

COMMISSION DECISION

of 8 February 1983

concerning aid to maintain maritime employment granted to fishing undertakings by the French Government

(Only the French text is authentic)

(83/313/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 100/76 of 19 January 1976 on the common organization of the market in fishery products⁽¹⁾, as last amended by Regulation (EEC) No 3443/80⁽²⁾, and in particular Article 26 thereof, and to Council Regulation (EEC) No 3796/81⁽³⁾, which replaced Regulation (EEC) No 100/76 with effect from 1 June 1982, and in particular Article 28 thereof,

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

I

Whereas, in response to a request made by the Commission on 12 October 1979, the French authorities, in accordance with Article 93 (3) of the EEC Treaty, informed the Commission by letter dated 21 April 1980 of the granting of aid in 1979 and 1980 to fishing undertakings in an attempt to maintain employment in coastal areas;

Whereas this aid amounted, in practice, to FF 0,105 for each litre of gas-oil used; whereas it was granted to all fishing undertakings; whereas the sum set aside for this aid in 1979 and 1980 was FF 53 million;

Whereas it emerged that this aid had been granted regularly in France since 1974; whereas the granting thereof in 1974 and 1975 had been authorized by the Commission; whereas the Commission had raised no objections to its renewal in 1977;

Whereas the French Government stresses that the aim of the aid in question is to mitigate the effects on the

fishing fleets of the spectacular increase in running costs, the dwindling of catches the redeployment of fishing activities and the absence of the necessary Community measures, a situation which has resulted in large-scale laying-up and which could in the long term jeopardize employment in coastal areas;

Whereas the French Government has explained that the reference to fuel is used merely as a criterion for granting the aid and that the aid in question is to be considered as employment aid;

Whereas the aid described above falls within the scope of Article 92 to 94 of the EEC Treaty by virtue of the Articles of Regulations (EEC) No 100/76 and (EEC) No 3796/81 referred to above;

Whereas, following initial scrutiny, the Commission took the view that the aid in question, granted since 1974, was no longer temporary aid but operating aid granted with no actual reciprocal commitment on the part of the recipient, that it had a substantial direct impact on competition and trade between the Member States and that it was therefore incompatible with the common market within the meaning of Article 92 of the Treaty; whereas it accordingly decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the above aid and, to this effect, by letter of 22 July 1980, gave the French Government formal notice to submit its comments;

Whereas, in June 1981, the Commission learned of the French Government's intention to continue this aid after 1980 despite the procedure pending under Article 93 (2) and to double the rate; whereas, in response to a request made by the Commission on 3 and 27 July 1981, the French Government stated that the matter was still at the planning stage, and that the Commission would be notified at the appropriate time;

Whereas, in December 1981, the Commission learned that the French Government had in fact decided to double the aid in question with effect from July 1981; whereas, after being asked for confirmation by telex dated 22 December 1981, the French Government confirmed this information by telex dated 8 January 1982 and, in accordance with Article 93 (3) of the EEC

⁽¹⁾ OJ No L 20, 28. 1. 1976, p. 1.

⁽²⁾ OJ No L 359, 31. 12. 1980, p. 13.

⁽³⁾ OJ No L 379, 31. 12. 1981, p. 1.

Treaty, notified the extension and doubling of the aid in question for 1982, to be granted on the same basic terms; whereas the level of the aid in question was fixed at FF 0,21 per litre of fuel used and the sum set aside for the purpose was FF 106 million; whereas such notification implies that the aid in question was granted in 1981 without the Commission being notified in advance;

Whereas the Commission decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of this new aid, and, to this effect, on 25 February 1982, sent the French Government a letter giving it notice to submit its comments;

Whereas it follows from the above that the French Government clearly failed in its obligations under Article 93 (3) of the EEC Treaty;

II

Whereas, in its replies to the Commission dated 13 October 1980 and 6 April 1982, the French Government stated that the granting of aid to maintain maritime employment in 1980, 1981 and 1982 does not distort competition, as proven by the regular increase since 1977 of French fishery imports, mostly from elsewhere in the Community, and that the aid in question is not aid for fuel as it is not indexed to the price of oil but, by contrast, is progressive in nature; whereas, despite its being doubled in 1982, the aid has in fact dropped since 1977 in terms of the price of fuel from 17 to 12 %;

Whereas the French Government claims that the aid in question is intended, pending Community decisions, to enable fishing enterprises to adapt to new fishing conditions and to prevent a probable irreversible decline in their activity, and a reduction in their income, or even a loss of jobs in areas which have little industry, are very isolated and are particularly dependent on fishing; whereas such aid is intended to be temporary; whereas, lastly, other Member States in similar situations have adopted measures which are either identical or comparable in effect;

