STATE AIDS (WINE-GROWING): FRANCE v COMMISSION

Subject: State aids
Prohibition
Agriculture

Industry: Wine-growing)
(Some implications for other agricultural industries)

Parties: French Republic
Commission of the European Communities

Source: Judgment of the Court of Justice of the European Communities, dated 12 December 2002, in Case C-456/00 (*French Republic v Commission of the European Communities*)

(There are two special points of interest in this case. The first concerns the interaction between the rules on competition and the common agricultural policy. As a broad principle, the agricultural sector, as distinct from the sector comprising processed agricultural products, lies outside the ordinary scope of the rules on competition; and, in the present case, the Court explicitly states that the state aid provisions of the Treaty cannot override the provisions of the common agricultural policy, even when the latter provisions are contained in secondary legislation. "As is clear from the Court's case-law, Article 36 EC recognises the priority of the common agricultural policy over the objectives of the Treaty in the field of competition": see paragraph 33 below. The second point of interest lies in the Commission's own invocation of the foregoing principle to support its decision. Far from contesting the principle, the Commission relies on it. "The aid scheme at issue finances additional vine-planting. It results in an increase in the production of 'normal wine', which is prohibited by the common organisation of the market in wine": see paragraph 27 below. The Court upheld this view, adding for good measure the observation that the Commission, for the purposes of applying Article 87(3) EC, enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context and that the Court, in reviewing whether that freedom was lawfully exercised, cannot substitute its own assessment for that of the competent authority but must restrict itself to examining whether the authority's assessment is vitiated by a manifest error or misuse of powers: see paragraph 41 below.)

Judgment

1. By application lodged at the Court Registry on 18 December 2000, the French Republic brought an action under Article 230 EC for annulment of Commission Decision 2001/52/EC of 20 September 2000 on the State aid implemented by France in the wine-growing sector ('the contested decision').

Relevant provisions

2. The first paragraph of Article 36 EC states:
'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 37(2) and (3) and in accordance with the procedure laid down therein, account being taken of the objectives set out in Article 33.'

3. Article 87(1) EC provides:
'Save as otherwise provided in this Treaty, 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 common market.'

4. Article 87(3) EC states:
'The following may be considered to be compatible with the common market:
...
(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.'

5. Council Regulation EEC/822/87 of 16 March 1987 on the common organisation of the market in wine consolidated the rules concerning the common organisation of the market in wine.

6. Article 6(1) of Regulation 822/87 provides:
'All new planting of vines shall be prohibited until 31 August 1990 ...'

7. Article 14 of Regulation 822/87 as amended by Council Regulation EEC/2253/88 of 19 July 1988 states:
'1. The granting of national aid for the planting of category 3 areas cultivated for the production of table wines shall be prohibited.
2. As regards the planting of wine-growing areas other than those referred to in paragraph 1, the granting of national aid shall be prohibited except where it is:
- laid down by specific Community provisions,
- allowed pursuant to Articles [87] to [89] of the Treaty and contains criteria which should, in particular, enable the objective of reducing production quantity or of improving quality to be attained without leading to increased production. ...
3. The prohibition referred to in paragraph 2 shall apply as from 1 September 1988. ...
...'

8. Article 76 of Regulation 822/87 states:
'Save as otherwise provided in this Regulation, Articles [87], [88] and [89] of the Treaty shall apply to the production of and trade in the products listed in Article 1.'

9. Regulation 822/87 has been replaced by Council Regulation EC/ 1493/1999 of 17 May 1999 on the common organisation of the market in wine, in which the first subparagraph of Article 2(1) provides:
'Planting with vines of wine grape varieties classified pursuant to Article 19(1) shall be prohibited until 31 July 2010 ...'

10. Article 11(1), (2) and (3) of Regulation 1493/1999 states:
'1. A system for the restructuring and conversion of vineyards is hereby established.
2. The objective of the system shall be the adaptation of production to market demand.
3. The system shall cover one or more of the following measures:
(a) varietal conversion, including by means of grafting-on;
(b) relocation of vineyards;
(c) improvements to vineyard management techniques related to the objective of the system.
The system shall not cover the normal renewal of vineyards which have come to the end of their natural life.'

11. As provided in Article 15 of Regulation No 1493/1999, the detailed rules for the implementation of Chapter III of that regulation, which is headed 'Restructuring and conversion' and comprises Articles 11 to 15, may in particular include 'provisions aiming to prevent an increase in production potential'.

