STATE AID
C 58/98 (ex NN 66/97, N 509/97 and N 16/98)
Belgium (Flanders)
(1999/C 54/03)

(Articles 92 to 94 of the Treaty establishing the European Community)

Commission communication pursuant to Article 93(2) of the EC Treaty to the other Member
States and interested parties concerning the measure in favour of the promotion of agricultural
products

By the letter reproduced below, the Commission
informed the Belgian Government of its decision to open
the procedure provided for in Article 93(2) of the EC
Treaty.

"After examining the information provided by the
Belgian authorities, the Commission has decided to open
the procedure provided for in Article 93(2) of the Treaty
in respect of the aid referred to above.

In order to enable the Commission to undertake a
detailed assessment of the compatibility of the promo-
tional activities undertaken pursuant to the measure, the
Commission has decided to request the Belgian auth-
orities to provide copies of all promotional material for
agricultural products financed by the Vlaamse Dienst
voor AgroMarketing (VLAM) within one month of the
date of this letter.

Furthermore, in view of the doubts expressed by the
Commission concerning the compatibility with
Community law of the promotional activities undertaken
in favour of the labels “Flandria” and “Duke of
Flanders”, the Commission reserves the right to suspend
forthwith and pending the outcome of the investigation
according to Article 93(2) of the Treaty any aid
payments in favour of the promotion of the two above-
mentioned labels. The Commission invites Belgium to
submit its observations on this possible injunction within
28 days of the notification of this decision.

In taking this decision the Commission has relied on the
following considerations.

I

The measure was notified by the Belgian authorities in
accordance with Article 93(3) of the Treaty by letter of
25 March 1997, registered on 26 March 1997. As the
measure became effective since 1 January 1997, the aid
was registered as non-notified aid (NN 66/97).

By letter of 18 July 1997 new information concerning the
pig, and fruit and vegetable sector was sent. This aid was
registered as aid N 509/97. By letter of 22 December
1997 new information was sent concerning the poultry,
cattle and milk sector. This aid was registered as aid
N 16/98.

By letters of 19 September 1997, 9 February 1998, 29
July 1998 Nos VI 36230, VI 6365, VI 29997 the
Commission requested the Belgian authorities to provide
further information about certain aspects of the aid. A
series of informal contacts took place between the
Commission services and the competent Belgian auth-
orities including two meetings in October 1997 and June
1998.

Additional information was sent by letter from the
Belgian authorities of 22 July 1998, registered on 27 July
1998.

II

The Vlaamse Dienst voor AgroMarketing (VLAM) is a
private law organisation which has been established by
sectoral representatives in agriculture and is recognised
by the Flemish Government. It is responsible for the
promotion of Flemish agricultural products with a view
to increasing sales of such products. VLAM undertakes
direct advertising in the media as well as promotion in
the broader sense, such as a presence at trade fairs.

The activities of VLAM are based on two legal texts:
— Decreet betreffende het Vlaams Promotiecentrum
voor Agro- en Visserijmarketing, 20 December 1996,
— Besluit van de Vlaamse regering betreffende de
verplichte bijdragen bestemd voor de promotie en
afzetbevordering van de Vlaamse producten van de
sectoren landbouw, tuinbouw en visserij, 4 februari
1997 (and its subsequent adjustment).

The 1998 budget for VLAM is expected to amount to
BEF 671 million (ECU 16,5 million). This is partly
financed by a direct grant from the Flemish Government
(BEF 151 million). In order to finance the remainder of
its budget, VLAM has been empowered by the Flemish
Government to levy parafiscal taxes on the various agricultural subsectors. In addition to the activities directly covered by its budget, VLAM also benefits from the secondment of personnel from other parts of the Flemish public sector which is worth the equivalent of BEF 55 million (ECU 1.35 million).

According to the information provided by the Belgian authorities, VLAM organises a range of promotional activities including in-store leaflets, recipe booklets, billboards, television commercials, brochures for trade organisations, presence at fairs, free publicity, etc.

For some agricultural subsectors specific campaigns are launched, such as a brochure and billboard campaign stressing the nutritional value of bread or a booklet “The art of the Azalea”. For other subsectors a combined approach is used. In store leaflets encourage consumers to buy chicken, pork or rabbit.

