COMMISSION DECISION

of 22 December 1976

relating to the granting of aid for horticulture under glass in the Netherlands in order to offset the increase in fuel oil prices

(Only the Dutch text is authentic)

(77/75/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (1), and in particular Article 31 thereof,

Having regard to Council Regulation (EEC) No 234/68 of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage (2), and in particular Article 11 thereof,

Having regard to the comments submitted by the parties concerned,

Whereas by letter of 15 July 1975 from the office of its permanent representative, the Netherlands Government communicated to the Commission under Article 93 (3) of the Treaty a proposal for aid comprising the granting of subsidies for horticulture under glass amounting to Fl 34·50 per tonne of heavy fuel oil and Fl 37·00 per 1 000 litres of light fuel oil, in order to offset the increase in the price of oil products, and the raising of the rate of reimbursement of excise duties on heavy and light fuel oil from 75 to 100 % ; whereas the abovementioned subsidies amounted to about one-third of the price increase for oil products between 1 September 1973 and 1 July 1975, i.e. Fl 34·54 per tonne of heavy fuel oil and Fl 37·05 per 1 000 litres of light fuel oil ;

Whereas in the 'guidelines for the granting of any national aid with a view to the adaptation of horticulture under glass and inshore fisheries to developments on the energy market', communicated to the Member States by letter of 25 June 1974 and amended by letter of 30 April 1975, the Commission decided to consider as compatible with the common market aid intended to offset the increase in the price of oil products used in horticulture between 1 July 1975 and 30 June 1976, provided that it did not exceed one-third of the price increase for these products recorded between 1 September 1973 and the date on which any such aid measure was adopted ; whereas these guidelines also state that this compensation may be granted only if the price of natural gas is equal to the price of heavy fuel oil less the amount of the aid granted, these prices being understood as being based on an equal calorific value ;

Whereas the total amount of the aid proposed by the Netherlands Government (subsidies and increase in the rate of reimbursement of exercise duties) exceeded the amounts which could be authorized for fuel oil prices obtaining on the date on which the measures were proposed ;

Whereas the Commission therefore initiated on 15 September 1975 the procedure provided for in the first sentence of Article 93 (2) of the EEC Treaty in respect of these measures exceeding the maximum of one-third of the price increase ; whereas, under the said procedure, it gave the Netherlands Government, the other Member States and any other parties concerned, notice to submit their comments (3) ;

Whereas the Netherlands Government submitted its comments to the Commission by letter of 23 December 1975, in which it did not contest the fact that the reimbursement of excise duties fell within the field of application of Articles 92 to 94 of the EEC Treaty, but did not accept the view that the increase in the rate of reimbursement of excise duties would be covered by the guidelines ;

Whereas, in reply to a letter of 11 June 1976 from the Member of the Commission responsible for agriculture, the Netherlands authorities submitted to the Commission by letter of 2 August 1976, certain comments which did not contain any points such as to alter the Commission's assessment ;

Whereas two Member States and certain parties concerned other than the Member States submitted comments to the Commission in which they stated that they regarded exceeding the maximum of one-third as incompatible with the common market since, in their view, a distortion of competition had already been created by the fact that those engaged in horticulture in the other Member States did not receive aid

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 55, 2. 3. 1968, p. 1.
(3) OJ No C 217, 23. 9. 1975.

during the period in question to offset the increase in the price of fuel;

Whereas there is a very large volume of trade between the Member States in the agricultural products concerned; whereas, consequently, the granting of national aid is likely to affect this trade between Member States and to distort competition within the meaning of Article 92 (1) of the EEC Treaty;

Whereas the guidelines covered any aid intended to offset the increase in the cost of energy products, without any exception, and therefore also included aid in the form of the reimbursement of excise duties;

Whereas the aid for the operation of undertakings provided for in the guidelines was intended to alleviate the effects of the increase in the price of oil products and to enable undertakings engaged in horticulture under glass to remain operative during a certain period of adjustment to the new situation, likely to be a lasting one, created by this increase, in order to avoid social and regional problems; whereas the maximum rate fixed by the guidelines constituted the limit within which such aid could be considered as intended to facilitate the development of horticulture within the meaning of Article 92 (3) (c) of the EEC Treaty, since this maximum rate enabled Member States to grant sufficient aid to ensure the adjustment of healthy and viable undertakings to the increase in the price of oil products while at the same time maintaining the need for an effort on the part of the undertakings themselves to cover two-thirds of this increase; whereas aid in excess of this limit would reduce the effort required of the undertakings, would enable less profitable undertakings to remain operative and would impair trade patterns to a degree contrary to the common interest;

Whereas exceeding the rate of aid provided for in the guidelines would distort competition and would impair trade between the Member States to a degree contrary to the common interest; whereas it is therefore covered by the prohibition contained in Article 92 (1) of the Treaty without qualifying for exceptional treatment under paragraph 3 (c) of that Article;

Whereas, furthermore it is obvious that the aid in question does not fulfil the conditions which would enable it to qualify for a derogation as provided for in Article 92 (2) and (3) (b) of the EEC Treaty; whereas the aid is not of a regional nature within the meaning of Article 92 (3) (a);

Whereas, consequently, this aid is incompatible with the common market under the terms of Article 92 of the Treaty, in so far as it exceeds the aforementioned maximum rate,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of the Netherlands shall not adopt the proposed aid measures communicated to the Commission by letter of 15 July 1975, to the extent that the total amount of the aid exceeds Fl 34·54 per tonne of heavy fuel oil and Fl 37·05 per 1 000 litres of light fuel oil.

Article 2

This Decision is addressed to the Kingdom of the Netherlands.

Done at Brussels, 22 December 1976.

For the Commission

P. J. LARDINOIS

Member of the Commission