Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

30 May 2013 *

(Article 107(1) TFEU — State aid — Concept of 'State resources' — Concept of 'imputability to the State' — Inter-trade organisations in the agricultural sector — Recognised organisations — Common activities decided on by those organisations in the interests of trade — Financing by means of contributions introduced on a voluntary basis by those organisations — Administrative measure making those contributions compulsory for all traders in the agricultural industry affected)

In Case C-677/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Conseil d'État (France), made by decision of 28 November 2011, received at the Court on 29 December 2011, in the proceedings

Doux Élevage SNC,

Coopérative agricole UKL-ARREE

v

Ministère de l'Agriculture, de l'Alimentation, de la Pêche, de la Ruralité et de l'Aménagement du territoire,

Comité interprofessionnel de la dinde française (CIDEF),

THE COURT (Fifth Chamber),

composed of T. von Danwitz, President of the Chamber, A. Rosas, E. Juhász (Rapporteur), D. Šváby and C. Vajda, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 15 November 2012,

after considering the observations submitted on behalf of:

— Doux Élevage SNC, by P. Spinosi, M. Massart and D. Lechat, avocats,

— the agricultural cooperative UKL-ARREE, by P. Spinosi, avocat,

— the Comité interprofessionnel de la dinde française (CIDEF), by H. Calvet, Y. Trifounovitch, C. Rexha and M. Louvet, avocats,

* Language of the case: French.

— the French Government, by E. Belliard and by G. de Bergues, J. Gstalter and J. Rossi, acting as Agents,

— the European Commission, by B. Stromsky and S. Thomas, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 31 January 2013,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 107(1) TFEU regarding State aid and, more specifically, the concept of 'State resources' appearing in that provision.

2 The request has been made in proceedings between Doux Élevage SNC and the agricultural cooperative UKL-ARREE, companies operating in the agricultural industry of turkey farming and production, and the competent national authorities, concerning the lawfulness of a decision by which those authorities extended to all traders in that industry, on a compulsory basis, an agreement, made within the inter-trade organisation representing that industry, introducing the levying of a contribution for the purposes of financing common activities decided on by that organisation.

French law

3 Law No 75-600 of 10 July 1975 on agricultural inter-trade organisations (*Journal Officiel de la République Française* (JORF) of 11 July 1975, p. 7124) introduced inter-trade consultation in the agricultural sector, in so far as the various trade organisations, commonly known as 'trades', which are most representative of an agricultural industry may join together in an inter-trade group. The provisions of that law have been codified in the code rural et de la pêche maritime ('the Rural Code'), the relevant provisions of which (in the version applicable to the events in the main proceedings) are set out below.

4 Article L. 611-1 provides:

'The Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire [Higher Council for Orientation and Coordination of the Agricultural and Food Economy], comprising representatives from interested ministries, from agricultural production, from the processing and marketing of agricultural products, from artisanal and independent food traders, from consumers, from official associations for the protection of the environment and agricultural property, and from trade unions representing employees in the agricultural and food industries, shall participate in the development, coordination, implementation and evaluation of policies on production programming and market organisation.

The Conseil shall be competent to deal with all agricultural, agro-food, agro-industrial and forestry production.

…'

5 Article L. 632-1 provides:

'(I) Consortia established on the initiative of the trade organisations which are most representative of agricultural production and, depending on the circumstances, of processing, marketing and distribution may be recognised as inter-trade organisations by the competent administrative

authority following an opinion from the Conseil supérieur d'orientation et de coordination de l'économie agricole et alimentaire, either at national level or at the level of a production area defined by reference to a specific product or a specific group of products, if they pursue, particularly through the conclusion of inter-trade agreements, all of the following objectives:

— to develop and promote contractual initiatives between their members;

— to contribute to market management through the proactive monitoring of markets, improved adaptation of products in quantitative and qualitative terms and the promotion of such products;

— to strengthen food security, particularly through the traceability of products, in the interests of users and consumers.

