COMMISSION DECISION

of 10 March 1982

on a direct aid for the purchase of oil-based fuels for heating glasshouses, granted by the Belgian Government to commercial horticulturalists subject to the special value-added tax scheme

(Only the Dutch and French texts are authentic)

(82/175/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), as last amended by Regulation (EEC) No 1116/81 (2), 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 (3), as last amended by the Act of Accession of Greece, and in particular Article 11 thereof,

Having regard to Council Regulation (EEC) No 827/68 of 28 June 1968 on the common organization of the market in certain products listed in Annex II to the Treaty (4), as last amended by Regulation (EEC) No 2966/80 (5), and in particular Article 5 thereof,

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93 (2) of the EEC Treaty and having regard to these comments,

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 118, 30. 4. 1981, p. 1.
(3) OJ No L 55, 2. 3. 1968, p. 1.
(4) OJ No L 151, 30. 6. 1968, p. 16.
(5) OJ No L 307, 18. 11. 1980, p. 5.

I

Whereas by letter dated 28 April 1981 from the Office of its Permanent Representative, received by the Commission on 30 April 1981, the Belgian Government informed the Commission, at the latter's request, under Article 93 (3) of the Treaty, of an aid towards the purchase of oil-based fuels used in heating glasshouses granted to commercial horticulturalists subject to the flat-rate value-added tax scheme applicable to farmers, for the purpose of offsetting the increase in value-added tax on such fuels; whereas this aid was, however, introduced by Ministerial Decree No 81-11 of 2 December 1980, published in the 'Moniteur belge' of 6 January 1981, without prior notice being given to the Commission under Article 93 (3) of the Treaty to allow time for comment at the proposal stage;

Whereas the aid measure takes the form of a direct aid of 1·20 Bfrs/kg for heavy fuel oil and extra heavy fuel oil and 0·90 Bfr/litre for diesel and light fuel oil used for heating glasshouses by commercial horticulturalists subject to the flat-rate system of value-added tax applicable to farmers; whereas the aid applies to quantities of fuel delivered to horticulturalists between 1 October 1980 and 31 December 1981 and paid for by them before 31 March 1982;

Whereas, in its reply, the Belgian Government argued that the measure was not an aid but was designed to neutralize the effects of adjustments made on 1 October 1980 in the excise tax and value-added tax arrangements applying to fuel used in horticulture under glass; that excise duties on fuel oil and diesel oil had been reduced to zero and the value-added tax raised from 6 % to 16 % and that commercial horticulturalists subject to the flat-rate value-added tax scheme applicable to farmers were unable through the normal value-added tax scheme to pass on the extra cost of their inputs occasioned by the tax changes affecting them, so that the Belgian Government had had to act to offset the increase in value-added tax from 6 % to 16 % as it affected such horticulturalists;

Whereas, pursuant to specific Articles of the Regulations on the common organization of markets mentioned above, Articles 92 to 94 of the Treaty are applicable to this aid;

Whereas the new arrangement reduces the cost of heavy fuel oil by 0·64 Bfr/kg and of diesel oil by 0·30 Bfr/litre in relation to the former system; whereas these reductions inevitably change the price relationship between fuels in favour of heavy fuel oil; whereas, therefore, the compensation given does more than simply offset the increase in value-added tax on these fuels;

Whereas, in view of the situation described, the direct aid has had the effect of reducing the cost of certain inputs (in this case oil-based fuels) for a certain class of producers (in this case commercial horticulturalists) and a certain type of production (in this case horticulture under glass), thereby fulfilling the criteria set out in Article 92 (1) of the Treaty without qualifying for any of the derogation provided for in Article 92 (3);

