II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1994

concerning aid and compulsory contributions to promote market outlets for poultry and rabbit farming products in Belgium

(Only the French and Dutch texts are authentic)

(95/486/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 2771/75 of 29 October 1975 on the common organization of the market in eggs [1], as last amended by Regulation (EEC) No 1574/93 [2], and in particular Article 19 thereof,

Having regard to Council Regulation (EEC) No 2777/75 of 29 October 1975 on the common organization of the market in poultrymeat [3], as last amended by Regulation (EEC) No 1574/93, and in particular Article 19 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 EC Treaty [4], as last amended by Commission Regulation (EC) No 794/94 [5], and in particular Article 5 thereof,

After giving notice to the parties concerned, pursuant to Article 93 (2) of the EC Treaty, to submit their comments [6],

Whereas :

I

1. By letter dated 6 July 1989, recorded as received on 11 July 1989, the Office of the Belgian Permanent Representative to the European Communities notified the Commission, pursuant to Article 93 (3) of the EC Treaty, of a draft Royal Decree concerning compulsory contributions to promote market outlets for products covered by the Poultry, Egg and Rabbit Advisory Section within the Office National des Débouchés Agricoles et Horticoles (ONDAH).

   Further information was sent by the Belgian authorities by letter dated 15 September 1989, recorded as received on 20 September 1989.

   The draft Decree was adopted on 31 July 1989 and published in the *Moniteur belge* (Belgian official gazette) of 24 August 1989. It extends the financing arrangements for poultry and rabbit farming to 31 December 1990.

2. The draft Royal Decree in question repeals the Royal Decree of 28 February 1985 concerning compulsory contributions to promote market outlets for products covered by the Poultry, Egg and Rabbit and Fruit and Vegetables Advisory Sections within the Office National des Débouchés Agricoles et Horticoles.

[1] OJ No L 282, 1. 11. 1975, p. 49.
[2] OJ No L 152, 24. 6. 1993, p. 1.
[3] OJ No L 282, 1. 11. 1975, p. 77.
[4] OJ No L 151, 30. 6. 1968, p. 16.
[5] OJ No L 92, 9. 4. 1994, p. 15.
[6] OJ No C 24, 1. 2. 1990, p. 13 ; OJ No C 302, 22. 11. 1991, p. 4 ; OJ No C 142, 4. 6. 1992, p. 3.

The Royal Decree of 28 February 1985 was examined by the Commission (Aid C 7/87, formerly NN 54/86) which adopted a negative Decision on it on 30 November 1988 [1]. The Commission held in Article 1 of that Decision that the aid was incompatible with the common market on account of the way in which it was funded.

Part of the funding came from compulsory contributions levied on exports, regarded by the Commission as a charge having an effect equivalent to a customs duty, and as such incompatible with Article 12 of the EC Treaty. By Royal Decree of 8 March 1989 Belgium amended the said provisions by abolishing the contributions referred to above.

On 25 April 1989 the Commission sent the Belgian Government a letter terminating the procedure.

3. By letter No SG(89) D/15032 dated 30 November 1989, the Commission initiated the procedure under Article 93 (2) of the EC Treaty in respect of the aid (see point II.2) extended by the Royal Decree of 31 July 1989, on account of its method of funding by compulsory contributions levied on animals imported from other Member States at the slaughter stage and on importers engaged solely in importation who import compound feedingstuffs from Member States only (procedure No C 49/89).

In a notice published in the *Official Journal of the European Communities* [2], the Commission informed the other Member States and interested parties other than Member States of the above decision and gave them notice to submit their comments.

4. A. By letter of 24 May 1991 the Belgian authorities notified the Commission of a draft Royal Decree amending the Royal Decree of 31 July 1989. The draft Royal Decree was adopted on 5 August 1991 and published in the *Moniteur belge* of 21 September 1991.

The draft extends the earlier scheme to rabbit products and extends the validity of the Royal Decree of 31 July 1989, as amended, to 31 December 1991.

B. By letter of 19 February 1992 the Belgian authorities also notified a draft Royal Decree amending the abovementioned Royal Decree of 31 July 1989. This draft Royal Decree was adopted on 4 May 1992 and published in the *Moniteur belge* of 21 May 1992.