Inter-trade organisations may also pursue other objectives, in particular:

— to encourage the maintenance and development of the economic potential of the sector;

— to encourage the development of non-food utilisation of products;

— to participate in international development initiatives;

…

(II) Only one inter-trade organisation can be recognised for each product or group of products. Where a national inter-trade organisation is recognised, regional inter-trade organisations shall constitute committees of, and be represented within, that national inter-trade organisation.

…'

6 Article L. 632-2-I provides:

'Only inter-trade organisations whose Articles of Association provide for the designation of an arbitrator in respect of disputes which may arise between member trade organisations when inter-trade agreements are applied … may be recognised …

Recognised inter-trade organisations may be consulted on the guidelines and measures in respect of industry policies concerning them.

Such organisations shall contribute to the implementation of national and Community economic policies and may enjoy priority in the allocation of public aid.

In the interest of the effective exercise of their duties, they may have as members organisations representing consumers and employees of undertakings in the sector.

The conditions governing the recognition or withdrawal of recognition for inter-trade organisations shall be laid down by a decree of the Conseil d'État.'

7 Following the adoption of Law No 2010-874 of 27 July 2010 on the modernisation of agriculture and fishing (JORF of 28 July 2010, p. 13925), a law post-dating the events in the main proceedings, the third paragraph of Article L. 632-2-I was deleted.

8 Under Article L. 632-2-II:

‘Product-specific agreements concluded within a recognised inter-trade organisation … and seeking to adapt supply to demand may not involve restrictions of competition …

Such agreements shall be adopted unanimously by the trades forming part of the inter-trade organisation in accordance with the first paragraph of Article L. 632-4 …

Upon conclusion and prior to implementation, those agreements shall be notified to the ministre de l’Agriculture (Minister for Agriculture), the Minister responsible for the economy, and the competition authorities. A notice mentioning the conclusion of those agreements shall be published in the Bulletin officiel de la concurrence, de la consommation et de la répression des fraudes.

…’

9 Article L. 632-3 is worded as follows:

‘Agreements made within a recognised inter-trade organisation may be extended, for a fixed period, in whole or in part, by the competent administrative authority where they pursue, by the use of standard contracts, agricultural agreements and common initiatives, or initiatives taken in furtherance of a common interest, which are consistent with the public interest and compatible with the rules of the Common Agricultural Policy, promoting in particular:

(1) the monitoring of supply and demand;

(2) the adjustment and regularisation of supply;

(3) the implementation, subject to State control, of marketing rules, prices and conditions of payment. This provision shall not apply to forestry products;

(4) product quality: to this end, agreements may, inter alia, provide for the development and implementation of quality controls and rules governing the definition, packaging, transportation and presentation of products, up to and including the retail stage, if required; for registered designations of origin, agreements may, inter alia, provide for the implementation of quality control procedures;

(5) inter-trade relations in the sector concerned, in particular by establishing technical standards, programmes for applied research, experimentation and development, and by investing in such programmes;

(6) information concerning industries and products and their sale on the domestic and external markets;

(7) collective steps to combat the risks and hazards connected with production, processing, marketing and distribution of agricultural and food products;

(8) control of harmful organisms within the meaning of Article L. 251-3;

(9) development of non-food utilisation of products;

(10) participation in international development initiatives;

(11) development of contractual relations between the members of the trades represented within the inter-trade organisation, in particular by inserting into standard contracts standard form provisions relating to: commitments; rules for determining prices; delivery schedules; contract durations; the floor price principle; rules for revising conditions of sale in the event of significant fluctuations in the price of agricultural raw materials; and volume control measures for the purposes of adapting supply to demand.'

10 Following the adoption of Law No 2010-874 of 27 July 2010, Article L. 632-3 is now worded as follows:

'Agreements made within a recognised inter-trade organisation may be extended, for a fixed period, in whole or in part, by the competent administrative authority where they pursue common initiatives, or initiatives taken in furtherance of a common interest, which are consistent with the public interest and compatible with European Union legislation.'

The rest of the wording formerly appearing in that article has been deleted.

