II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 18 November 1997

on aid which Belgium (Wallonia) plans to grant in the form of a premium for growing winter rape for non-food purposes

(notified under document number C(1997) 3697)

(Only the French and Dutch texts are authentic)

(Text with EEA relevance)

(98/541/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 No 136/66/EEC of 22 September 1966 on the common organisation of the market in oils and fats [1], as last amended by Regulation (EC) No 1581/96 [2], and in particular Article 33 thereof,

Having regard to Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops [3], as last amended by Regulation (EC) No 1422/97 [4],

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

Whereas:

I

By letter of 5 December 1994, recorded as received on 7 December 1994, the Belgian Permanent Representation notified the Commission, in accordance with Article 93(3) of the Treaty, of the proposed aid measure referred to above.

By letter SG(95) D/3326 of 20 March 1995, the Commission initiated against the abovementioned draft scheme the procedure provided for in Article 93(2) of the Treaty and gave notice to the Belgian Government to submit its comments and, in a communication published in the *Official Journal of the European Communities* [5], gave notice to the other Member States and other interested parties to submit their comments.

No comments were submitted by the Belgian authorities or by any interested parties.

In the absence of any comments, in particular by the Belgian authorities, the doubts as to whether the scheme is compatible with the Treaty remain, for the reasons set out below.

II

The scheme against which the Commission initiated the procedure provided for in Article 93(2) of the Treaty consists of a premium for the production of winter rape for non-food purposes. The premium is worth BEF 2 000 (about ECU 50) per hectare of winter rape grown for

[1] OJ 172, 30. 9. 1966, p. 3025/66.
[2] OJ L 206, 16. 8. 1996, p. 11.
[3] OJ L 181, 1. 7. 1992, p. 12.
[4] OJ L 196, 24. 7. 1997, p. 18.
[5] OJ C 142, 14. 5. 1996, p. 4.

non-food purposes on fallow land receiving aid under a set-aside scheme in accordance with Community and national legislation.

The premium is payable in respect of one hectare or more, up to a limit of 20 hectares per farmer. The recipient must:

— conclude a cultivation contract in accordance with Commission Regulation (EEC) No 334/93 [1], as last amended by Regulation (EC) No 2991/95 [2], laying down detailed implementing rules for the use of land set aside for the provision of materials for the manufacture within the Community of products not primarily intended for human or animal consumption,

— comply with the methods of production (use of fertilisers and plant-protection products) described in detail in the 'Environment Charter' for winter rape grown for non-food purposes.

III

In its letter of formal notice the Commission took account of the following:

The Belgian authorities state that the purpose of the scheme is to find new outlets and diversify farm production. They also claim that the measure is designed to further environmental protection by adjusting production methods in accordance with the Environment Charter.

After scrutinising the draft scheme the Commission has concluded that, since it is payable per surface area unit, the aid has no lasting effect on the development of the sector and is therefore to be regarded as operating aid incompatible with the common market. The Commission's confirmed view is that a direct effect of this scheme is to improve the possibilities of production and disposal of the products by the operators concerned compared with other operators (in Belgium or in other Member States) who do not receive aid of a comparable nature.

The national aid is awarded in order to encourage the production of a crop that is governed by the rules of a common organisation of the market. According to consistent case-law of the Court of Justice of the European Communities, those rules are to be regarded as a complete and exhaustive system that precludes Member States from introducing measures that derogate from them or bring them into question. The aid does not, therefore, qualify for any of the exemptions provided for in Article 92(3) of the Treaty.

On the point that the aid is to be granted in the context of the Community provisions of the common agricultural policy, it should be noted that neither Regulation (EEC) No 1765/92 nor Regulation (EEC) No 334/93 allow Member States to grant aid in addition to the Community compensation for set-aside land used for growing products for non-food purposes.

Since the aid is granted for crops grown on land governed by the system provided for in Regulation (EEC) No 1765/92, it is contrary to the provisions of that Regulation, under which an intervention system is to stabilise agricultural markets in the context of the common organisation concerned (see Article 13 of Regulation (EEC) No 1765/92).

Accordingly, any intervention by the State in the field governed by Regulation (EEC) No 1765/92 would be tantamount to State interference in a 'complete and exhaustive system' which, the Court of Justice has repeatedly confirmed, falls solely within the competence of the Community.

Regarding the intention of the Belgian authorities to improve environmental protection the Commission would point out that Article 7(3) of Regulation (EEC) No 1765/92 applies to land set aside. Under that provision, Member States are to apply to the land in question environmental safeguard measures that take into account the characteristics of the land taken out of production. The application of production methods that are compatible with environmental protection requirements are thus to be regarded as the fulfilment of an obligation that is already applicable under Community legislation.