Whereas the justification advanced by the Belgian Government to the effect that the measure offsets the increase in value-added tax on oil-based fuels cannot be accepted; whereas the Belgian Government, if it had wished to provide effective compensation for the increase in value-added tax, should have acted under Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — common system of value-added tax: uniform basis of assessment [1], and in particular Article 25 thereof, which allows Member States to fix flat-rate compensation percentages at different levels for the different subdivisions of agriculture, and not by granting a specific aid which, by its form, is not such as to ensure proper compensation;

Whereas the Commission, in the light of its analysis of the case, initiated on 19 June 1981 the procedure provided for in Article 93 (2) of the Treaty, in relation to the said aid, giving the parties concerned notice to submit their comments;

II

Whereas the Belgian Government, in its reply to the Commission, dated 17 August 1981, restated its argument that the measure was not an aid but simply designed to maintain fair competition between horticulturalists subject to the normal scheme and those subject to the flat-rate scheme following the tax changes on 1 October 1980, since the latter producers were not able to pass on the increased tax to their customers as were the former; whereas it stated that the funds to finance the measure had to come from value-added tax revenue transferred for the purpose from the Ministry of Finance to the Belgian agricultural fund, that although the Belgian Government had been aware that compensation could be provided through the particular mechanism of the value-added tax scheme, it had not adopted this course because urgent action had been required, and that the introduction of a different rate for horticulture under glass would have required protracted negotiations because Belgium operates a single flat-rate of value-added tax compensation for farmers in all sectors;

Whereas the Belgian Government's reply was not such as to change the Commission's appraisal of the measure;

Whereas several Member States and other parties concerned have submitted comments to the Commission; whereas these support the Commission's view;

III

Whereas it follows from the foregoing that the aid granted by the Belgian Government is such as to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the Treaty;

Whereas Article 92 (1) of the Treaty lays down the principle that aids fulfilling the criteria set out therein are incompatible with the common market; whereas the exceptions to this rule contained in Article 92 (3) relate to aims pursued in the interests of the Community and not only of particular sectors of national economies; whereas these exceptions are to be interpreted strictly in the examination of any aid programme for a specific region or sector and of any individual case where general aid schemes are operated; whereas derogations may only be granted if the Commission ascertains that the aid is necessary to attain one of the aims mentioned in the Treaty provisions;

Whereas, in the case at issue, the Commission takes the view that there is no offsetting advantage which would justify a derogation as provided for in Article 92 (3) of the Treaty;

[1] OJ No L 145, 13. 6. 1977, p. 1.

Whereas therefore it is clear that the measure is not such as to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, or to promote the execution of an important project of common European interest, or to remedy a serious disturbance in the economy of the Member State concerned; whereas it follows that Article 92 (3) (a) and (b) of the Treaty cannot be invoked;

Whereas, furthermore, the aid for the purchase of fuel, being aid intended to reduce the cost of certain inputs, constitutes an operating subsidy to the agricultural holdings receiving it which has no lasting effects; whereas the Commission has consistently opposed such aids since they normally do not in themselves fulfil the conditions justifying derogation under Article 92 (3) (c) of the Treaty because they are not such as to encourage development of the kind described therein;

Whereas, in view of the fact that farmers in all the Member States are in a similar economic situation, characterized by stationary or falling incomes at a time of rapidly increasing costs of production, and given also the appreciable competition within the Community in products of the sector concerned, the measure is likely to impair trading conditions to a degree contrary to the common interest;

Whereas consequently the measure in question should be prohibited,

HAS ADOPTED THIS DECISION:

Article 1

The direct aid for the purchase of oil-based fuels used in heating glasshouses granted by the Belgian Government to commercial horticulturalists subject to the special value-added tax scheme, as notified by the Belgian Government to the Commission on 28 April 1981 and as published in Ministerial Decree No 81-11 of 2 December 1980, is incompatible with the provisions of Article 92 of the Treaty and must therefore be abolished.

Article 2

The Kingdom of Belgium shall inform the Commission of the measures taken in order to comply with this Decision within one month of being notified thereof.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 10 March 1982.

For the Commission

Poul DALSAGER

Member of the Commission