II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 4 July 1990

on loans granted by the Belgian authorities to two shipowners for the purchase of a 34 000 m³ LPG ship and two refrigerator ships

(Only the French and Dutch texts are authentic)

(90/627/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 Directive 87/167/EEC of 26 January 1987 on aid to shipbuilding (1), and in particular Articles 3 and 4 (1), in conjunction with Article 4 (4) thereof,

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

Whereas :

I

As a result of information provided by an association of shipbuilders, the Commission's departments learned that the Boelwerf shipyard received orders for a 34 000 m³ LPG ship for Fertex, a shipping company, and for two refrigerator ships for another shipping company, Europese Transport Maatschappij Crystal Prince. An 18-year loan at 2 % interest with a three-year grace period was granted under the Law of 23 August 1948 on shipping credit in respect of 85 % of the contract price in each case.

In the first case, by letters dated 6 May 1989, the Commission asked the Belgian authorities to confirm the information. The Belgian authorities replied by letter dated 5 June 1989 that the contract was covered by financing repayable over 15 years, starting three years after the delivery of the ship, without specifying the interest rate, and they stated that in any case the terms of the loan were in line with Directive 87/167/EEC. In addition, the Belgian authorities reminded the Commission of a memorandum sent previously in which they stressed that shipping credit was directed at two objectives, i. e. shipbuilding on the one hand and the high operating costs of ships flying the Belgian flag on the other. Lastly, they stated that they could not follow the Commission departments' calculation of the grant equivalent specified in the Commission's letter of 27 February 1989 terminating Article 93 (2) proceedings in respect of certain measures relating to the shipping sector in Belgium.

Although incomplete, the information was deemed sufficient by the Commission to justify the initiation, on 25 October 1989, of proceedings under Article 93 (2). By letter dated 30 November 1989, the Commission informed the Belgian Government accordingly, inviting it to submit its comments, and the other Member States and parties concerned were informed by means of a notice published in the *Official Journal of the European Communities* (2).

In the second case, the Belgian Government replied by letter dated 17 November 1989, confirming that the loan relating to the two ships covered 85 % of the price and

(1) OJ No L 69, 12. 3. 1987, p. 55.

(2) OJ No C 20, 27. 1. 1990, p. 6.

was for 15 years at a 2 % interest rate, and that repayment was to commence only 36 months after the date of delivery.

The Commission consequently initiated the procedure laid down in Article 93 (2) on 10 January 1990 and informed the Belgian Government accordingly by letter dated 3 April 1990. The other Member States and other parties concerned were informed by means of a notice published in the *Official Journal of the European Communities* (1).

II

In letters dated 6 February and 15 May 1990, in which it submitted its comments in response to the initiation of proceedings, the Belgian Government began by arguing that the contracts had been signed when the Belgian aid system had just been placed under the authority of the Executive of the Flemish Region and that the latter had merely been applying the rules on the granting of loans in the same way as when the system was administered by the national authorities.

It went on to reiterate that the Belgian scheme was made up solely of facilities granted to shipowners in the form of the advance of funds at a reduced interest rate, the provision of a guarantee and an interest rate subsidy, that the combined application of these measures involved the simultaneous granting of production aid and operating aid and that a memorandum setting out this interpretation had already been sent to the Commission when the aid scheme was examined in the light of Directive 87/167/EEC.

Since the Belgian Government granted interest rate subsidies on loans entered into by Belgian shipowners for the purchase of ships in third countries, it took the view that this involved only aid for the operation of ships and that accordingly this part of the aid scheme established under the Law of 23 August 1948, where applied to contracts for ships built in Belgium, should not be included in the ceiling laid down in Article 4 (1) of Directive 87/167/EEC. It concluded its argument by stating that the Flemish Executive had acted in good faith on the basis of an approach deriving from a misunderstanding which had arisen in the past between the Belgian Central Government and the Commission.

III

The Belgian aid scheme falling under Articles 3 and 4 of Directive 87/167/EEC, as notified to the Commission by letter dated 15 January 1988, is governed by the Law of 23 August 1948, as amended on several occasions and most recently on 30 December 1980, and is intended to ensure the maintenance and development of the merchant fleet and sea fishing and for this purpose sets up a fund for shipping and shipbuilding.

Article 1 (a) of the Law provides that the fund may grant advances covering up to 70 % of the value of a new ship. Article 1 (b) provides for a State guarantee in respect of supplementary loans contracted at market rates, and Article 1 (c) grants an interest subsidy amounting to half of the interest rate on such loans, but not exceeding 3 %. However, the total amount of the advances and loans provided for in Article 1 (a) and (c) may not exceed 85 % of the price of the ship.

The Law does not, however, stipulate at what rate or over what period the advance provided for in Article 1 (a) must be repaid. During the preparatory work on Directive 87/167/EEC, the Belgian Government informed the Commission of the rules for repayment of advances granted under Article 1 (a) of the Law of 23 August 1948, stating that such advances covered a 15-year period. With a two-year grace period, and an interest rate of 4 to 5 %. These terms confirmed by the Belgian Government by letter dated 21 March 1988 within the framework of the examination of all shipbuilding aid in Belgium under Article 10 of Directive 87/167/EEC.

IV

On the basis of the terms for granting advances, guarantees and interest subsidies as notified to the Commission, and taking account of a market interest rate which at the time the contracts were concluded was 8,25 % in respect of the 34 000 m^3 LPG ship and the refrigerator ships, the grant equivalent of the advances granted by the Belgian Government under the Law of 23 August 1948, the calculation of which was duly explained to its authorities, should have been 20,5 %.

V

The contracts in question were in fact accompanied by loans equivalent to 85 % of the price of the ship at a 2 % interest rate for a term of 15 years, with repayment starting only 36 months after the delivery of the ship. These terms mean that the loans granted by the Belgian Government are equivalent to 35 %.

VI

Since responsibility for administration of the fund set up under the Belgian Law of 23 August 1948 has devolved to the Executive of the Flemish Region, the latter body was responsible for the decisions taken as from 1 January 1989 in accordance with the amendments made to the Belgian Constitution in 1988. This transfer of responsibility does not, however, excuse the Belgian Government or allow it to argue that the Executive of the Flemish Region was simply acting in good faith in maintaining continuity in the application of the aid scheme, since Article 5 of the Treaty stipulates clearly that Member States shall take all appropriate measures, whether general or particular, to

(1) OJ No C 67, 17. 3. 1990, p. 11.

ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community.

Nor does the fact that the Belgian Government sent the Commission a memorandum stating that the Belgian aid scheme was partly intended to support shipyards and partly to support the operation of sea transport under the Belgian flag provide any justification for the terms of the loan granted. The arguments set out in the memorandum merely reiterated the points which had been thoroughly discussed with the experts of the Member States during the preparatory work on Directive 81/363/EEC (4), and it was advisedly, in order to ensure full transparency, that the Council of Ministers, with the backing of the Belgian Government, finally decided in adopting Directive 87/167/EEC to include all aid to shipowners, where such aid is linked to the purchase of a ship in the Member States, in the ceiling provided for in Article 4 (1).

It was therefore in full knowledge of the facts that the Belgian Government granted the loan in the case in point, and the fact of granting aid to shipowners in respect of ships built in third countries, under whatever pretext, does not in any way justify the grant equivalent of such aid being deducted where aid is granted in respect of ships built in Belgium.

VII

The aid granted to shipowners in Belgium is aid within the meaning of Article 3 (1) and (2) of Directive 87/167/EEC, which stipulates that all forms of aid to shipowners or to third parties actually used for the building or conversion of ships in Community shipyards (including credit facilities, guarantees and tax concessions) is subject in full to the rules set out in Article 4 of the Directive.

Article 4 (1) states that production aid in favour of shipbuilding may be considered compatible with the common market provided that the total amount of aid granted in support of any individual contract does not exceed, in grant equivalent, a common maximum ceiling which, as stipulated in Article 4 (2), is fixed by the Commission. Article 4 (4) further stipulates that the ceiling applies to aid falling within Article 3 (2).

Since the ceiling was fixed for 1989 at 26 % and since the loan granted by the Belgian Government amounts to a grant equivalent of 35 %, it is clear that the Belgian Government has not complied with the rules laid down in Directive 87/167/EEC and hence with the rules laid down in the Treaty,

HAS ADOPTED THIS DECISION :

Article 1

The loans having a grant equivalent of 35 % granted by the Belgian Government to the shipping companies Fertex and Europese Transport Maatschappij Crystal Prince for the building, respectively, of a 35 000 m^3 LPG ship and two refrigerator ships in the Boelwerf shipyard are incompatible with the common market.

Article 2

Pursuant to Article 93 (2) of the Treaty, the Belgian Government shall revise the terms of the loans so as to reduce them to a maximum level of 26 % in grant equivalent terms, in line with the ceiling fixed by the Commission for 1989 in accordance with Article 4 (2) of Directive 87/167/EEC.

Article 3

The Belgian Government shall inform the Commission of the measures which it has taken in order to comply with this Decision within two months of being notified of it.

Article 4

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 4 July 1990.

For the Commission

Leon BRITTAN

Vice-President

(4) OJ No L 137, 23. 5. 1981, p. 39.