COMMISSION DECISION

of 8 February 1983

concerning aid for fuel granted to fishermen by the Belgian Government

(Only the Dutch and French texts are authentic)

(83/314/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 100/76 of 19 January 1976 on the common organization of the market in fishery products [1], as last amended by Regulation (EEC) No 3443/80 [2], and in particular Article 26 thereof, and to Council Regulation (EEC) No 3796/81 [3], which replaced Regulation (EEC) No 100/76 with effect from 1 June 1982, and in particular Article 28 thereof,

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

I

Whereas, in accordance with Article 93 (3) of the EEC Treaty, the Belgian Government notified the Commission, by letter dated 15 January 1981 from its Permanent Representation to the European Communities and by supplementary telex of 6 February 1981, of a draft Ministerial Order on certain measures to encourage fuel saving in sea fishing;

Whereas this draft Order was implemented by Royal Decree No 81/362 of 26 February 1981 on measures to encourage fuel saving in horticulture and sea fishing; whereas the Belgian Government thereby failed in its obligations under Article 93 (3) of the EEC Treaty;

Whereas, in the case of sea fishing, which is the only sector covered by this Decision, the Royal Decree in question provides for the granting of a premium to commercial fishermen to encourage them to save fuel; whereas this premium is calculated and granted on a quarterly basis; whereas it amounts to Bfrs 5 for each litre of fuel saved per hour at sea, multiplied by the number of hours spent at sea by the vessel concerned during the relevant quarter; whereas the saving is calculated in relation to a theoretical average consumption per hour at sea based solely on the gross tonnage of the vessel concerned, or to the actual average consumption of the vessel in question per hour at sea during the 12-month fishing period immediately preceding 1 January 1981, whichever is the higher;

Whereas the theoretical average consumption has been calculated, statistically, on the basis of the consumption and tonnage of and time spent at sea by Belgian vessels in 1980;

Whereas the premium in question is subject to a ceiling inasmuch as the saving claimed by recipients may not exceed 30 % of the theoretical hourly consumption;

Whereas the sum set aside for this aid is Bfrs 60 million; whereas the aid is on a once-only, non-renewable basis and payment will continue until the funds are exhausted;

Whereas Ministerial Order No 81/1643 of 4 August 1981 made provision for aid applications to be filed at the end of each quarter of 1981 and not later than 1 March 1982; whereas, in accordance with Article 93 (3) of the EEC Treaty, the Belgian authorities notified the Commission by letters dated 12 July and 25 August 1982 of their intention to extend the deadline from 1 March to 31 December 1982;

Whereas the aid described above falls within the scope of Articles 92 to 94 of the Treaty by virtue of the Articles of Regulations (EEC) No 100/76 and (EEC) No 3796/81 referred to above;

Whereas, following initial scrutiny, the Commission took the view that the aid in question constituted operating aid granted with no actual reciprocal commitment on the part of recipients, that it had a substantial direct impact on competition and trade between the Member States and that it was therefore incompatible with the common market within the meaning of Article 92 of the Treaty; whereas it accordingly decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the above aid and, to this effect, by letter of 31 March 1981, gave the Belgian Government formal notice to submit its comments;

(1) OJ No L 20, 28. 1. 1976, p. 1.
(2) OJ No L 359, 31. 12. 1980, p. 13.
(3) OJ No L 379, 31. 12. 1981, p. 1.

II

Whereas the Belgian Government, in its reply to the Commission dated 25 May 1981, claimed that the proposed measures should provide a genuine impetus for the dissemination of practical knowledge in the field of energy saving; whereas what is involved is 'human investment', which has a more lasting impact than certain physical investments; whereas, in view of the economic situation in general and that of the fishing sector in particular, it is not felt advisable to link the granting of the aid in question with a requirement to invest; whereas, lastly, the measure involved does constitute a lasting incentive which should increase the recipients' awareness and knowledge with regard to the problem of energy saving; whereas several Member States and several other parties concerned have submitted their comments to the Commission; whereas certain Member States and sectoral organizations share the Commission's view;

Whereas other Member States feel that the absence of a Community fisheries policy may lead Member States to introduce aids to prevent the current situation from deteriorating; whereas several sectoral organizations would like to see the granting of fisheries aids harmonized within the Community;

III

Whereas, with regard to the rules on competition contained in the EEC Treaty, the scheme introduced by the Belgian Government has to be viewed from two angles, firstly as an implicit demand to Belgian fishermen to realize the need for energy saving and the possibility of achieving this by rationalizing the utilization and improving the maintenance of their vessels and the engines thereof, and, secondly, as a premium for fishermen whose average hourly fuel consumption in 1981 has dropped in relation to a reference level and period;

Whereas the above objective of reducing fuel consumption by Belgian fishermen appears to be in accord with the Community's energy policy; whereas, in its resolution of 9 June 1980 concerning Community energy policy objectives for 1990 and convergence of the policies of the Member States [1], the Council affirmed that the Community should step up its efforts to save energy and reduce its oil consumption and imports;

Whereas, however, the premium in question does not appear likely to enable this objective to be achieved in the long term; whereas it is not in fact linked with any reciprocal commitment on the part of the recipients with regard to training expenditure or activity; whereas granting of this premium will in no way alter their structural situation;

Whereas the interests of good management alone lead fishermen to look for every possible way of saving energy and reducing production costs in general; whereas such endeavours are in no way linked to obtaining aid of the type in question; whereas, accordingly, such aid is in no way the cause of any fuel saving made and its only effect is to reduce the cost of the fuel actually used by the recipients;

Whereas the sole requirement to be fulfilled in order to qualify for the aid in question is a reduction in hourly fuel consumption; whereas a momentary reduction in consumption of this nature cannot be considered as energy saving in the strict sense of the term as it has no lasting effect on fuel consumption by the recipient; whereas the aid granted is not therefore linked with lasting changes by the recipient to the way in which he operates his vessel;

Whereas it follows from the above that the aid introduced by the Belgian Government must be considered as direct aid for fuel cosumption used by fishermen; whereas such aid therefore has an immediate impact on the production costs of recipients and gives them a definite advantage over other Community fishermen not in receipt of such aid;

Whereas intra-Community trade in fishery products for human consumption is substantial and accounts for approximately 30 % of total landings for human consumption in the Community as a whole; whereas, for its part, the Belgian market receives approximately one quarter of its requirements from the landings made by its own fishermen, slightly over half from imports from other Member States, and the balance from imports from non-member countries;

Whereas, moreover, for a number of years, all Community fishermen have been faced with a very sharp increase in the price of fuel; whereas competition on the Community market in fishery products is very keen;

[1] OJ No C 149, 18. 6. 1980, p. 1.

IV

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

Whereas Article 92 (1) of the EEC Treaty states that aids fulfilling the criteria laid down therein are incompatible in principle with the common market; whereas exceptions to this incompatibility, which are the only exceptions relevant to the case in point, are set out in paragraph 3 of the said Article and lay down the objectives followed in the Community's interest and not only in the interest of individual sectors of the national economy; whereas these exceptions are to be strictly interpreted when scrutinizing any aid programme of a regional or sectoral nature or any individual case of application of general aid schemes; whereas exceptions can be allowed only in cases where the Commission can establish that the aid is necessary for achievement of one of the objectives set out in these provisions;

Whereas to allow such exceptions in respect of aids which do not offer such a reciprocal advantage would amount to allowing trade etween Member States to be affected and competition to be distorted without justification on grounds of Community interest and would result in unfair advantages for the recipients;

Whereas it has not been possible to establish the existence of such a reciprocal advantage in the case in point; whereas the Belgian Government was unable to provide any evidence, ad the Commission could find none, that the aids in question fulfilled the conditions required for allowing one of the exceptions provided for in Article 92 (3) of the EEC Treaty;

Whereas the aid in question is clearly not designed to promote or facilitate the development of certain areas; whereas, on regional criteria, Article 92 (3) (a) and (c) is accordingly inapplicable;

Whereas such aids constitute neither an important project of common European interest nor measures capable of remedying a serious disturbance in the Belgian economy; whereas Article 92 (3) (b) is accordingly inapplicable;

Whereas aid for the purchase of fuel, intended as it is to reduce the cost of certain inputs, constitutes an operating aid with no lasting impact on the economic situation of the recipients; whereas, in general, the Commission has always been opposed to such aid, since, as a rule, such aid does not in itself fulfil the conditions for eligibility for the exception provided for in Article 92 (3) (c) of the EEC Treaty, since it is not likely to facilitate the development of certain activities within the meaning of that provision;

Whereas it follows from the above that the aid in question does not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid to encourage fuel saving in the fisheries sector as approved by the Belgian Government by Royal Decree No 81/362 of 26 February 1981 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Such aid must accordingly no longer be granted.

Article 2

The Kingdom of Belgium shall inform the Commission, within one month of the notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 8 February 1983.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission