletter on the Common Agricultural Policy

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Uniform application to agriculture of the  
EEC Treaty's provisions on competition

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Aids to agriculture: report and inventory

The Council of Ministers has several times called upon the EEC Commission to suggest criteria for the establishment of a common competition policy applicable to the production of and trade in agricultural products. The Council's programme of work includes the following aim:

"The Council, acting on a proposal of the Commission, shall establish the legal basis of a uniform competition policy applicable to production of and trade in the products listed in Annex II to the Treaty of Rome, and shall at the same time lay down criteria for the implementation of this policy.

The provisions adopted in application of these criteria shall come into force not later than 1 July 1967."

The most important part of competition policy relates to aids granted out of national resources by the six Member States; these come under Articles 92 to 94 of the EEC Treaty.

The first paragraph of Article 92 of the Treaty runs:

"Except where otherwise provided for in this Treaty, any aid, granted by a Member State or granted by means of State resources, in any manner whatsoever, which distorts or threatens to distort competition by favouring certain enterprises or certain productions shall, to the extent to which it adversely affects trade between Member States, be deemed to be incompatible with the Common Market."

Paragraphs 2 and 3 of this Article specify the aids that can be excepted from this fundamental provision of the Treaty, e.g. aids to promote the execution of important projects of common European interest, aids to facilitate the development of certain activities or of certain economic regions, and such other categories of aids as may be specified by decision of the Council acting by means of a qualified majority vote, on a proposal of the Commission.

Article 93 concerns the steps that must be taken by the Commission, in co-operation with the member countries, to combat aids that are incompatible with the provisions of the Treaty. It lays down:

"The Commission shall, together with Member States, constantly examine all systems of aids existing in those States. It shall propose to the latter any appropriate measures required by the progressive development or by the functioning of the Common Market."

The Treaty's provisions on competition are of prime importance for agriculture and particularly for the common agricultural policy and the establishment of an agricultural common market. In principle these provisions apply equally to industry and to agriculture; however, agreements to dominate the market, which are found in industry, are

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unknown in agriculture, so the rules of competition have to be applied differently in the agricultural sector. The many types of aid granted to agriculture are thus different in kind from aids to industry; their aim is primarily to strengthen and maintain agricultural activity and competitiveness vis-à-vis other sectors of the economy. This fact is recognized in the EEC Treaty, Article 42 of which reads:

"The provisions of the Chapter relating to the rules of competition shall apply to the production of and trade in agricultural products only to the extent determined by the Council within the framework of the provisions and in accordance with the procedure laid down in Article 43, paragraphs 2 and 3, due account being taken of the objectives mentioned in Article 39.

The Council may, in particular, authorize the granting of aids:

- (a) For the protection of enterprises handicapped by structural or natural conditions; and
- (b) Within the framework of economic development programmes."

#### First steps towards equality of competition in agriculture

Although the EEC Treaty thus makes an exception for agriculture where competition policy is concerned, the EEC Council and Commission were soon obliged to consider the question of equal competition between the agricultural sectors of the six countries.

On 14 January 1962 the Council adopted regulations establishing the first common agricultural market organizations in the Community; these concern cereals, pigmeat, eggs, poultry, fruit and vegetables, and initial provisions were also laid down for wine. These market organizations, which came into force in the EEC on 1 August 1962, embody uniform arrangements governing trade, prices, quality standards, etc., for all six Member States.

Provision had to be made to ensure that Member States comply with the regulations and, above all, do not jeopardize their implementation by types of intervention which distort competition. This was the object of Regulation No. 26 of 4 April 1962, on the application of certain rules of competition to the production of, and trade in, agricultural products.

Regulation No. 26 is based on Articles 42 and 43 of the EEC Treaty. It should be regarded as a temporary arrangement to settle problems of competition connected with the common agricultural policy. The temporary nature of its provisions is shown in the Preamble, which states:

"It follows from Article 42 of the Treaty that the application to the production of, and trade in, agricultural products of the rules of competition laid down in the Treaty constitutes one of the elements of the common agricultural policy and the

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provisions set forth hereunder will require to be supplemented in the light of the development of this policy."

In the EEC Treaty the provisions governing competition are divided into three sections:

- (a) Articles 85 to 90, agreements between enterprises, decisions by associations of enterprises, and concerted practices;
- (b) Article 91, dumping;
- (c) Articles 92 to 94, State aids.

Regulation No. 26 solved the problem that Articles 85 to 90 pose for agriculture by specifying that Article 85(1) of the Treaty shall not apply to any agreements, decisions or practices of farmers and farmers' associations which impose no obligation to charge a specific price, do not eliminate competition, or jeopardize the objectives of Article 39 of the EEC Treaty.

Article 3 of Regulation No. 26 lays down that Article 91(1) of the Treaty, which concerns dumping, shall apply to trade in the products listed in Annex II of the Treaty.

The regulation is, however, incomplete as regards the application to agriculture of Articles 92, 93 and 94 of the Treaty, which concern aids.

Regulation No. 26 simply states that Article 93(1) and (3) (first sentence) of the Treaty shall apply to aids granted to the production of or trade in agricultural products. This means essentially that the Member States are only bound to notify aids, but not to adjust their aid policies. However, as common market organizations for particular agricultural products have been in existence since 1 August 1962, a temporary expedient was adopted: most of the regulations establishing these markets specify that Articles 92, 93 and 94 of the Treaty are also applicable, with certain reservations, to the products in question.

In all Member States, an essential feature of agriculture is the granting of subsidies, refunds or other financial aids to support prices or agricultural markets and enable agriculture to meet the requirements of a modern economy. These aids often constitute one of the main instruments of the national market system.

The regulations establishing the common market organizations prescribe that certain of the above-mentioned aids shall be extended to the whole Community by means of common implementing provisions, or gradually reduced or eliminated. In view of the economic position of agriculture, national aids may even in many cases be necessary for realization of the common agricultural policy.

The provisions of Articles 92 to 94 of the EEC Treaty are sufficient to enable the Community institutions to take the aims and methods of the common agricultural policy into account when dealing with aids to agriculture.

It can even be said that, in view of Articles 93 and 94, the EEC Commission enjoys very extensive powers under the Treaty. Regulation No. 26 was thus only the first step towards implementation of the Treaty's provisions on aids within the framework of the common agricultural policy.

It has been laid down that Articles 92 to 94 should gradually become fully applicable to agricultural products as the common market organizations were established - subject to the special needs of the markets concerned.

In adopting the first regulations to implement the common agricultural policy, the Council therefore made certain rules of competition applicable to the production of and trade in agricultural products. This initial decision was intended, in the first place, to eliminate practices that are incompatible with the principles of the Common Market and jeopardize the objectives of Article 39 of the Treaty and, secondly, to create the necessary conditions for subsequent regularization of the whole matter of competition, in the light of the development of the common agricultural policy. The provisions of Regulation No. 26 were quite adequate for this purpose. The Commission was empowered to remind Member States of their undertaking to implement the common agricultural policy and comply with the provisions governing competition.

The various regulations allowed the Commission, as the initial investigating body, to examine aids and give numerous rulings on particular instances in the Member States. It has frequently made use of its right to call upon Member States to end certain practices relating to aids.

#### Towards a common competition policy for agriculture

Since early 1962 the EEC Commission has been assembling the elements for the body of rules of competition necessary for completion of the agricultural policy.

On 10 May 1963 the Commission put before the Council an interim report on the compilation of a list of aids to agriculture, and followed it by another report on 8 November 1963.

Thus a beginning was made with the "inventory of aids" which has been compiled and classified by the Commission's services from data supplied by the Member States.

Hitherto the temporary rules in Regulation No. 26 have been sufficient to ensure that the provisions of Article 39 of the EEC Treaty were complied with and that the common market organizations were implemented. It is, however, clear that, with the steady advance of the common agricultural policy, the period of temporary arrangements for competition policy in agriculture is gradually coming to an end.

Accordingly, by 1 July 1967 at the latest - the date envisaged for establishment of the single agricultural market - the Council will have to arrange for the uniform application to agriculture of the EEC Treaty's provisions on competition.