11 Article L. 632-4 provides:

'Any extension of such agreements shall be conditional upon their provisions being unanimously adopted by the trades represented within the inter-trade organisation. However, regarding agreements which concern only a part of the trades represented within that organisation, it is sufficient that they be unanimously adopted by those trades alone, provided that no other trade is opposed.

…

Where that extension is decided on, the measures thus provided for shall be binding, within the production area concerned, on all members of those trades participating in that inter-trade organisation.

The competent authority shall have a period of two months from the date of receipt of the application submitted by the inter-trade organisation to rule on the extension sought. If, at the end of that period, the authority has not notified the inter-trade organisation of its decision, the application shall be deemed to have been accepted.

A decision refusing an extension shall state the reasons on which it is based.'

12 Article L. 632-6 provides:

'Recognised inter-trade organisations to which reference is made in Articles L. 632-1 and 632-2 may levy, on all members of participating trades, contributions under agreements which have been extended in accordance with the procedure laid down in Articles L. 632-3 and 632-4 and which, notwithstanding their binding nature, remain debts subject to private law.

…

Contributions may also be levied on imported products under the conditions established by decree. At the request of the beneficiary inter-trade organisations, such contributions shall be recovered by the customs authorities, at the expense of the former.

Such contributions are not exclusive of parafiscal charges.'

13 Under Article L. 632-8-I:

‘Every year, recognised inter-trade organisations shall report to the competent administrative authorities on their activities and shall provide:

— their financial accounts;

— an activity report and the minutes of their general meetings;

— an evaluation of each extended agreement.

They shall furnish the competent administrative authorities with all documents required by the latter for the exercise of their powers of control.’

14 By an Order of 24 June 1976 (JORF of 26 August 1976, p. 5143), the competent administrative authority recognised the private-law non-profit association Comité interprofessionnel de la dinde française (French turkey inter-trade committee) (CIDEF) as an agricultural inter-trade organisation in accordance with Law No 75-600. CIDEF brings together four trades: ‘production’, ‘hatching and imports of hatching eggs and stumps’, ‘slaughter and processing’, and ‘feed’.

15 Under Article 2 of its Constitution, CIDEF:

‘has the following objectives:

— to group together all trade initiatives with a view to organising and regularising the turkey market;

— for that purpose, to establish a statistical information system to provide traders with a continuous flow of data on the introduction of livestock, slaughters, stocks, external trade, and household and community consumption;

— to regularise production and the turkey market through action on supply and demand volumes;

— to acquire the necessary financial resources;

— to request the ratification of standards defined by each trade in respect of the products manufactured and sold by that trade;

— to make written contracts compulsory for the provision of goods and services between traders. (The Committee shall propose model framework contracts);

— to act as interlocutor before national and Community bodies in respect of all turkey-related problems shared by traders;

— in the context of the EEC, to establish the closest possible ties with turkey traders in partner countries;

— to take all appropriate initiatives to resolve technical and technological problems and, inter alia, to carry out the necessary testing;

— to ensure in part or in full that trades from the poultry meat production industry have, for all products, access to services in areas of mutual interest. Those services shall be entrusted to the Committee using written agreements. The services shall be financed through a separate account and may not give rise to the levying by CIDEF of any contribution rendered obligatory under Article L. 632-6 of the Rural Code.’

The dispute in the main proceedings, the background thereto and the question referred for a preliminary ruling

16 By means of an inter-trade agreement adopted on 18 October 2007, CIDEF introduced an inter-trade contribution, to be levied on all members of the trades represented therein. The agreement was for a period of three years. By an addendum complementing that agreement and concluded on the same day, the amount of the contribution for 2008 was fixed at EUR 14 per 1 000 turkey poults. By two Orders of 13 March 2008 (JORF of 27 March 2008, p. 5229, and JORF of 1 April 2008, p. 5412), the competent Ministers, in accordance with Article L. 632-3 of the Rural Code, extended the inter-trade agreement for a period of three years and the addendum for a period of one year. By a subsequent addendum to the inter-trade agreement mentioned above, concluded on 5 November 2008, CIDEF decided to maintain the inter-trade contribution for 2009 at the same amount. Under the fourth paragraph of Article L. 632-4 of the Rural Code, the competent authority tacitly decided to accept the extension of the addendum on 29 August 2009, a decision made public by a Notice from the competent Minister published on 30 September 2009 (JORF of 30 September 2009, p. 15881).