12. Article 71(1) of Regulation No 1493/1999 states:
'Save as otherwise provided in this Regulation, Articles 87, 88 and 89 of the Treaty shall apply to the production of and trade in the products covered by this Regulation.'

Background to the dispute

13. By letter of 3 February 1999, the French Government notified the Commission of a proposed aid scheme intended to encourage cognac producers to switch to production of local wine ('vin de pays'). The aid, which was to relate to 1 000 hectares in Charentes (France), was designed to promote the grubbing of vines of the ugni blanc variety, the yield from which is used mainly for cognac production, and their replacement with varieties of vine from which quality local wines could be produced.

14. In October 1999 the Commission decided to initiate the investigation procedure provided for in Article 88(2) EC with regard to three of the four measures notified by the French Government.

15. At the end of that procedure, the Commission adopted the contested decision, whose operative part is worded as follows:

'Article 1

1. The measure implemented by France consisting of a supplement to national aid for improving the vine population of wine-growing holdings in the Cognac region for the 1998/1999 and 1999/2000 wine years is an unlawful aid incompatible

with Articles 87, 88 and 89 of the Treaty and does not qualify for the derogation provided for in Article 87(3) of the Treaty.
2. The accompanying measure providing for technical support to producers is incompatible with Articles 87, 88 and 89 of the Treaty and does not qualify for the derogation provided for in Article 87(3) of the Treaty.

Article 2

France shall be required to cancel the aid schemes referred to in Article 1.

Article 3

France shall take the measures necessary to recover the aid granted to beneficiaries under the schemes referred to in Article 1.

Article 4

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

Article 5

This Decision is addressed to the French Republic.'

16. Meanwhile the French Government, without awaiting completion of the investigation procedure, had adopted two decrees on the conditions for granting the aid for improving the vine population of wine-growing holdings in the Cognac region: a decree of 12 March 1999 (JORF of 11 April 1999, p. 5387) relating to the 1998/99 wine year and a further decree of 6 April 2000 (JORF of 23 April 2000, p. 6260) relating to the 1999/2000 wine year.

Arguments of the parties

17. In support of its action for annulment, the French Government puts forward a single plea, alleging that the Commission erred in law when interpreting Regulations 822/87 and 1493/1999.

18. First of all, the French Government submits that the aid at issue complies with the objective, laid down in Article 14(2) of Regulation 822/87, of reducing production quantity or of improving quality without increasing production. That objective is also found in Regulation 1493/1999.

19. The conversion of areas planted with vines of the ugni blanc variety whose average yield is approximately 150 hl/ha to vines for the production of Charentes local wines which are subject to a yield ceiling of 80 hl/ha entails a reduction in the volume of wine produced.

20. The French Government rejects the Commission's conclusion that aid for the conversion of vineyards planted with vines of the ugni blanc variety to vines intended exclusively for the production of local wines is comparable to financing the planting of additional vines, which have been prohibited since 1988. In its view, it is not possible to carry out a varietal conversion without planting new vines, of a less productive variety, to replace the old ones. Furthermore, inasmuch as the new vines merely replace grubbed vines, it cannot be claimed that additional planting is involved.

21. In the French Government's submission, the Commission is wrong to consider that the present case involves conversion from vines used for the

production of spirits to vines producing 'normal wine', resulting in an increase in the production of such wine. That concept of 'normal wine' is meaningless under the common organisation of the market in wine, which does not distinguish between wines intended for cognac production and other wines. Nor is there any obligation to produce cognac from wine which comes from ugni blanc vines.

22. According to the French Government, Regulation 1493/1999 does not establish a correlation between the conversion of an area and any obligation on the Member States to reduce production on unconverted areas. Nor does Article 11 of that regulation provide that conversion of a given area must be accompanied by the grubbing of an equivalent acreage of vines. The Commission cannot impose conditions other than those prescribed by the regulation.

23. Second, the French Government maintains that the course of development of the wine market can be assessed only over a long period. The constant increase in worldwide sales of French local wine that was recorded for the period 1994-98 constitutes a general trend which a slight decline over the years 1998-99 is not sufficient to call into question.

24. Finally, in the absence of an appropriate analysis of the wine market, the Commission remains vague when seeking to prove that the aid at issue results in distortions of competition.

25. In the Commission's submission, it follows from the Court's case-law that, as regards national aid in the agricultural sector, recourse by a Member State to Articles 87 EC, 88 EC and 89 EC cannot prevail over the regulation governing the common organisation of the market in question (Case 177/78, *McCarren*).

