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*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 8 May 1985**

**on an aid to producers' organizations granted by the United Kingdom Government**

**(Only the English text is authentic)**

(85/425/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 Articles 11 and 26 thereof, and to Council Regulation (EEC) No 3796/81 [3], which replaced it with effect from 1 June 1982, and in particular Articles 13 and 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 those comments,

Taking the following into account :

I

In accordance with Article 93 (3) of the EEC Treaty, the United Kingdom Government notified the Commission by letters dated 28 March and 4 June 1980 from its Permanent Representation to the European Communities of its intention to grant, between 1 April and 30 September 1980, an aid of £ 2 million to producers' organizations in the fisheries sector.

This aid was to be shared among the various recipients according to the size of their catch in 1979 and was to be used for several measures including the introduction of temporary laying-up premiums, grants to port authorities enabling them to reduce temporarily the charges which they levy, the financing of programmes for improving packaging methods and publicity campaigns for fishery products and support for the autonomous systems of withdrawal prices operated by producers' organizations. The producers' organizations themselves were to be responsible for allocating the aid as between these four objectives.

The United Kingdom Government gave as its reason for granting this aid the difficult situation facing United Kingdom fishermen, who had been unable to raise market prices in line with the considerable rise in their production costs and in particular the rise in oil prices. The United Kingdom Government stressed that this situation had led to a decline in fishing activity and was likely to cause an uncontrolled break-up of the United Kingdom fishing fleet at a time when discussions at Community level had not yet established a common structures policy. The aid was thus intended to prevent an irreversible trend in the United Kingdom fishing industry with all the serious social and regional repercussions which it would entail. The United Kingdom Government considered that the aid in question would serve to strengthen the important position of producers' organizations in the common organization of the market in fishery products.

(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.

The aid described is covered by Articles 92 to 94 of the Treaty pursuant to Article 26 of Regulation (EEC) No 100/76 and Article 28 of Regulation (EEC) No 3796/81.

Following initial scrutiny the Commission took the view that the part of the aid in question which was intended to enable the producers' organizations to maintain their autonomous system of withdrawal prices was likely to constitute an infringement of Regulation (EEC) No 100/76 on the common organization of the market in fishery products and, accordingly, decided to initiate the procedure laid down in Article 93 (2) of the Treaty in respect of all the aids to producers' organizations and, to this effect, by letter of 22 July 1980, gave the United Kingdom Government formal notice to submit its comments.

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In its reply to the Commission dated 22 August 1980, the United Kingdom Government asked the Commission to confirm that it was opposed only to support for the autonomous withdrawal price systems. The Commission has never received a reply as to the justification for this aid.

Several Member States and several professional organizations have submitted their comments to the Commission. Some of the Member States and professional organizations share the Commission's view. Other Member States feel that the absence of a common fisheries policy obliged the Member States to introduce aids to prevent the situation from deteriorating.

The Commission asked the United Kingdom Government, by letter dated 3 February 1984 and telex dated 18 April 1984, to provide exact information as to the allocation of the amounts earmarked by each producers' organization for each of the four measures concerned. The United Kingdom Government forwarded to the Commission, by letter dated 17 May 1984, a table showing the allocation of the aid of £ 2 million among the producers' organizations concerned and the measures planned, which shows that at least 40 % of the total amount was reserved for supporting the autonomous withdrawal price systems.

It appears from this information that the United Kingdom Government granted the aid during the period in question despite the fact that the procedure laid down in Article 93 (2) had been initiated. The United Kingdom Government thus failed to fulfil its obligations under Article 93 (3) of the EEC Treaty.

III

Article 8 (1) of Regulation (EEC) No 100/76 and Article 9 (1) of Regulation (EEC) No 3796/81 provide that producers' organizations may fix a withdrawal price below which they will not sell products supplied by their members. For certain products a withdrawal price is fixed by the Community while producers' organizations may fix an autonomous withdrawal price for any products.

The financial compensation provided for in Article 11 of Regulation (EEC) No 100/76 and in Article 13 of Regulation (EEC) No 3796/81 is reserved for withdrawals of products subject to the Community withdrawal system and can be granted only to producers' organizations which apply withdrawal prices fixed by the Community. In 1980 most producers' organizations in the United Kingdom were applying, for those products, withdrawal prices which were considerably higher than Community prices.

Moreover, the granting of aid to producers' organizations is governed by comprehensive rules and is limited to the granting of the aid provided for in Article 6 (1) and (2) of Regulation (EEC) No 100/76 and Article 6 (1), (2) and (4) of Regulation (EEC) No 3796/81. In consequence, State aids to producers' organizations in support of autonomous withdrawal price systems cannot be covered by those provisions, the purpose of which is to encourage the formation of producers' organizations and to facilitate their operation.

The State aid granted to producers' organizations in the United Kingdom to enable them to maintain their autonomous system of withdrawal prices strengthens the competitiveness of all their operations, including those covered by Community arrangements. The maximum amount of aid provided for in Article 6 (1) of Regulation (EEC) No 100/76 and in Article 6 (1) and (2) of Regulation (EEC) No 3796/81 is unduly increased by the granting of the aid in question. The granting of this aid may have important implications for the principles of responsibility and co-responsibility of producers' organizations under the organization of the market.

The granting of aid to producers' organizations to enable them to maintain their autonomous system of withdrawal prices therefore constitutes an infringement of Community law.

IV

Article 92 (1) of the EEC Treaty states that aids fulfilling the criteria laid down therein are incompatible in principle with the common market. The exceptions provided for in Article 92 (3) of the EEC Treaty are inapplicable in the case of an infringement of the organization of the market in fishery products.

This Decision is without prejudice to any consequences which the Commission might draw as regards recovery of the abovementioned aid from the recipients or the financing of the common agricultural policy by the EAGGF,

HAS ADOPTED THIS DECISION :

*Article 1*

The aid to producers' organizations to enable them to maintain their autonomous system of withdrawal prices, as granted in the United Kingdom between 1 April and 30 September 1980, is incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Such aid shall accordingly no longer be granted.

*Article 2*

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

*Article 3*

This Decision is addressed to the United Kingdom.

Done at Brussels, 8 May 1985.

*For the Commission*

Frans ANDRIESSEN

*Vice-President*