Application of Articles 92 to 94 of the Treaty to the production of and trade in agricultural products

The EEC Commission is now in a position to submit proposals to the Council regarding the application to agricultural products of Articles 92 to 94 of the Treaty of Rome, and regarding the establishment of criteria for harmonizing justified aids in respect of these products. To fulfil this task, the Commission needed to get as complete a picture as possible of all the aids granted in the Member States. The limitation "as complete as possible" already indicates that the inventory makes no claim to be exhaustive. For one thing, aids of a structural or social nature could not be included (they will be listed later in a special inventory of indirect measures affecting income) and, in addition, it was not the intention to list all aids anyway. The object was rather to assess the extent, nature, purpose and mode of operation of the aids granted by States, and to see how far they are compatible with the Treaty. The Commission had to list these aids in the light of the relevant provisions of the Treaty, and assess them collectively.

Generally speaking, the aids given in the Member States concern:

- (a) Production and marketing,
- (b) Investment in agriculture.

The Commission classified the aids under these two headings. It found that there are over 500 examples of aid in the six Member States, half of which are given for production and marketing and half for investment. The Commission had to assess these support measures by the criteria relating to the rules of competition laid down in the EEC Treaty, in order to see whether they should be deemed compatible or incompatible with the Common Market. Aids to production and marketing concerned 17 categories of products. Here establishment of the common agricultural market organizations has already had some effect, and the scope for maintaining direct aids has been considerably reduced; these are now concentrated to a greater extent on products for which there is as yet no common market organization. In the case of the other products, i.e. those for which a common organization of the market already exists, the Member States have begun to lay more emphasis on indirect incentives when granting aid.

How the EEC Commission classifies and assesses aids .

The Commission has put before the Council proposals concerning the application to agriculture of the Treaty's provisions on aids granted by States (Articles 92 to 94). The document in question is divided into three Chapters:

Chapter I

Application of the Treaty's provisions (Articles 92 to 94) in general;

Chapter II

Principles governing the Commission's work on aids to agriculture;

Chapter III

The Commission's actual proposals.

Chapters I and II contain definitions, principles and information regarding situations that have already arisen as a result of the development of the Common Market. Thus the Commission points out in Chapter I that the Treaty's provisions on State aids are an element of the common agricultural policy, although they can be waived where such is necessary to attain the objectives of Article 39.

As a result of measures establishing common organizations of the markets, common prices and common financing, the agricultural policy has now reached a very advanced stage. By 1 July 1967 over 90% of farm products will be subject to common market organizations governed by Articles 92 to 94. The Commission proposes that these Articles be made applicable on that date to all agricultural products, including the few for which there will still not be a common market organization, and that Regulation No. 26 be supplemented accordingly.

In Chapter II the Commission says that the only aids which can be deemed compatible with the Common Market are those which have been recognized as a necessary adjunct to the instruments created by the common agricultural policy. These aids must be appropriate to the existing economic and agricultural conditions. They must be dynamic, and must be directed towards lasting improvements.

The Commission divides aids into three classes, according to the degree to which they may affect competition:

Class 1

Aids that can be deemed compatible with the Common Market (e.g. for consolidation of holdings, incentives to farmers to relinquish or take over farms in decline, funds for scientific research, retraining). If the Council agrees, aids granted for these purposes may be segregated forthwith from the list of 500-odd for examination; they can be regarded as "good".

Class 2

Aids which may distort competition only in the long term and not in the short or medium term (e.g. for water engineering, land reclamation, drainage, land clearance, improvement of farm equipment, purchase of selected seed and good-quality animals for breeding). These aids are also "good", but can affect competition indirectly.

Class 3

Other aids, which may distort competition directly and on which the Commission is not at present in a position to take a comprehensive view. These are aids which affect competition in the short or medium term, as they concern specific products (e.g. aids for the construction of hot-houses and of buildings for rearing poultry and pigs). They also include aids which the Commission already regards as incompatible with the Common Market, e.g. aids for the transport of agricultural products from one Member State to another, measures to promote exports, and aids for storage given in the form of allowances exceeding the actual cost of storage.

Chapter III contains the Commission's proposals as to the action the Council should take.

The Commission suggests, for example, that the Council should declare that the aids in Class 1 may be deemed compatible with the Common Market. It reserves its right to submit further proposals to the Council on this matter.

Acting under Article 94 of the Treaty, the Commission proposes procedures for examining projected aids, and suggests that certain classes of aid be exempted from prior notification.

In particular, the Council will have to consider three draft regulations:

(a) Regulation amending Council Regulation No. 26.

The regulations at present in force are incomplete in so far as Articles 92 to 94 of the Treaty are not applied without reservation to all the products listed in Annex II to the EEC Treaty; in some cases the regulations do not even permit attainment of the objectives of Article 39.

The regulations are also incomplete in that the Community cannot at present modify, reduce or eliminate any State aids in order to protect agriculture from the ensuing distortions. That will only be fully possible when Articles 92 to 94 are made applicable without reservation to all the products listed in Annex II - with the inevitable exceptions provided for in the various regulations establishing the market organizations.

This should be done by amending Article 4 of Regulation No. 26.



Under Article 93(1) of the EEC Treaty, all aids granted for agricultural products must be subjected to constant examination, so that they may, where necessary, be modified, progressively reduced or even eliminated.

If the Community did this simply with an eye on competition, all or most of these aids would have to be terminated.

Many kinds of State aids may, however, contribute to realization of the common agricultural policy, because this is only being established by stages and also because of the special nature of agriculture and the differences in structure and natural conditions between the various agricultural regions. Such aids can make farms more competitive and improve production arrangements and agricultural regions wherever the free play of competition is not sufficient to create incentives for the reorientation, reorganization and adjustments necessitated by the common agricultural policy.

These include the aids listed in an Annex to the proposed regulation. Their aims are:

- (i) Improvement of production structures;
- (ii) Improvement of the organizational infrastructure;
- (iii) Improvement of varieties and strains and of animal and vegetable production;
- (iv) Promotion of consumption.

These aids should therefore be deemed compatible with the Common Market.

The Commission has proposed to the Council that Regulation No. 26 be supplemented to this effect.

- (b) The second draft regulation would exempt aids in Class 1 from prior notification and, perhaps in the long term, also those in Class 2. Should the Commission think fit it will, before 1 January 1967, propose to the Member States an upper limit for Class 2 aids. The Commission will also suggest upper limits for the aids in Class 3, and common conditions governing the granting of such aids (duration and nature of recipients); they will continue to require prior notification.

Under Article 93(3), first sentence, the Commission must be informed of plans to institute or modify aids "in due time to enable it to submit its comments". The Commission must therefore be given sufficient information and time to enable it to issue a firm or provisional ruling before the measures in question are carried out. The Commission will either have to institute formal proceedings under Article 93(2), first paragraph, or else to waive them, depending on the nature of the case.

- (c) In order to clarify matters of procedure and fix appropriate time-limits and criteria, the Commission has also submitted a third proposal, for a Council regulation laying down conditions

and details regarding the application of certain provisions of Article 93 of the EEC Treaty, in application of Article 94 of the Treaty.

The Commission's proposals are accompanied by the long inventory of aids notified by Member States, together with the Commission's comments on these aids.

#### Criteria governing the Commission's policy on aids

In working out additional criteria for a policy on aids to agriculture, the Commission proceeds from the principle that aids must only be granted by individual States in cases where they are essential for attainment of the objectives of the common agricultural policy. That policy already provides for Community measures by which the objectives of Article 39 can be realized: the common target prices are so fixed as to guarantee the agricultural population a fair standard of living, and particular regions or branches of agriculture can receive Community aid from the EAGGF under Community development programmes.

From the point of view of general economic life, aids must promote and hasten the adaptation of agriculture to the requirements of a modern economy. They should never result in maintenance of the status quo; rather must they help to integrate agriculture completely into the economy, and enable it to play its full part in the attainment of the Community's objectives as defined in Article 2 of the Treaty. From the point of view of agriculture itself, these aids must promote rationalization and efficiency in the production and marketing of farm produce by increasing labour productivity.

The general criteria that must govern the granting of aid follow automatically from these basic objectives. Aids must be dynamic in character; they must stimulate the implementation of programmes in areas where normal market conditions are not sufficient to ensure progress, owing to the rigidity of the agricultural sector.