26. As to reductions in yield and in production acreage, the Commission, relying on the classification of cognac as a potable spirit obtained from wine, submits that the present case is concerned not so much with the conversion of high-yield wine-producing vines as with the conversion of vines intended for the production of wine which is used to make spirits to vines producing 'normal wine'.

27. The aid scheme at issue finances additional vine-planting. It results in an increase in the production of 'normal wine', which is prohibited by the common organisation of the market in wine.

28. The Commission states that it was not a question of imposing conditions for authorisation of the aid at issue but quite simply of assessing the adverse impact of such aid on competition. It was for that reason that it examined whether the French authorities had in fact laid down measures reducing the impact of the aid on the market, by a reduction of yields, in particular those of vines of the ugni blanc variety, and by a reduction of production acreage in the region, as the French Government had proposed. After establishing that the national authorities had not given effect to those objectives, that is to say that they had not adopted measures to reduce the aid's impact, the Commission concluded that the aid was not compatible with the new Community requirements in the wine-growing sector.

29. As regards bringing production into line with demand and distortions of competition, the Commission states that the information concerning market growth supplied by the French Government is not confirmed by the data from the Office National Interprofessionel des Vins (National Inter-Trade Wine Office) concerning the fall in prices for local wines. Those data show that the market in local wines is experiencing difficulties.

Findings of the Court

Introductory remarks

30. First of all, while the procedure provided for in Articles 87 EC and 88 EC leaves a wide discretion to the Commission, and under certain conditions to the Council, in coming to a decision on the compatibility of a system of State aid with the requirements of the common market, it is clear from the general scheme of the Treaty that that procedure must never produce a result which is contrary to the specific provisions of the Treaty (see, in particular, Case C-225/91, *Matra v Commission*, paragraph 41).

31. Also, where there is a regulation on the common organisation of the market in a given area, the Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it (Case C-1/96, Compassion in World Farming, paragraph 41, and Case C-507/99, Denkavit, paragraph 32).

32. It follows that the Commission's assessment of State aid in a sector where common organisation of the market has been established involves examining the effect which such aid may have on the operation of that common organisation. In other words, as the Court has held, recourse by a Member State to the provisions of Articles 87 EC, 88 EC and 89 EC cannot receive priority over the provisions of the regulation on the common organisation of the market concerned (*McCarren*, cited above, paragraph 11).

33. Furthermore, as is clear from the Court's case-law, Article 36 EC recognises the priority of the common agricultural policy over the objectives of the Treaty in the field of competition (Case C-280/93, Germany v Council, paragraph 61).

34. Since the aid at issue was found in the contested decision to be unlawful on the ground that it did not meet the requirements laid down by the common organisation of the market in wine, it should be established whether, in the present case, the Commission interpreted correctly the provisions governing that common organisation of the market.

Substance

35. Balance between production and demand on the wine market is one of the objectives of the common organisation of the market in wine.

36. In order to attain such an objective, the provisions governing the common organisation of the market in wine have, for a long time, prohibited either the new planting of vines (Article 6(1) of Regulation 822/87, which was in force when the aid at issue was notified to the Commission, and Article 2(1) of Regulation 1493/1999, which has been in force since 21 July 1999) or national planting aid which does not enable production quantities to be reduced (Article 14(2) of Regulation 822/87). Provisions aiming to prevent an increase in production potential are also envisaged under Regulation 1493/1999 (subparagraph (c) of the second paragraph of Article 15 of that regulation).

37. In addition, since cognac is a potable spirit obtained from wine, it is excluded from the category of agricultural products (Case 123/83, *Clair*, paragraph 15) and, consequently, is not among the products regulated under the common organisation of the market in wine.

38. In that context, if areas planted with vines of the ugni blanc variety, the yield from which is used to make a spirit which, as an industrial product, is not sold on the wine market, are converted into areas intended for the production of local wines sold on that market, the quantity of such wines produced in the region in question will necessarily increase.

39. As has been pointed out in paragraph 35 of this judgment, an increase in wine production runs counter to one of the objectives of the common organisation of the market in wine. Accordingly, the Commission was fully entitled to find in the contested decision that the aid at issue was incompatible with the provisions governing the common organisation of a market.

40. The Commission nevertheless examined, in paragraphs 37 to 49 of the contested decision, whether the French Government had implemented measures capable of mitigating the negative effects on the market of the aid in question, in accordance with the derogation laid down in Article 87(3)(c) EC.

41. In this connection it should be remembered, first, that the Commission, for the purposes of applying Article 87(3) EC, enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context (see, inter alia, Case C-156/98, *Germany v Commission*, paragraph 67, and Case C-310/99, *Italy v Commission*, paragraph 45), and second, that the Court, in reviewing whether that freedom was lawfully exercised, cannot substitute its own assessment for that of the competent authority but must restrict itself to examining whether the authority's assessment is vitiated by a manifest error or misuse of powers (see Case C-288/96, *Germany v Commission*, paragraph 26, and *Italy v Commission*, cited above, paragraph 46).

42. In the light of those principles, the French Government's argument that the Commission erred in law by imposing, under Article 11 of Regulation 1493/1999, conditions relating to reductions in yield and production acreage which are not provided for in that provision cannot be upheld.

43. Examination of the contested decision shows that the Commission at no time imposed such conditions on the basis of Article 11 of Regulation No 1493/1999. Furthermore, as the Advocate General has observed in point 45 of his Opinion, that article does not lay down rules relating to the grant of national aid for the reconstruction and conversion of vineyards, but sets up a Community support scheme in whose financing the Member States are in principle unable to participate.

44. The Commission merely examined, in the exercise of the discretion available to it, whether the measures announced by the French authorities themselves concerning the reduction of yields and production potential would be sufficient to mitigate the impact of the aid in question on the market. At the end of its examination, it concluded that they were insufficient.

45. Furthermore, the assessments of an economic nature carried out by the Commission with regard to bringing production into line with demand and distortions of competition likewise fall within the scope of its discretion.

46. The Commission correctly found, taking account of, first, the information supplied by the Office National Interprofessionel des Vins concerning the fall in the average price of local wines in the 1999/2000 wine year, which was the result of a reduction in demand recognised by the French Government, and second, the objective of maintaining balance in the market pursued by the common organisation of the market in wine, that an increase in the production of local wines in France would be likely to create distortions of competition in a wine market where growth does not appear certain.

47. Moreover, it should be noted that the French Government did not adduce any evidence to support the conclusion that the Commission exceeded the limits of its discretion in finding that the aid at issue did not meet the requisite conditions for falling within the derogation provided for in Article 87(3)(c) EC.

48. The French Government merely maintained that the course of development of the wine market could be assessed only over a long period and that the Commission remained vague when seeking to prove that the aid at issue resulted in distortions of competition.

49. In those circumstances, and given that the statement of reasons for the contested decision discloses in a clear and unequivocal fashion the reasoning followed by the Commission in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review, that statement of reasons complies with the requirements established by the Court's case-law (see, in particular, Case C-17/99, *France v Commission*, paragraph 35, and *Italy v Commission*, cited above, paragraph 48).

50. In the light of all the foregoing considerations, the plea alleging that the Commission erred in law must be rejected.

51. The action must therefore be dismissed.

Costs

52. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

Court's Ruling

The Court hereby:
1. Dismisses the action;
2. Orders the French Republic to pay the costs. ■

State Aid: the ABX Case

A case in which "rescue aid" was approved by the Commission, on the basis of its own published Guidelines (see the reference on page 38 of this issue), concerned three bridging loans to companies belonging to ABX Logistics in France, Germany and the Netherlands, whose parent company is Belgian Railways. The rescue aid, which must be repaid in the medium term, is intended to enable the three recipients to remain temporarily afloat and to avoid job losses, which should benefit all of ABX's activities. A decision on the recipient companies' future will have to be taken within six months of today's date. The companies consist of about 107 consolidated subsidiaries spread across several countries and continents. ABX is a supplier of transport and logistics services. Since the three direct recipients are in financial difficulty due to a lack of funds available to them directly or within their respective national holding companies, they are allowed to receive loans from Belgian Railways in the form of rescue aid. The three bridging loans may be up to a combined maximum of €123 million and are for six months. If the recipients filed for bankruptcy, it would have disastrous direct repercussions on 7,619 jobs (4,578 in France, 2,702 in Germany and 339 in the Netherlands). The Commission has examined the aid in the light of the Community guidelines on State aid for rescuing and restructuring firms in difficulty and concluded that the aid is justified for acute social reasons and because it is limited to the minimum amount needed to keep the three direct recipients afloat long enough to take a decision on their future. Following this approval, the Belgian authorities must, within six months of today, send the Commission either a restructuring plan, a bankruptcy plan or proof that the rescue aid has been fully repaid.

Source: Commission Statement IP/03/93, dated 21 January 2003