Whereas several Member States and several sectoral organizations have submitted their comments to the Commission; whereas certain Member States and sectoral organizations share the commission's view; whereas other Member States feel that the absence of a common fisheries policy may lead Member States to introduce aids to prevent the current situation from deteriorating; whereas several sectoral organizations would like to see the granting of fisheries aids harmonized within the Community;

III

Whereas the fuel subsidies in question have a direct impact on the production costs of recipients and have given them a definite advantage over the other Community fishermen;

Whereas the fact that the aid in question has been granted since 1974 means that it is no longer temporary; whereas the Commission has made it clear to the Member States, and notably to the French authorities in 1975, that it was not in favour of the idea of extending the aids for fuel which it had authorized in the fisheries sector in 1974 and 1975;

Whereas the fact that French fishery imports are on the increase does not cancel out the impact of aid on intra-Community trade and competition;

Whereas the reference made by the French Government to similar aids in other Member States does not appear relevant as the mere existence of an aid scheme in one Member State is never sufficient to justify the granting of similar aid in another Member State;

Whereas intra-Community trade in fishery products for human consumption is substantial and accounts for approximately 30 % of total landings for human consumption in the Community as a whole; whereas, for its part, the French market receives approximately 60 % of its requirements from the landings made by its own fishermen, approximately 20 % from imports from non-member countries and approximately 20 % from imports from the other Member States, and France exports 16 % of its production, approximately two-thirds of which goes to the other Member States;

Whereas the aid in question is simply an aid for fuel and cannot be considered as employment aid; whereas there is no requirement regarding the use of the aid and, in particular, no link with the level of employment in the recipient undertakings;

Whereas the fact that the aid in question is not indexed to the price of oil does not mean that it is not aid for fuel;

Whereas the absence of Community decisions on the reform of the common fisheries policy does not constitute a valid reason for Member States to grant national aids;

Whereas, moreover, for a number of years all Community fishermen have been faced with a very sharp increase in the price of fuel; whereas competition on the Community market in fishery products is very keen;

IV

Whereas it follows from the above that the aid introduced by the French Government is likely to affect trade between the Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty;

Whereas Article 92 (1) of the EEC Treaty states that aids fulfilling the criteria laid down therein are incompatible in principle with the common market; whereas exceptions to this incompatibility, which are the only exceptions relevant to the case in point, are set out in paragraph 3 of the said Article and lay down the objectives followed in the Community's interest and not only in the interest of individual sectors of the national economy; whereas these exceptions are to be strictly interpreted when scrutinizing any aid programme of a regional or sectoral nature or any individual case of application of general aid schemes; whereas exceptions may be allowed only in cases where the Commission can establish that the aid is necessary for achievement of one of the objectives set out in these provisions;

Whereas to allow such exceptions in respect of aids which do not offer such a compensatory advantage would amount to allowing trade between Member States to be affected and competition to be distorted without justification on grounds of Community interest and would result in unfair advantages for certain Member States;

Whereas it has not been possible to establish the existence of such a compensatory advantage in the case in point; whereas the French Government was unable to provide any evidence, and the Commission could find none, that the aids in question fulfilled the conditions required for allowing one of the exceptions provided for in Article 92 (3) of the EEC Treaty;

Whereas the aid in question is clearly not designed to promote or facilitate the development of certain areas; whereas, on regional criteria, Article 92 (3) (a) and (c) is accordingly inapplicable;

Whereas such aids constitute neither an important project of common European interest nor measures capable of remedying a serious disturbance in the French economy; whereas Article 92 (3) (b) of the Treaty is accordingly inapplicable;

Whereas aid for fuel, intended as it is to reduce the cost of certain inputs, constitutes an operating aid with no lasting impact on the economic situation of the

recipients; whereas, in general, the Commission has always been opposed to such aid, since, as a rule, such aid does not in itself fulfil the conditions for eligibility for the exception provided for in Article 92 (3) (c) of the EEC Treaty, since it is not likely to facilitate the development of certain activities within the meaning of that provision;

Whereas, in its communication to the Council of 25 May 1978 on sectoral aid policy, the Commission made it clear that temporary aids to mitigate the social consequences of a crisis situation must be linked with restructuring objectives for the sector in question and subject to action by recipients to facilitate conversion; whereas this does not apply in the case of the aid in question;

Whereas it follows from the above that the aid in question does not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid to maintain maritime employment as granted to fishing undertakings in France from 1979 to 1982 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Such aid must accordingly no longer be granted.

Article 2

The French Republic shall inform the Commission, within one month of the notification of this Decision, of the measures taken to comply therewith.

Article 3

This Decision is addressed to the French Republic.

Done at Brussels, 8 February 1983.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission