II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 8 December 1995

on a Community financial contribution towards certain expenditure incurred by the Member States implementing the monitoring and control systems applicable to the common fisheries policy

(95/523/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 43 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Council Decision 89/631/EEC of 27 November 1989 on a Community financial contribution towards expenditure incurred by Member States for the purpose of ensuring compliance with the Community system for the conservation and management of fishery resources (4), and in particular Article 1 (5) thereof, provides that before 30 June 1995 the Council must adopt the provisions for Community financial assistance which could apply from 1 January 1996;

Whereas the common fisheries policy, which guarantees the long-term existence of fishery stocks and thus employment in the sector, can achieve its objectives only if its rules are complied with and effectively controlled;

Whereas those objectives and rules are primarily established by Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (5) and by Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (6);

Whereas the Member States, by guaranteeing the implementation of the control system applicable to the common fisheries policy, are carrying out an obligation of Community interest;

Whereas for some Member States the scale of the enforcement task is unrelated to budget capacity and may in certain cases constitute a disproportionate burden;

Whereas it is therefore appropriate to provide for a contribution by the Community towards certain inspection and monitoring expenditure incurred by some Member States;

Whereas Article 7 of Council Regulation (EC) No 685/95 of 27 March 1995 on the management of the fishing effort relating to certain Community fishing areas and resources (7) provides for additional Community financial support for Ireland, including support for operating expenditure, for the purposes of improving controls, with due regard for authorized Community practices and in the framework of financial guidelines;

(1) OJ No C 186, 20. 7. 1995, p. 9.
(2) OJ No C 287, 30. 10. 1995.
(3) Opinion delivered on 25 October 1995 (not yet published in the Official Journal).
(4) OJ No L 364, 14. 12. 1989, p. 64. Decision as last amended by Decision 94/207/EC (OJ No L 101, 20. 4. 1994, p. 9).
(5) OJ No L 389, 31. 12. 1992, p. 1.
(6) OJ No L 261, 20. 10. 1993, p. 1. Regulation as last amended by Regulation (EC) No 2870/95 (see p. 1 of this Official Journal).
(7) OJ No L 71, 31. 3. 1995, p. 5.

Whereas the total Community contribution should remain within the limits of a budget provision of ECU 205 million for a period of five years (1996-2000); whereas the corresponding financial resources should be entered as annual appropriations in the general budget of the European Communities;

Whereas any such contribution should be conditional on the attainment, by the Member States which are beneficiaries, of a satisfactory standard of enforcement both at sea and on land; whereas the effectiveness of the enforcement must be made apparent in the annual report referred to in Article 35 of Regulation (EEC) No 2847/93,

HAS ADOPTED THIS DECISION:

Article 1

1. The Community may, under the conditions set out in this Decision, contribute to the financing of certain expenditure by Member States relating to the implementation of the control system applicable to the common fisheries policy provided for in Regulation (EEC) No 2847/93. Expenditure covering the following may be regarded as eligible:

(a) the acquisition or modernization of inspection and control equipment;

(b) specific measures intended to improve the quality and effectiveness of the monitoring of fishing and related activities, the duration of which does not exceed two years.

The expenditure referred to in the first subparagraph must contribute to the mobilization of monitoring facilities in accordance with Article 1 (2) of Regulation (EEC) No 2847/93.

2. The Community contribution shall relate to eligible expenditure incurred by Member States between 1 January 1996 and 31 December 2000.

'Eligible expenditure' shall mean the costs arising from legal and financial undertakings entered into by competent authorities within the above period.

3. The Community funding of the measures introduced by this Decision shall cover a five-year period (1996-2000). The financial reference illustrating the will of the legislative authority for the implementation of the actions covered by this Decision shall be ECU 205 million.

The financial statement shall be revised each year on the basis, especially, of the appropriations decided by the budgetary authority during the annual budgetary procedure.

4. The budgetary authority shall determine the available appropriations for each financial year. The Community contribution shall be granted within the limits of the appropriations allocated to that end in the Community budget.

Article 2

1. The financial contribution referred to in Article 1 (1) (a) shall cover investment expenditure relating to the acquisition or modernization of:

— vessels, aircraft and land vehicles employed in the monitoring and control of fishing activities;

— systems for the detection and recording of fishing activities (including equipment installed on fishing vessels);

— systems for the recording, management and transmission of data relating to controls, including computer applications and software.

The expenditure referred to in the first subparagraph shall be eligible to the extent that it is actually used for the implementation of the control system referred to in Article 1.