This draft extends the earlier scheme to laying hens and broiler chickens and prolongs it indefinitely.

5. With regard to the two measures referred to in 4.A and 4.B, the Commission, by letters dated 31 July 1991 (procedure C 39/91) and 28 May 1992 (procedure C 10/92), notified the Belgian authorities of its decisions to extend the procedure under Article 93 (2) of the EC Treaty initiated on 3 November 1989 in respect of that aid, prolonged initially until 31 December 1991 and subsequently for an indefinite period, again on account of its method of funding by compulsory contributions levied on animals imported from other Member States at the slaughter stage and on importers engaged solely in importation and who import compound feedingstuffs from Member States only.

In two additional notices published in the *Official Journal of the European Communities* [3], the Commission informed the other Member States and increased parties other than Member States of the above decisions and gave them notice to submit their comments.

II

1. The aid scheme introduced by the Royal Decree of 31 July 1989, as amended by the Royal Decrees of 5 August 1991 and 4 May 1992, the drafts of which were notified to the Commission, is described below.

Aid

2. The purpose of the aid is to promote the sale of the products in question (through advertising, participation in exhibitions and fairs, market research, attendance at international conferences, and so on).

Compulsory contributions

3. The aid is funded by compulsory contributions levied for the benefit of the Poultry, Egg and Rabbit Advisory Section of the ONDAH provided for in the Royal Decree of 31 July 1989, as amended by the Royal Decrees referred to above.

Products subject to the levy

— Eggs:

eggs of gallinaceous, columboid or web-footed fowl, in shell and suitable for human consumption in the unaltered state or for use by the food processing industry

[1] OJ No L 85, 30. 3. 1989, p. 45.
[2] OJ No C 24, 1. 2. 1990, p. 3.
[3] OJ No L 302, 22. 11. 1991, p. 4, and OJ No C 142, 4. 6. 1992, p. 3.

— Egg products :

eggs not in shell, egg yolk and egg albumin

— Poultry :

gallinaceous, columboid or web-footed fowl, live, domestic

— Meat :

any carcases or parts of poultry and rabbits likely to be used for human consumption

— Rabbit meat :

any fresh, chilled, frozen or deep-frozen rabbit meat

— Rabbit :

any domestic rabbit, irrespective of age, of either sex

— Compound feedingstuffs

Levy imposed on :

Poultry slaughterhouses approved by the Ministry of Public Health

Egg packing plants

Egg wholesalers

Firms specializing in egg products

Firms for which egg products are an ancillary activity

Operators keeping fowl for the production of eggs

Operators keeping broilers (other than day-old chicks)

Hatchery operators

Propagation firms recognized by the Ministry of Agriculture

Operators recognized by the Ministry of Agriculture for the importation and manufacture of compound feedingstuffs

Operators slaughtering or responsible for the slaughter of rabbits

Importers of slaughtered rabbits from non-member countries

Rates of contribution

— Poultry slaughterhouses :

  — Bfrs 3 000 where fewer than 100 000 poultry are slaughtered annually,

  — Bfrs 100 000 where more than two million poultry are slaughtered annually,

  — Bfrs 0,05 per animal slaughtered where between 100 000 and two million poultry are slaughtered annually.

— Egg-packing plants :

  — Bfrs 6 000 where their maximum technical sorting capacity is 5 000 eggs per hour,

  — Bfrs 8 000 where their technical sorting capacity is not less than 5 000 but not more than 15 000 eggs per hour,

  — Bfrs 10 000 where their technical sorting capacity is more than 15 000 eggs per hour.

— Egg wholesalers :

  — Bfrs 3 000 per year.

— Firms for which egg products are an ancillary activity :

  — Bfrs 1 500 per year.

— Firms specializing in egg products :

  — Bfrs 12 000 per year.

— Firms with facilities guaranteeing a real pasteurization capacity of not less than 3 tonnes per hour :

  — Bfrs 30 000 per year.

— Operators keeping fowl for the production of eggs, whether or not of laying age, including cast hens :

  — Bfrs 1 000 per year for a firm with between 5 000 and 14 999 fowl ;

  — Bfrs 2 000 per year for a firm with between 15 000 and 29 999 fowl ;

  — Bfrs 4 000 per year for a firm with not less than 30 000 fowl ;

— Operators keeping broilers (other than day-old chicks) :

  — Bfrs 1 500 per firm with between 10 000 and 24 999 broilers per year ;

  — Bfrs 3 000 per firm with not less than 25 000 broilers, per year.

