II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 29 July 1986

on the system of ceilings on the price of diesel fuel for fishermen introduced by the French Government

(Only the French text is authentic)

(86/592/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 3796/81 of 29 December 1981 on the common organization of the market in fishery products [1], as last amended by the Act of Accession of Spain and Portugal, and in particular Article 28 thereof,

After giving interested parties notice, pursuant to the provisions of the first subparagraph of Article 93 (2) of the EEC Treaty, to submit their comments [2] and having regard to the comments submitted,

Whereas :

I

Background and description of the aid

In April 1982, the staff of the Commission of the European Communities learnt through the press that the French Government had announced the entry into force of the system for the indexing of the price of diesel fuel for fishermen.

At the request of the Commission dated 28 June 1982, repeated on 11 August and 2 December 1982, the French authorities confirmed the existence of such a scheme by letters of 22 July and 14 December 1982.

Considering that reply to be inadequate, on 8 February 1983 the Commission decided to examine the matter with regard to Article 169 of the EEC Treaty on the basis of a failure to comply with Article 5 of the Treaty.

Under that procedure, by letter of 6 May 1983 the French authorities provided more detailed information on the scheme for adjusting fuel prices for fishermen.

It involves a mechanism set up in close conjunction with the petroleum distributing companies and is intended to bring about a gradual adjustment of the price of diesel fuel in the fisheries sector in order to avoid the social and economic repercussions of a sudden sharp rise. It thus comes into play when a significant difference is recorded between the increase in the market price for diesel oil and the variation in the general consumer-price index drawn up monthly by the Institut National de la Statistique et des Etudes Economiques (INSEE). The latter is used to fix a 'ceiling' price for fishermen. If its is exceeded on the diesel oil market, the distributors receive from the State the difference between the price paid by the fishermen and the market price in order to offset their losses. If the price of diesel fuel for fishermen subsequently reaches the market price, and the change in the latter is less than the increase in the cost of living index, the mechanism is suspended.

After appearing for the first time in March 1982, the scheme for adjusting fuel prices for fishermen was suspended in 1983.

In early 1985, the Commission staff learnt, once more through the press, that it had been reinstated under the same conditions.

[1] OJ No L 379, 31. 12. 1981, p. 1.
[2] OJ No C 227, 7. 9. 1985, p. 3.

The scheme is subject to Articles 92, 93 and 94 of the EEC Treaty by virtue of the provisions of Article 28 of Council Regulation (EEC) No 3796/81.

After an initial examination, the Commission considered that the scheme in question appeared to involve a subsidy to fishermen through the compensation paid to diesel fuel distributors to offset their loss of income. Furthermore, such aid granted without any reciprocal concession by the recipients would appear to amount to an operating aid, which the Commission normally considers as incompatible with the common market.

Accordingly the Commission decided to initiate in respect of that scheme the examination procedure provided for in Article 93 (2) of the EEC Treaty and, by letter of 28 June 1985, it gave notice to the French Government to submit its comments, reminding it of the obligation to notify the Commission as provided for in Article 93 (3) of the Treaty.

II

Comments submitted

One Member State and one producer organization forwarded comments to the Commission.

In their reply to the Commission of 9 September 1985, the French authorities made the following comments:

1. The scheme is a temporary one for 'smoothing' the price of diesel fuel for fishermen under exceptional circumstances, and not a subsidy to fishermen; nor does it entail the application of a ceiling on the price of diesel fuel for fishermen. The French Government denies that the scheme amounts to national aid within the meaning of Article 92 of the EEC Treaty, which explains why it did not notify the Commission in accordance with Article 93 (3) thereof.

2. The application of a system for adjusting the price of diesel fuel for fishermen is justified by the short-term economic and social situation, which has been made especially arduous by the sharp rises due to the freeing of diesel fuel prices paid by fishermen following the judgment of the Court of Justice of the European Communities of 29 January 1985 [1]. The French Government stresses the short-term and temporary nature of the measures in question.

3. This justification is backed up by the need to offset the discontinuation of the aid to maintain employment in coastal areas involving a flat-rate amount of FF 0,21 per litre of fuel used by fishermen. The Commission had considered that the latter was a fuel subsidy and had prohibited it, by Decision 83/313/EEC [2], and the Court of Justice had found France guilty of failing to comply with its obligations [3].

III

Legal assessment

In the abovementioned Decision, the Commission points out that, generally, fuel subsidies have a direct impact on the production costs of recipients and give them a definite advantage over the other Community fishermen.

In the case in point, and despite the arguments to the contrary of the French Government, while no fuel subsidy is granted directly to the fishermen there is a system for momentarily reducing the price of diesel oil for a particular category of consumers, in this case the fishermen, which has all the characteristics of aid for fuel.

1. The fishermen receive a preferential rate for the purchase of diesel oil while consumers as a whole pay the price fixed on the market, which is higher, since that is the precondition for the scheme to operate.

   They are therefore in a preferential situation as compared with other French consumers and also with other Community fishermen, as the other Member States do not grant their nationals similar arrangements.

   While, as the Commission pointed out in its abovementioned Decision 83/313/EEC on the French aid to maintain maritime employment, the existence of similar aids is never sufficient to justify the granting of a national aid, the absence of similar aids in other Member States strengthens the argument that the conditions of competition in the common market are distorted by the national aid in question.

   Such a strengthening of the competitive situation of French fishermen may have negative effects on that of producers in other Member States, since the French market receives almost half of its requirements from landings made by its own fishermen and about a quarter from imports from other Member States, the rest being made up by imports from non-member countries, and moreover France exports almost one quarter of its production, of which more than half goes to the other Member States (figures for 1984).

   With very keen competition on the Community market in fishery products, trade between Member States is affected by such aid.

   The fact that the French scheme applies temporarily but repetitively does not contradict these comments.

[1] Leclerc, Case 231/83.
[2] OJ No L 169, 28. 6. 1983, p. 32.
[3] Judgment of 13 March 1985, Case No 93/84.

2. The petroleum distributing companies, which are commercial untertakings subject to market laws, have no *a priori* reason for wishing to favour any particular sector, such as fisheries, rather than another. In order to obtain the preferential rate for fishermen from them, the French State had to undertake to pay financial compensation to offset their loss of income. Although the French authorities have not provided any details on this subject, it is clear that that constitutes an indirect fuel subsidy for fishermen.

3. In a comparable case (1), the Commission's view was that 'a preferential tariff is caught by the prohibition in Article 92 (1) of the Treaty when the following three factors obtain :

   — when the tariff favours certain undertakings or the production of certain goods competing with the undertakings or production of other Member States, and the products in question are traded within the Community,

   — when the tariff has been imposed by a public authority,

   — when a tariff results in compensation from the State being paid to the distribution company or to the State receiving less revenue.'

   It is accordingly abundantly clear that the granting of a preferential tariff does not form part of the normal management of a private undertaking but depends on political and economic considerations peculiar to a State. The measure concerned therefore involves aid financed directly from State resources and fulfils the conditions of Article 92 (1) of the EEC Treaty.

The foregoing leads to the conclusion that the scheme for a ceiling on the price of diesel oil for fishermen introduced by the French Government is a State aid incompatible with Article 92 (1) of the EEC Treaty.

The exceptions provided for in Article 92 (3) of the Treaty, the only ones concerned in this case, relate to objectives pursued in the interest of the Community and not in that of specific sectors of a national economy.

Those exceptions must be interpreted strictly when examining any aid programme for a specific region or any individual case where general aid measures are applied. They cannot be granted except in cases where the Commission is able to establish that the aid is necessary to achieve one of the objectives covered by those provisions.

To allow such exceptions to aid measures which do not offer such an offsetting benefit would amount to allowing trade between the Member States to be affected and competition to be distorted without justification from the point of view of Community interest.

In this specific case, the aid does not offer such an offsetting benefit. The French Government was unable to provide any justification, nor could the Commission find any, indicating that the aid in question fulfils the conditions required for the application of one of the exceptions provided for in Article 92 (3) of the EEC Treaty.

As regards the exceptions for aids intended to facilitate the development of certain regions, account should be taken of the fact that, on the one hand, the regions concerned do not suffer from an abnormally low standard of living or from serious underemployment within the meaning of Article 92 (3) (a), and, on the other hand, the operating aid in question is not likely to facilitate the economic development of those regions within the meaning of Article 92 (3) (c).

Neither does the aid constitute an important project of common European interest nor a measure likely to remedy a serious disturbance in the French economy within the meaning of Article 92 (3) (b).

As regards the exception for aids intended to facilitate the development of certain activities, the aid in question to reduce certain operating costs cannot bring about economic development within the meaning of Article 92 (3) (c). Furthermore, the scale of intra-Community trade in French fishery products precludes any idea that the conditions of trade might not be altered to an extent contrary to the common interest.

Consequently, the aid in question does not meet the conditions required for eligibility for one of the exceptions provided for under Article 92 (3) of the EEC Treaty.

As aid intended to reduce the cost of certain means of production, even on a temporary basis, aid for fuel constitutes operating aid without any durable effect on the economic situation of the recipients.

The Commission has in principle always been opposed to such aids. In its communication to the Council of 25 May 1978, on Commission policy on sectoral aid schemes, it stated clearly that temporary aids intended to remedy the social consequences of a crisis situation should be linked to restructuring objectives in the sector concerned and should be dependent on action by the recipients to facilitate their adjustment. Similarly, in its Guidelines for the examination of State aids in the fisheries sector (1), it

(1) OJ No L 37, 10. 2. 1982, p. 29, OJ No L 97, 4. 4. 1985, p. 49.

(1) OJ No C 268, 19. 10. 1985, p. 2.

stated that operating aid to undertakings is, in principle, incompatible with the common market, unless it is directly linked to a restructuring plan considered compatible with the common market. That is not the case with the aid in question.

The foregoing leads to the conclusion that the aid in question does not fulfil the conditions required for eligiblity for one of the exceptions under Article 92 (3) of the EEC Treaty and consequently must be discontinued forthwith by the French Government.

As the aid has been granted illegally, this Decision is without prejudice to any consequences which the Commission might draw as regards recovery of the sums involved, in accordance with its letter to the Member States of 3 November 1983 concerning the recovery of sums illegally granted [2],

HAS ADOPTED THIS DECISION:

Article 1

The aid scheme for adjusting fuel prices for fishermen, granted in France at irregular intervals from 1982 to 1985, is incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty. It must accordingly be discontinued in its entirety and must no longer be granted in the future.

Article 2

France shall inform the Commission within one month of notification of this Decision of the measures it has taken to comply with the provisions of Article 1.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 29 July 1986.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

[2] OJ No C 318, 24. 11. 1983, p. 3.