2. The financial contribution referred to in Article 1 (1) (b) shall cover eligible expenditure which is intended to increase the effectiveness of the application of the common fisheries policy and relates to measures and projects not exceeding two years in duration and having at least one of the following purposes:

(a) the implementation of joint inspection programmes as referred to in Article 2 (4) of Regulation (EEC) No 2847/93;

(b) experiments with, and the introduction of, new technologies to improve the monitoring of fishing and related activities;

(c) the implementation of specific control programmes established by Community initiative and carried out by the Member State(s) concerned;

(d) programmes to computerize the processing and exchange of data developed by joint agreement between several Member States and, where appropriate, the Commission;

(e) other control measures of Community interest to be adopted at a later date.

3. In addition, the financial contribution referred to in Article 1 (1) (b) may relate to eligible expenditure intended for the training of national officials connected with control activities, in particular in a Member State other than that in which they work.

Detailed rules for the application of this paragraph shall be adopted in accordance with Article 18 of Regulation (EEC) No 3760/92.

Article 3

1. For any Member State in any year, the Community financial contribution shall not be lower than 35 % or higher than 50 % of the eligible expenditure.

2. Notwithstanding paragraph 1, the Commission may decide to grant a higher rate, in particular in order to permit:

— the realization of a joint measure by Member States and the Commission likely to remedy control difficulties affecting an area of special Community interest,

— experiments with, and the introduction of, new technologies to improve the monitoring of fishing and related activities.

The annual budget allocation reserved for such measures shall be limited to 15 % of the budget allocation.

3. Notwithstanding paragraph 1, the Commission may decide to grant a higher rate in order to provide for additional financial support for the purpose of improving controls, as defined in Article 2 (1), including support for the following operating expenditure :

— remuneration of national officials connected with monitoring and control activities and occupying additional posts created after 1 January 1996 within the framework of a detailed programme, for the duration of the programme, and relating to the inspection and control of specific fisheries and zones ; for the purposes of this paragraph, 'remuneration' shall mean the salaries and travel allowances of the officials concerned necessary for the carrying out of their duties, less taxes and charges, levied in accordance with national legislation,

— costs relating to training and providing information for the national officials connected with control activities,

— costs incurred as a result of controls entrusted to surveillance companies,

— costs relating to equipment of national officials connected with control activities,

— running costs associated with items purchased under Article 2 (1).

The financial support for operating expenditure for Ireland shall be granted up to a total amount of ECU 3 million per annum.

Article 4

1. Member States wishing to benefit from a financial contribution shall forward to the Commission, no later than 15 November 1995 :

(a) a five-year programme describing the controls which they intend to carry out during the period referred to in Article 1 (2). The control programme must contain in particular the objectives of the proposed control and inspection measures, the envisaged operational measures and the anticipated results ;

(b) a programme of forecast annual expenditure for the period referred to in Article 1 (2) for which they wish to receive a financial contribution from the Community.

2. Each Member State shall forward to the Commission, for the first time in 1996 and each year thereafter, a report on progress achieved with regard to forecasts and to the need to adjust the control programme. That report shall form a special chapter in the report referred to in Article 35 of Regulation (EEC) No 2847/93.

3. The information referred to in paragraphs 1 and 2 must enable the Commission to ensure adequate monitoring of the expenditure relating to the implementation of the control system applicable to the common fisheries policy.

Article 5

1. Member States wishing to benefit from a Community financial contribution towards the expenditure referred to in Article 2 shall forward to the Commission, on the first occasion no later than 15 November 1995 and subsequently no later than 30 June of each year, an application for funding for the following year containing the information specified in points 1 and 2 of the Annex. Applications received after those dates shall not be considered except in exceptional, duly justified cases.

2. The application for funding must be drawn up within the framework of the programmes referred to in Article 4.

Article 6

On the basis of information provided by the Member States, the Commission shall decide, for the first time before 15 March 1996 and subsequently before 31 December of each year, in accordance with the procedure laid down in Article 18 of Regulation (EEC) No 3760/92, on :

— the eligibility of the planned expenditure,

— the rate of the Community contribution,

— any conditions to which the contribution may be subject.

Article 7

At the reasoned request of a Member State, the Commission may grant advances up to a maximum of 50 % of the Community's annual contribution. That advance shall be deducted from the final amount of the Community contribution to the eligible expenditure actually incurred.

Article 8

Should a Member State decide not to realize all or part of the expenditure which the Commission has deemed eligible, in accordance with Article 6, it shall inform the Commission thereof without delay giving details of the impact on its control programme.

Article 9

1. Member States shall present their applications for reimbursement of expenditure no later than 31 May of the year following that in which the expenditure was incurred.

2. When submitting an application for the reimbursement of expenditure, Member States should verify and certify that the expenditure was carried out with due regard to the conditions laid down in this Decision, in particular point 4 of the Annex.

3. If the application reveals indications that the conditions set out in paragraph 2 have not been complied with, the Commission shall undertake a thorough examination of the case by asking the Member State to forward its comments within a specific time limit. If the examination confirms that the conditions have not been complied with, the Commission shall set a suitable time limit for compliance by the Member State. If, when the time limit has expired, the Member State has not acted on the recommendations, the Commission may reduce, suspend or cancel its contribution in the area of assistance concerned.

Article 10

Member States shall provide the Commission with any information which it may request for the performance of its duties under this Decision.

Member States shall provide the Commission with any information which will enable it to verify the use of the surveillance and control facilities which have been the subject of a Community financial contribution pursuant to this Decision.

If the Commission considers that the facilities are not being used for the intended purpose or in accordance with the conditions set out in this Decision, it shall inform the Member State accordingly. The Member State shall then conduct an administrative inquiry in which Commission officials may participate. The Member State shall inform the Commission of the progress and results of the inquiry and provide the Commission without delay with a copy of the report of the inquiry and the principal data used in preparing it.

Article 11

The Commission may carry out any checks which it deems necessary to ensure that the conditions and tasks imposed on the Member States by this Decision are fulfilled, and the Member States shall provide assistance to the staff appointed by the Commission for this purpose.

The provisions of this Article shall be without prejudice to Article 29 of Regulation (EEC) No 2847/93.

Article 12

This Decision is addressed to the Member States.

Done at Brussels, 8 December 1995.

For the Council

The President

J. BORRELL FONTELLES

ANNEX

1. The application for funding referred to in Article 5 shall state the expenditure envisaged for the following years. It shall specify in particular:

   — the timetable for the expenditure envisaged,

   — the technical features of the equipment, its cost, the method of payment envisaged and its control objective relative to the programme,

   — the planned use of the equipment, including its date of entry into service,

   — the nature and cost of specific measures intended to improve the quality and effectiveness of the control of fishing and related activities and details of their envisaged duration.

2. Member States shall forward all relevant information allowing the Commission to appreciate the expenditure envisaged with regard to the following criteria:

   — the objectives pursued within the framework of the expenditure which they wish to incur,

   — the anticipated results linked to the expenditure to be incurred,

   — in the case of expenditure on the purchase of vessels, aircraft and land vehicles, the estimated amount of time which they will devote to fisheries inspection and monitoring,

   — the use made by a Member State of any financial contribution granted under Decision 89/631/EEC or under this Decision in any previous year,

   — the improvement in the Member State's performance in fisheries enforcement at sea and on land in the period preceding the application, under the programme referred to in Article 4, and the improvement likely to result from the expenditure envisaged.

3. In considering a Member State's enforcement performance, the Commission shall have regard to the following considerations in particular:

   — the prevention, detection and prosecution of infringements against the common fisheries policy,

   — the presence in national legislation, and the application in practice, of penalties that are commensurate with the seriousness of infringements and effectively discourage further infringements of the same kind,

   — the reliability of the catch figures forwarded by the Member State to the Commission and the Member State's ability to prevent the overfishing of its quotas,

   — the amount and effectiveness of the human and material resources devoted by the Member State to fisheries enforcement,

   — the diversity of the fishing activities in the Member State's fishery zone,

   — the degree of cooperation in fisheries enforcement between that Member State and other Member States and the Commission,

   — where applicable, that Member State's contribution to fisheries enforcement in areas governed by international conventions to which the Community is a Contracting Party and the scale and effectiveness of that enforcement,

   — the enforcement effort devoted by the Member State to the fishing activities of its vessels on the high seas.

4. The reimbursement of expenditure and the payment of advances shall be made only if the provisions of the Directives coordinating procedures for the award of public works and supply contracts have been complied with, in the sense that the duly completed public contract questionnaires must make reference to the notices on the award of public contracts published in the *Official Journal of the European Communities*. In case of non-publication of the notices in the *Official Journal of the European Communities*, the beneficiary shall certify that the public contracts have been awarded in conformity with Community legislation.

   The Commission may request any information which it considers necessary for judging whether Community legislation on public contracts has been respected.

   Reimbursement shall be subject to the presentation of documentary evidence in duplicate. That evidence should contain at least the main elements of the agreement between the Member State and the service provider(s) and the corresponding proofs of payment. To be eligible for reimbursement, individual items of expenditure must be listed in a summary statement indicating explicitly for each item the object of the expenditure, its connection with the proposed programme and the net amount excluding VAT.