— Hatchery operators :

Animal contributions are as follows :

  — Bfrs 20 000 where capacity exceeds two million eggs,

  — Bfrs 15 000 where capacity is not less than one million but not more than two million eggs inclusive,

  — Bfrs 12 000 where capacity is not less than 750 000 but not more than one million eggs inclusive,

  — Bfrs 9 500 where capacity is not less than 500 000 but not more than 750 000 eggs inclusive,

  — Bfrs 7 500 where capacity is not less than 300 000 but not more than 500 000 eggs inclusive,

  — Bfrs 5 500 where capacity is not less than 200 000 but not more than 300 000 eggs inclusive,

  — Bfrs 4 000 where capacity is not less than 100 000 but not more than 200 000 eggs inclusive,

  — Bfrs 2 500 where capacity is not less than 1 000 but not more than 100 000 eggs inclusive,

— Breeding firms :

Bfr 1 per breeding fowl on a holding.

— Recognized importers and manufacturers of compound feedingstuffs :

Bfrs 1 700 per year.

— Operators slaughtering or responsible for the slaughter of rabbits :

— The contribution is Bfrs 1,25 per rabbit slaughtered.

— Of this contribution :

— Bfrs 0,15 kg of rabbit meat is booked to the rabbit supplier, with the exception of importers of live rabbits from a Member State,

— Bfrs 0,50 kg of rabbit meat is booked to the purchaser of slaughtered rabbits, not including products which are not intended or are unsuitable for human consumption.

Contributors deduct from their compulsory contributions Bfrs 0,50 kg of product not intended or unsuitable for human consumption.

— Public and private slaughterhouses make this contribution subject to a minimum of Bfrs 6 000 per year.

— Importers of slaughtered rabbits from non-member countries :

Bfr 1/kg of imported rabbit meat.

III

1. Under the three procedures referred to above the Commission gave the Belgian authorities notice to submit their comments. The Commission received the comments by letter of 11 January 1990, 26 September 1991 and 11 June 1992 respectively (points 2 to 6 below).

In a notice published in the *Official Journal of the European Communities* (see points I.3 and 5), it informed the other Member States and interested parties other than Member States of the above decisions and gave them notice to submit their comments.

2. The Belgian authorities maintain firstly that the provisions in respect of which the Commissoin initiated the procedure under Article 93 (2) of the EC Treaty had already been included in the Royal Decree of 28 February 1985 which was the subject of a final negative decision of 30 November 1988 (Aid C 7/87, formerly NN 54/86). Under that procedure the Commission held that the aid was incompatible with the common market, contending solely that it was funded by compulsory contributions levied on exports in breach of Article 12 of the EC Treaty, but did not challenge the way in which they were collected by other contributions, levied on imports from other Member States.

3. With regard to the contribution levied at the slaughter stage, the Belgian authorities state that importers who sell live animals to Belgian operators are not subject to it. It is unfair therefore to conclude that the levying of the contribution has been transferred to a stage which inevitably follows importation.

4. The Belgian authorities maintain further that contributions are levied at the slaughterhouse without distinction as to origin, pursuant to Article 95 of the EC Treaty and in accordance with the decisions of the Court of Justice. In the judgment in Case 132/78, *Denkavit,* of 31 May 1979 [1], the Court held that in order to relate to a general system of internal dues and thus not come within the application of the provisions prohibiting charges having an effect equivalent to customs duties, the charge to which an imported product is subject must impose the same duty on national products and identical national products at the same marketing stage and the chargeable event giving rise to the duty must also be identical in the case of both products. The charge imposed on the slaughter of both national and imported products satisfies these requirements fully.

5. The Belgian authorities maintain also that this case cannot be compared with the situation alluded to in the judgment of the Court of 25 June 1970 in Case 47/69, *France* v. *Commission* [2], referred to by the Commission. The charge imposed by the French Government on importers in that case financed an aid intended for the French textile industry only, in view of which the Court held that such aid had a protective effect. Operators who consider it advantageous to import animals and have them slaughtered in Belgian slaughterhouses benefit from the same promotional schemes as operators obtaining supplies from Belgian livestock producers. After slaughter the meat is stamped with the seal of the Belgian slaughterhouse and its origin can no longer be distinguished. The funds collected are used for compaigns to increase consumption of this meat and to support all operators participating in fairs and exhibitions.