Moreover, in the case of set-aside land used for growing products for non-food purposes, Article 10 of Council Regulation (EEC) No 2078/92 [3], as last amended by Commission Regulation (EC) No 2772/95 [4], precludes the implementation of national aid measures in addition to those provided for in the Regulation (which themselves may not be granted for environmental programmes for growing products for non-food purposes on land set aside).

The proposed national scheme should therefore be regarded as incompatible with Article 10 of Regulation (EEC) No 2078/92.

IV

By virtue of Article 33 of Regulation No 136/66/EEC, Articles 92, 93 and 94 of the Treaty are, subject to any provisions of that Regulation to the contrary, applicable to the production and marketing of the products referred to in Article 1.

[1] OJ L 38, 16. 2. 1993, p. 12.
[2] OJ L 312, 23. 12. 1995, p. 9.
[3] OJ L 215, 30. 7. 1992, p. 85.
[4] OJ L 288, 1. 12. 1995, p. 35.

They accordingly apply also to winter rape.

Pursuant Article 92(1) of the Treaty any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market.

The measures in question constitute aid granted within the meaning of Article 92(1) of the Treaty.

They improve the economic situation of recipient undertakings in relation to competitors who do not receive such assistance. Accordingly, they distort or threaten to distort competition in the manner referred to above.

Taking into account, on the one hand, the volume of rape trade (1995: exports from Belgium (including Luxembourg) to the other Member States: ECU 7,81 million; imports into Belgium (including Luxembourg) from the other Member States: ECU 71,37 millions [1]) and, on the other hand, Belgium's production (18 900 tonnes) compared with that of the other Member States (8,05 million tonnes) [2], the aid is likely to affect trade between Member States since it favours domestic production at the expense of imports from the other Member States.

In this connection it should be emphasised that even aid that is relatively small, or the relatively modest size of the recipient undertaking does not *a priori* rule out the possibility of trade between Member States being affected.

In the light of the above the aid in question is State aid that fulfils the criteria under Article 92(1) of the Treaty.

There are, however, exceptions to the principle of incompatibility set out in Article 92(1) of the Treaty.

V

The Article 92(2) exceptions to that incompatibility evidently do not apply in this case, nor have they been invoked by the Belgian authorities.

A strict interpretation must be applied to the exceptions provided for in Article 92(3) of the Treaty when scrutinising any regional or sectoral scheme or any individual case in which a general aid scheme is being applied.

In particular, an exception is allowed only where the Commission is able to establish that the aid is necessary to achieve one of the objectives concerned. To grant the benefit of such derogations to aid which is not necessary for that purpose would be tantamount to allowing adverse effects on trade between Member States and distortions of competition that are without justification in terms of the Community interest and, by the same token, to allowing operators from certain Member States to enjoy unwarranted advantages.

In the case at hand the scheme does not contribute to attaining the objective in question. The Belgian Government has not provided, nor has the Commission found, any justification to the effect that the scheme fulfils the requirements for applying one of the exceptions provided for in Article 92(3).

It is not a scheme intended to promote the execution of an important project of common European interest within the meaning of Article 92(3)(b) since, by virtue of its possible impact on trade, the scheme is contrary to the common interest.

Nor is it, within the meaning of that provision, intended to remedy a serious disturbance in the economy of the Member State concerned.

Nor has the scheme been notified as a regional aid pursuant to Article 92(3)(a) of the Treaty.

The Commission may regard aid intended to facilitate the development of certain economic activities or of certain economic regions as compatible with the common market pursuant to Article 92(3)(c) of the Treaty if the aid:

— does not adversely affect trading conditions to an extent contrary to the common interest

and

— facilitates the development of certain economic activities or certain regions by promoting the disposal of production that is specific to them.

By definition, being aid of the type described in Article 92(1), it distorts or threatens to distort competition but, by virtue of Article 92(3)(c), it is automatically incompatible only if it does so in a manner that is contrary to the common interest.

In view of the infringements noted in III, granting the aid in question does not in any way serve the common interest.

[1] Comext 2.
[2] Eurostat.

Consequently the Commission notes that the measure does not qualify for the exemptions provided for in Article 92(3)(a) and (c) in the case of aid designed to promote or facilitate the economic development of regions or of certain activities referred to at (c).

The aid cannot, therefore, qualify for any of the exemptions provided for in Article 92 of the Treaty and is therefore to be regarded as incompatible with the common market. It may not, therefore, be granted,

HAS ADOPTED THIS DECISION:

Article 1

The aid provided for in Article 2 of the draft Order of the Government of the Region of Wallonia on the granting of a premium for growing winter rape for non-food purposes is incompatible with the common market pursuant to 92 of the EC Treaty and may not be granted.

Article 2

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

Article 3

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 18 November 1997.

For the Commission
Franz FISCHLER
Member of the Commission