



Press and Information

General Court of the European Union

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Judgment in Cases T-139/09, T-243/09 and T-328/09
France, Fédération de l'organisation économique fruits et légumes
(Fedecom) and Producteurs de légumes de France v Commission

The General Court confirms the Commission's decision categorising the French 'contingency plans' applied to the fruit and vegetable sector between 1992 and 2002 as unlawful State aid

The fact that the aid was co-financed by voluntary contributions from associations of the farmers concerned does not preclude its categorisation as State aid

Between 1992 and 2002, French organisations of fruit and vegetable producers received aid paid by an operational fund in an amount estimated by the Commission at over €330 million. Those 'contingency plans' were intended to attenuate the effects of temporary excesses in the supply of fruit and vegetables, to regulate the market price by a coordinated collective approach and to finance structural measures intended to enable the adaptation of sectors to the market. The fund was managed by approved economic agricultural committees, which consist, at the regional level, of farmers' organisations. Between 30% and 50% of the financing of the fund came from farmers' voluntary contributions. Farmers who did not pay the contribution could not receive aid. The remainder of the financing of the fund came from the Office national interprofessionnel des fruits, des légumes et de l'horticulture (National Interbranch Office for Fruit, Vegetables and Horticulture) (Oniflhor), a public industrial and commercial institution under the supervision of the French State.

By decision of 28 January 2009,¹ the Commission held that the aid in question constituted unlawful State aid – as it had not been notified to the Commission – that was incompatible with the common market. It therefore ordered that the aid be recovered by France, with interest, from its beneficiaries. The Commission was led to examine, for the first time, whether measures financed by both State contributions and voluntary contributions from professionals in a sector could constitute State aid within the meaning of Article 87(1) EC, and answered that question in the affirmative.

France, the Fédération de l'organisation économique fruits et légumes (Fedecom) and Producteurs de légumes de France have brought actions seeking the annulment of that decision before the General Court.

By its judgments delivered today, the General Court dismisses those actions.

With regard to whether the aid in question could be regarded as State resources and therefore categorised as State aid despite the fact that it was, in part, financed by voluntary contributions from the beneficiaries, the General Court finds that the relevant criterion is not the initial origin of the resources, but that of the degree of intervention of the public authority in the definition of the measures in question and their methods of financing.

In that regard, the General Court finds that it is Oniflhor, a public institution under the supervision of the French State, which decided unilaterally on the measures to be financed by the contingency plans and how they should be implemented and financed. Although the approved economic agricultural committees had the task of managing the operational funds intended to finance those measures, they did not, however, have any discretion in their application. In that context, the

¹ Decision C(2009) 203 final of 28 January 2009 on the 'contingency plans' in the fruit and vegetable sector implemented by France (OJ 2009 L 127, p. 11).

General Court points in particular to the predominant role played by the State in those committees, within which it is represented by the regional Préfet. Moreover, the General Court notes that the beneficiaries of the measures had the power only to participate or not in the system thus defined by Oniflhor, by agreeing or refusing to pay the sectoral contribution which Oniflhor fixed. Accordingly, the Commission was correct in taking the view that the disputed measures constituted State aid.

Furthermore, the General Court rejected the applicants' arguments that the Commission failed to state sufficient reasons for its decision and disregarded the principle of the legitimate expectations of the aid beneficiaries, in that they believed that the aid was compatible with European Union law. With regard to the latter argument, the General Court recalls that an expectation cannot be regarded as legitimate where, as in the present case, the aid was implemented without first having been notified to the Commission. Moreover, the General Court finds that there were no exceptional circumstances which, even in the absence of such notification, could have justified the beneficiaries having such a legitimate expectation that the aid was lawful.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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