On the extension of the Royal Decree of 31 July 1989 to the rabbit sector the Belgian authorities stated in a letter of 26 September 1991 that the funds collected from the charge on rabbit meat would be used for promotion purposes in the hope of achieving an increase in consumption, which would stimulate local rabbit farming as well as rabbit imports. Operators

[1] [1979] ECR 1923.
[2] [1970] ECR 487.

importing live rabbits for slaughter in Belgian slaughterhouse would benefit from the same promotional schemes as operators obtaining supplies from Belgian rabbit producers. This generic promotion would reinforce the advertising campaigns which could be undertaken by Belgian and non-Belgian companies.

6. With regard to the compulsory contribution levied on importers engaged solely in importation and importing compound feedingstuffs from Member States only, the Belgian authorities consider that it complies with the Court's decision in the *Denkavit* case of 31 May 1979, referred to above.

IV

1. As the Commission stated in its final negative decision of 30 November 1988, the aid funded by compulsory contributions may be such, in so far as its objective is concerned (see point II.2), as to facilitate the development of the sectors concerned without adversely affecting trading conditions to an extent contrary to the common interest, and may therefore qualify for the exception in Article 92 (3) (c) of the EC Treaty. The Commission did not conclude however that the aid in question was compatible with Community rules, since its funding by compulsory contributions was in breach of Article 12 of the EC Treaty.

As the Belgian authorities note (point III.2), this position of 30 November 1988 did not give rise to any objections that the aid was funded by compulsory contributions levied on products imported from the other Member States, since at that time the Commission had not yet applied in the agriculture sector the findings of the Court in the judgment of 25 June 1970 in Case 47/69 to aid funded by compulsory charges imposed at stages subsequent to importation and by compulsory charges in the form of flat-rate amounts levied on importers of compound feedingstuffs engaged solely in the importation of products from other Member States.

With regard to parafiscal charges imposed on products imported from other Member States, the position of the Commission is as follows:

According to the decisions of the Court of Justice, the funding of a State aid by a compulsory charge is an essential component of the appraisal of such an aid and when such appraisal is made both the aid and its funding should be considered in the light of Community law.

The Commission considers therefore, in accordance with that case law, that an aid cannot be funded by parafiscal charges imposed on products imported from other Member States. Such funding has a protective effect in excess of the aid as such, by virtue of the fact that although equality of treatment is guaranteed on the legislative level between national products and imported products, on the practical level, a more favourable situation is necessarily created for national operators, since schemes undertaken are guided by national specializations, requirements and gaps.

2. This funding aspect, now considered by the Commission to affect the compatibility of the aid in the sector in question, resulted in its initiating on 30 November 1989 the procedure under Article 93 (2) of the EC Treaty in respect of the aid referred to in point 1 above in so far as it is funded by compulsory contributions imposed on products imported from other Member States.

— Consequently, contrary to the views of the Belgian authorities referred to in points III.4 and 6 above, the compatibility of a system of charges with the EC Treaty's tax provisions is not such as to alter the Commission's appraisal of the aid funded by them with regard to Articles 92 *et seq.* of the EC Treaty. The 'protective effect in excess of the aid as such' as defined by the Court is not taken into consideration where the compatibility of the charge within Article 95 of the EC Treaty is being considered.

— Similarly, contrary to the views of the Belgian authorities referred to in point III.5, the person subject to the charge, whether national producer or importer, does not constitute a relevant component of the analysis and is not likely therefore by nature to alter the Commission's position. Account is taken solely of the charge imposed on the product itself at any marketing stage whatever.

3. In the case under consideration, the aid funded by compulsory contributions for the benefit of the promotion fund for poultry and rabbit products is derived partly from charges imposed on products imported from other Member States both at the stage of the slaughter of domestic poultry (compulsory contribution of an amount fixed for each fowl slaughtered) and rabbits (compulsory contribution of an amount fixed for each rabbit slaughtered) and on importers engaged solely in the importation of compound feedingstuffs from other Member States.