17 Doux Élevage SNC, a subsidiary of the Doux group which is the leading European poultry producer, and the agricultural cooperative UKL-ARREE brought an action before the Conseil d'État for the annulment of the tacit decision to extend the addendum of 5 November 2008, made on 29 August 2009 as a result of the administration's silence regarding the application for an extension of that addendum, and for the annulment of the notice making that decision public. They argued that the inter-trade contribution established by the addendum of 5 November 2008, which the decision extended to all traders in the inter-trade organisation on a compulsory basis, related to State aid and that, accordingly, that decision ought to have been notified beforehand to the European Commission under Article 108(3) TFEU.

18 Following the judgment in Case C-345/02 *Pearle and Others* [2004] ECR I-7139, the national court took the view, in line with settled case-law, that contributions introduced by recognised inter-trade organisations, commonly known as 'cotisations volontaires obligatoires' (contributions which are initially voluntary and later made compulsory by an Inter-ministerial Order) ('CVOs'), for the purposes of financing common activities decided on by those organisations, as well as administrative measures rendering such contributions compulsory for all traders in the affected industry, did not fall to be treated as State aid.

19 However, prompted by certain observations from the Court of Auditors, in the interests of legal certainty the French Government notified the Commission of a framework programme of activities capable of being carried out by inter-trade organisations, appending 10 agreements concluded by the largest inter-trade organisations. In Decision C(2008) 7846 final of 10 December 2008 (State aid N 561/2008), the Commission, making reference to *Pearle and Others*, found that the measures at issue fell to be treated as State aid. However, it found that financing those measures did not give rise to any objections with regard to the system of the common organisation of the market and that such measures were not liable to affect trading conditions to such an extent as to be contrary to the common interest, and concluded that they qualified for the derogation provided for in Article 107(3)(c) TFEU. A similar position was adopted by the Commission in two subsequent decisions. All of those decisions were the subject of actions for annulment, lodged by the French Republic and by the inter-trade organisations affected, which are currently pending before the General Court.

20 The Conseil d'État first of all notes that the inter-trade agreement of 18 October 2007 was adopted by a unanimous decision by the four trades represented within the inter-trade organisation and that the decision to renew the inter-trade contribution at an unchanged rate for 2009 was also taken unanimously by those four trades. Next, it finds that the addendum of 5 November 2008 exhaustively lists the activities likely to be financed by the inter-trade contribution levied by CIDEF for the year 2009, namely: publicity activities specifically 'seeking to improve the image and promote sales' of

turkey; promotional activities concerning poultry meat in general; activities concerning external relations; representation with the French and European administrative authorities and participation in the European Rural Poultry Association; the use of studies and consumer panels in order to measure purchasing levels; activities supporting research and quality assurance activities; and activities in defence of the sector's interests.

21 In addition, the Conseil d'État emphasises that (i) that addendum does not allow the financing of measures for intervention in the turkey market and (ii) the publicity activities referred to by that addendum make no distinction as regards the origin of the products, and that it is not apparent from any of the documents in the case-file that a part of the contributions collected in 2009 had been exclusively intended for promotional activities concerning 'French turkey', either within France or overseas.

22 In light of those considerations and findings and the Commission's position as set out above, the Conseil d'État decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must Article 107 [TFEU], read in the light of [*Pearle and Others*], be interpreted as meaning that a decision by which a national authority extends to all traders in an industry an agreement which, like the agreement made within [CIDEF], introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities, activities in defence of the sector's interests, and the use of studies and consumer panels, is, in view of the nature of the activities in question, the methods by which they are financed and the conditions of their implementation, related to State aid?'

Consideration of the question referred

23 By its question, the national court asks, in essence, whether a decision by which a national authority extends to all traders in an agricultural industry an inter-trade agreement which introduces the levying of a contribution on a compulsory basis, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities and activities in defence of the sector's interests, constitutes State aid.

24 As a preliminary point, it should be borne in mind that, under Article 107(1) TFEU, 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 is, in so far as it affects trade between Member States, incompatible with the internal market.

25 Article 107(1) TFEU makes that incompatibility subject to the confirmation that four conditions have been met. First, there must be an intervention by the State or through State resources. Second, the intervention must be liable to affect trade between Member States. Third, it must confer an advantage on the recipient. Fourth, it must distort or threaten to distort competition (*Pearle and Others*, paragraph 33 and the case-law cited).

26 With regard to the first of those conditions, the settled case-law of the Court shows that only advantages granted directly or indirectly through State resources are to be considered aid within the meaning of Article 107(1) TFEU. The distinction made in that provision between aid granted by a Member State and aid granted through State resources does not signify that all advantages granted by a State, whether financed through State resources or not, constitute aid but is intended merely to bring within that definition both advantages which are granted directly by the State and those granted by a public or private body designated or established by the State (Case C-379/98 *PreussenElektra* [2001]

ECR I-2099, paragraph 58 and the case-law cited). Thus, the prohibition in Article 107(1) TFEU may also cover, in principle, aid granted by public or private bodies established or appointed by the State to administer aid (see, to that effect, *Pearle and Others*, paragraph 34 and the case-law cited).

27 However, for advantages to be capable of being categorised as aid within the meaning of Article 107(1) TFEU, they must, first, be granted directly or indirectly through State resources and, second, be imputable to the State (*Pearle and Others*, paragraph 35 and the case-law cited).

28 It should be noted, as the Advocate General observes in point 37 of his Opinion, that financing through State resources is a constitutive element of the concept of 'State aid'.

29 In that regard, the Court has already stated in paragraphs 59 and 61 of *PreussenElektra* that Member State legislation which, by establishing an obligation to purchase certain goods at minimum prices, confers advantages upon certain undertakings and imposes disadvantages on others, does not involve any direct or indirect transfer of State resources to undertakings which produce those goods and that an obligation of that kind is not capable of conferring the character of State aid upon that legislation.

30 In paragraph 36 of *Pearle and Others*, the Court, examining the charges imposed by a trade association on its members in order to finance an advertising campaign, reached the same conclusion, finding, inter alia, that, since the costs incurred by the public body for the purposes of that campaign were offset in full by the levies imposed on the undertakings benefiting therefrom, its action did not tend to create an advantage which would constitute an additional burden for the State or that body.

31 The Court also found, in paragraph 37 of that judgment, that the initiative for the organisation and operation of the advertising campaign at issue in those proceedings was that of a private association of opticians, and not that of the public body, which served merely as a vehicle for the levying and allocating of resources collected for a purely commercial purpose, previously determined by the trade, which had nothing to do with a policy determined by the State authorities.

32 Regarding the contributions at issue in the main proceedings, it is clear from the case-file submitted to the Court that they are made by private-sector economic operators – whether members or non-members of the inter-trade organisation involved – which are engaged in economic activity on the markets concerned. That mechanism does not involve any direct or indirect transfer of State resources, the sums provided by the payment of those contributions do not go through the State budget or through another public body and the State does not relinquish any resources, in whatever form (such as taxes, duties, charges and so on), which, under national legislation, should have been paid into the State budget. The contributions remain private in nature throughout their lifecycle and, in order to collect those contributions in the event of non-payment, the inter-trade organisation must follow the normal civil or commercial judicial process, not having any State prerogatives.

33 There is no doubt that inter-trade organisations are private-law associations and form no part of the State administration.

34 Nonetheless, it is also clear from the case-law of the Court that it is not necessary to establish in every case that there has been a transfer of State resources for the advantage granted to one or more undertakings to be capable of being regarded as a State aid within the meaning of Article 107(1) TFEU (see Case C-482/99 *France* v *Commission* [2002] ECR I-4397, paragraph 36 and the case-law cited).

35 Thus, the Court has ruled that Article 107(1) TFEU covers all the financial means by which the public authorities may actually support undertakings, irrespective of whether or not those means are permanent assets of the public sector. Therefore, even if the sums corresponding to the measure in question are not permanently held by the Treasury, the fact that they constantly remain under public control, and therefore available to the competent national authorities, is sufficient for them to be categorised as State resources (see *France* v *Commission*, paragraph 37 and the case-law cited).

36 In the case in the main proceedings, the conditions laid down by the Court in paragraph 37 of the judgment in *France* v *Commission* are not met. It is clear that the national authorities cannot actually use the resources resulting from the contributions at issue in the main proceedings to support certain undertakings. It is the inter-trade organisation that decides how to use those resources, which are entirely dedicated to pursuing objectives determined by that organisation. Likewise, those resources are not constantly under public control and are not available to State authorities.

37 Any influence that the Member State may exercise over the functioning of the inter-trade organisation by means of its decision extending an inter-trade agreement to all traders in an industry is not capable of altering the findings made in paragraph 36 of this judgment.

38 It is clear from the case-file submitted to the Court that the legislation at issue in the main proceedings does not confer upon the competent authority the power to direct or influence the administration of the funds. Moreover, as the Advocate General noted in point 71 of his Opinion, according to the case-law of the competent national courts, the provisions of the Rural Code governing the extension of an agreement introducing the levying of contributions within an inter-trade organisation do not permit public authorities to exercise control over CVOs except to check their validity and lawfulness.

39 Regarding that control, it should be noted that Article L. 632-3 of the Rural Code does not permit making the extension of an agreement dependent upon the pursuit of political objectives which are specific, fixed and defined by the public authorities, given that that Article non-exhaustively lists the very general and varied objectives that an inter-trade agreement must promote in order to be capable of being extended by the competent administrative authority. That conclusion cannot be undermined by the obligation imposed by Article L. 632-8-I of that code to inform the authorities of the way in which CVOs have been used.

40 Moreover, there is nothing in the case-file submitted to the Court permitting it to consider that the initiative for imposing the CVOs originated with the public authorities rather than the inter-trade organisation. It is important to emphasise, as the Advocate General observed in point 90 of his Opinion, that the State was simply acting as a 'vehicle' in order to make the contributions introduced by the inter-trade organisations compulsory, for the purposes of pursuing the objectives established by those organisations.

41 Thus, neither the State's power to recognise an inter-trade organisation under Article L. 632-1 of the Rural Code, nor the power of that State to extend an inter-trade agreement to all the traders in an industry under Articles L. 632-3 and 632-4 of that code permit the conclusion that the activities carried out by the inter-trade organisation are imputable to the State.

42 Lastly, the Commission submits that the activities of the inter-trade organisations are, in part, financed by public funds and that, taking into account the lack of separate accounts in respect of public and private funds, all the resources of those organisations represent 'State resources'.

43 In that regard, it should be noted that the question referred concerns only contributions levied within an inter-trade organisation, not other possible resources which may originate from the State budget.

44 Moreover, as the Advocate General pointed out in point 57 of his Opinion, private funds used by inter-trade organisations do not become 'State resources' simply because they are used alongside sums which may originate from that budget.

45 In the light of the foregoing, the answer to the question referred is that Article 107(1) TFEU must be interpreted as meaning that a decision by which a national authority extends to all traders in an agricultural industry an agreement which, like the inter-trade agreement at issue in the main proceedings, introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to

implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities and activities in defence of the sector's interests, does not constitute State aid.

Costs

46 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

Article 107(1) TFEU must be interpreted as meaning that a decision by which a national authority extends to all traders in an agricultural industry an agreement which, like the inter-trade agreement at issue in the main proceedings, introduces the levying of a contribution in an inter-trade organisation recognised by that national authority, thus rendering that contribution compulsory, in order to make it possible to implement publicity activities, promotional activities, external relations activities, quality assurance activities, research activities and activities in defence of the sector's interests, does not constitute State aid.

[Signatures]