4. The principle that a charge may not be levied on products imported from other Member States at the processing stage where processing is unlikely to alter their origin should be extended so that exemption at the frontier does not simply mean that the charge on imported products is shifted to the post-importation stages.

Operations carried out on the goods must be such as to alter the origin of the product so that it is no longer regarded as an imported product.

5. The contributions levied for the benefit of the promotion fund for poultry and rabbit farming could also be imposed on products imported from other Member States when the charge is being imposed on breeder fowl kept on a holding (Bfr 1/animal). Steps should be taken to determine whether fowl after a certain period of rearing undergo a change as to their origin within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code [1]. This would involve determining whether the origin of the animal was altered during rearing within the meaning of the above provision. The requirements for this provision, laid down mainly for trade with non-member countries, could be applied by analogy to intra-Community trade in the absence of any other provisions covering products of Community origin.

In the absence of Community provisions laying down criteria for the change of origin of live fowl which have not been obtained entirely in one country, the Commission raises no objection regarding the aid funded by a charge levied on breeding fowl kept on a holding but reserves the right to review the measure should a Community provision be adopted on the subject.

6. Similarly, when adopting its earlier positions the Commission did not consider whether the fattening period for rabbits and poultry prior to slaughter (the chargeable event giving rise to the charge) was liable, in itself or together with the slaughter, to confer Belgian origin on animals imported from non-member countries.

For the reasons set out in the second paragraph of point 5, the Commission reserves the right to review its position should a Community provision be adopted on the subject.

7. In the opinion of the Commission, the rule that a charge may not be imposed on imports from other Member States should not be extended to the importation of compound feedingstuffs or animals from other Member States when this activity is carried on also by a manufacturer of compound feedingstuffs or when the charge is imposed on a flat-rate basis — that it, without taking into account possible imports from other Member States by an importer who also imports the same products from non-member countries. The case law of the Court does not prevent the charges in question from being applied to products imported from non-member countries or to production on national territory. The rule should be extended therefore only to importers who are engaged solely in the importation of compound feedingstuffs or animals from Member States only ('specialized importers'). According to the Royal Decrees, the funding of aid for the promotion of poultry and rabbit products does not rule out the levying of a compulsory contribution also on 'specialized importers' of compound feedingstuffs from other Member States, namely those who are engaged solely in importation and who import compound feedingstuffs from other Member States only.

8. The imposition of charges on the basis of production (flat-rate animal contribution) and not on that of the quantity of products that may be imported from other Member States, bought, processed or sold, does not constitute protection in excess of the aid as such in view of the fact that they are imposed annually on a flat-rate basis and not on the basis of the quantity imported.

Nevertheless, since the proceeds of the charges are transferred to a common fund for poultry and rabbit products, the aid funded in this way cannot be separated from all the aids referred to.

9. The fact that the system of imposition may be compatible with Article 95 of the EC Treaty does not affect the Commission's appraisal of the aid funded by it having regard to Articles 92 *et seq.*

10. Consequently, aid funded by the compulsory contributions cannot be regarded as compatible with the common market under Article 92 of the EC Treaty on account of the way in which it is funded and must therefore be abolished.

The Belgian authorities must notify the action they propose to take to ensure that animals imported from other Member States and compound feedingstuffs imported from other Member States by 'specialist importers' are not subject to the compulsory contributions referred to above.

[1] OJ No L 302, 19. 10. 1992, p. 1.

11. This Decision is without prejudice to to any measures the Commission may see fit to take as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS DECISION :

Article 1

The aid granted by Belgium to the poultry and rabbit farming sector, funded by the compulsory contributions provided for in the Royal Decree of 31 July 1989, as amended by the Royal Decrees of 5 August 1991 and 4 May 1992, is incompatible with the common market within the meaning of Article 92 of the EC Treaty and must be abolished in so far as the contributions are imposed also on poultry and rabbits imported from other Member States at the slaughter stage, and on 'specialist importers' of compound feedingstuffs from other Member States (for the purposes of this Decision, those who are engaged solely in importation and who import compound feedingstuffs from the other Member States only).

Article 2

Belgium shall inform the Commission within two months of the date of 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, 30 November 1994.

For the Commission

Karel VAN MIERT

Member of the Commission