Promotional activities financed by VLAM are recognisable by the “Van Vlaanderen” logo. Apart from this logo, specific logos or labels have been developed for some of the subsectors: “Flandria” for vegetables, “Duke of Flanders” for ham, “Fromages Belges” for cheese, “Meesterlyck” for ham, “KIP lusten ze allemaal” for chicken, “Eieren” for eggs, “De keuken van tante Marie” for pork, and “Europees Kwaliteitsrundvlees” for beef which is partly co-financed. The “Van Vlaanderen” logo is used both in combination with other logos and alone.

The message the different promotional campaigns underline varies. For bread the generic qualities of bread are stressed. Likewise, the general use of chicken is demonstrated in recipe booklets. The campaigns for hams promoted by the Meesterlyck and Duke of Flanders logo concentrate on quality. The Flandria campaigns stress the quality of its products as the best Flemish producers have to offer. A brochure on horticultural products just gives information on plants.

The parafiscal taxes which are levied by VLAM are the following:

1. Promotion fund arable crops:
   - BEF 2 000/ha seed potatoes
   - BEF 25 000 per firm active in seed multiplication
   - BEF 5 000 per firm active in seed trading
   - BEF 550/ha hops
   - BEF 250/ha potatoes with a maximum of BEF 1 000/farmer
   - BEF 1 000 per farmer who sells potatoes and had less than 4 ha potatoes
   - BEF 5 000 + BEF 250/ha per farmer who sells potatoes and had more than 4 ha but less than 12 ha potatoes. Maximum fee is BEF 7 000
   - BEF 12 500 + BEF 250/ha per farmer who sells potatoes and had more than 12 ha potatoes
   - BEF 12 500 per firm active in potato trading and processing with a turnover less than 25 000 tonnes
   - BEF 25 000 per firm active in potato trading and processing with a turnover more than 25 000 tonnes
   - 2 pro mille of turnover taxed by the 6% VAT tariff for bakers.

2. Promotion fund fruits and vegetables:
   - BEF 100/hothouse with grapes with a maximum of BEF 500/farmer
   - BEF 4/m² mushrooms with a maximum of BEF 1 000/farmer
   - BEF 0,50/package unit for vegetables
   - BEF 15/package unit for fruit other than grapes
   - BEF 0,375 to 1,5/package of chicory (price depends on the type of package)
   - BEF 1/kg chicory exported to the USA or Japan.

3. Promotion fund non-edible horticulture
   - BEF 3 000/company selling non-edible horticultural products
   - BEF 3 000 to 15 000 top up per company selling non-edible horticultural products (amount depends on number of employees)
   - BEF 5 000 per wholesale company active in non-edible horticultural products
   - BEF 4 000 to 25 000 top up per wholesale company trading in non-edible horticultural products (amount depends on number of employees)
   - BEF 10 000 per azalea grower
   - BEF 8 000 to 50 000 top up per azalea grower (amount depends on number of employees).

4. Promotion fund cattle, sheep, goats and horses
   - BEF 100/slaughtered cow, BEF 65 to be paid by the producer, BEF 35 by the buyer
— BEF 30/slaughtered calf, BEF 15 to be paid by the producer, BEF 15 by the buyer
— BEF 30/slaughtered horse
— BEF 8/slaughtered sheep
— BEF 4/slaughtered goat
— BEF 65/exported cow
— BEF 15/exported calf
— BEF 30/exported horse
— BEF 8/exported sheep
— BEF 4/exported goat
— BEF 3/first insemination of cattle
— BEF 50/horse that is registered in a herdbook.

5. Promotion fund pigs
— BEF 10/slaughtered pig, BEF 5 to be paid for by the producer, BEF 5 by the buyer
— BEF 5/imported pig slaughtered in Flanders to be paid for by the buyer
— BEF 5/exported pig.

6. Promotion fund poultry, eggs and smaller animals
— BEF 3000 to 100000 per poultry slaughterhouse, the amount depends on the capacity
— BEF 6000 to 10000 per egg-packing-station, the amount depends on the capacity
— BEF 6000 per egg wholesaler
— BEF 1500 per egg-processing-company that produces egg products as a subsidiary activity
— BEF 12000 per egg-processing-company that produces egg products as its main activity
— BEF 5500 to 14000 per egg-hatching-station, the amount depends on the capacity
— BEF 1500 to 4500 per breeding station, the amount depends on the capacity
— BEF 2000 per producer of chicken feed, excluding importers of chicken feed
— BEF 1500 to 9000 per egg-producing-farm, the amount depends on the number of chickens
— BEF 1500 to 12500 per chicken-producing-farm, the amount depends on the number yearly produced

— BEF 3000 or 10000 per chicken-meat processing-plant
— BEF 1,25 per slaughtered rabbit, imported rabbits are excluded
— BEF 1 per rabbit imported from third countries.

7. Promotion fund milk products
— BEF 5/100 l milk
— BEF 1,3/kg milkfat.

8. Promotion fund fisheries
The activities undertaken by VLAM in the fisheries sector and the funding thereof by parafiscal levies have been approved by the Commission (see SG(97)D/5223). Therefore, these activities and the funding thereof by parafiscal levies on fish products are not covered by the present decision.

III
VLAM benefits from State aid in the form of a direct contribution to its budget from the Flemish Government and from the secondment without cost of personnel from other parts of the public service in Flanders. In accordance with constant Commission practice resulting from the case-law of the Court of Justice (1), the field of compulsory contributions has to be considered as State aid. Since the objective of the aid is to promote agricultural products originating in a particular region of the Community, the aid is clearly likely to distort competition by favouring certain undertakings or the production of certain goods and to affect trade between Member States. The Commission therefore considers that the aids granted in favour of VLAM fall within the scope of the prohibition of State aid within the meaning of Article 92(1) of the Treaty.

However, the prohibition on the granting of State aid set out in Article 92(1) is not unconditional. The exceptions contained in Article 92(2) of the Treaty and subparagraphs (a) and (b) of Article 92(3) have not been invoked by the Belgian authorities and are manifestly inapplicable. In order to benefit from the exception contained in Article 92(3)(c) it is necessary that the aid should facilitate the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

In order to determine whether State aid for the promotion and advertising of agricultural products can be considered to be compatible with the common

market pursuant to Article 92(3)(c) of the Treaty, the Commission applies the criteria set out in the “Framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the Treaty, excluding fishery products” (OJ C 302, 12.11.1987, p. 6). These criteria are as follows:

— aid for publicity campaigns contrary to Article 30 of the EC Treaty is prohibited as is that for advertising related to particular firms (negative criteria),

— advertising must concern one of the following (positive criteria):

   — surplus agricultural products,

   — new products or replacement products not in surplus,

   — the development of certain regions,

   — the development of small and medium-sized enterprises,

   — high-quality products and health foods,

— the aid may not exceed a maximum of 50% of expenditure, although that percentage may be exceeded in the case of products from small and medium-sized enterprises or farms or products from certain regions. That percentage may be raised to 100% of eligible expenditure where the trade contributes at least 50% of the cost of the planned measures through parafiscal charges (see point 4.1 of the abovementioned Community framework).

The negative criteria specify that under no circumstances can State aid be considered compatible with the common market if it infringes Article 30 of the Treaty. In this context the Framework refers to the Commission communication concerning State involvement in the promotion of agricultural and fisheries products (OJ C 272, 28.10.1986) This communication makes clear that generic promotion as such is not open to objection under Article 30 but if undue emphasis is placed on the national origin of the product there is a danger of a breach of Article 30 of the Treaty. To this end, the Commission invites the Member States to ensure that the following guideline is strictly respected. “Identification of the producing country by word or symbol may be made providing that a reasonable balance between references on the one hand to the varieties and qualities of the product and, on the other hand its national origin is kept. The reference to national origin should be subsidiary to the main message put over to consumers by the campaign and not constitute the principal reason why consumers are being asked to buy the product”.

Many of the promotional activities undertaken by VLAM appear to be generic in nature, and therefore appear to fall within the criteria set out in the Framework. However, VLAM also supports the promotion of three labels or logos with regional associations: Flandria, Duke of Flanders and Van Vlaanderen.

Flandria is a label used by the Fruits and Vegetables Fund. In order to be eligible for the use of the label certain quality standards have to be met. These quality standards are established by the sector concerned. In principle, it is possible for produce originating in other Member States to be marketed under the label, and the Commission understands that this is the case at least for Dutch tomatoes. The Duke of Flanders label is used for hams that meet certain quality criteria. The two labels are also subject to specific promotion campaigns in order to encourage the purchase of the products concerned by the consumers. The Van Vlaanderen (from Flanders) logo is used for all different campaigns as a sign that the specific campaign has been paid for by, and has the support of VLAM.

At this stage of the procedure, the Commission has doubts about the compatibility of these publicly financed promotional materials with Article 30 of the Treaty in so far as it appears that they may place an excessive emphasis on the origin of the products and may be intended to encourage consumers to believe that products from Flanders are intrinsically superior to products from other areas.

In their written observations to the Commission, the Belgian authorities have stated that, “the Flandria label must be seen as a generic quality label, with general specifications, which the European consumer does not spontaneously associate with Flanders. Nor is the label reserved for Flemish growers: it may be used for all products which meet the specifications, whatever their country of origin or provenance. Should an incorrect association with the geographical name Flanders result, this is in any case subsidiary to the main message: a quality label for choice products of the highest order”.

At this stage of the procedure, the Commission cannot share that assessment. The word “Flandria” does not
contain any connotation of the quality of products. In fact the word “Flandria” is the Latin name for Flanders, and would appear to be likely to be recognised as such by the majority of consumers in Flanders. Thus it appears that the primary effect of the promotion of products under the name Flandria is to emphasise solely the origin of the products, or alternatively to promote products of Flemish origin which meet particular quality specifications. In both cases, it appears that the promotion of certain categories of agricultural products under the name “Flandria” places an excessive emphasis on the origin of the products. As mentioned in point 3.5.1 of the Framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EC Treaty, excluding fishery products (OJ C 322, 12.11.1987, p. 6), the Commission does not take a favourable view on promotion that stresses the regional origin of a product instead of the quality of a product.

The argument given by the Belgian authorities that the Flandria label is not reserved for Belgian growers does not appear to give rise to grounds for changing this assessment. First, at this stage of the procedure, the Commission has no information available to enable it to verify the conditions under which produce from other Member States is admitted for sale under the Flandria label nor of the proportion of such produce which is in fact sold under the label. Furthermore, it is important to ensure that the promotion campaigns which are financed by State aid not only respect the provisions of the Treaty but also the derived Community legislation. In this context due account should be taken of Article 2(1) of Directive 79/112/EEC on the labelling of foodstuffs which provides that the labelling and methods used must not be such as to mislead the consumer as to the origin of the products. If the interpretation of the Commission that the word “Flandria” carries a clear geographical connotation is correct, then to allow the sale of products originating outside of Flanders under that name would appear likely to mislead consumers.

Similar considerations apply to the promotion of hams under the name “Duke of Flanders”. However, in this case the Commission has learned that the promotional activities for this product have included television advertising which explicitly claimed that Duke of Flanders ham was better than hams produced in other Member States. If confirmed, this would appear to constitute as infringement of Article 30 of the Treaty.

As such, the Van Vlaanderen logo has no link with other messages stressed in the different campaigns. If no undue emphasis is placed on the logo, its use would not appear to constitute per se an infringement of Article 30 of the Treaty. However, if excessive emphasis is placed on the origin of the product, the consumer is being encouraged to buy the product primarily because of its origin. Furthermore, the use of the Van Vlaanderen logo alongside the Flandria and Duke of Flanders labels is likely to further reinforce the references being made to the origin of the products.

In view of the foregoing, it appears that provided that:

1. The doubts expressed by the Commission as regards the promotion activities undertaken by VLAM in favour of the Van Vlaanderen, Flandria, and Duke of Flanders labels and logos comply with Article 30 of the Treaty.
2. The promotion activities undertaken by VLAM in order to be able to verify that these activities do not contravene the negative criteria set out in the Framework.
3. The specific nature of the doubts expressed by the Commission in respect of the promotion of the “Flandria” and “Duke of Flanders” labels, the Commission informs Belgium that it reserves the right to suspend forthwith and pending the outcome of the investigation according to Article 93(2) of the Treaty, all aid payments for the promotion of the Flanders’ labels, the Commission informs Belgium that it reserves the right to suspend forthwith and pending the outcome of the investigation according to Article 93(2) of the Treaty, all aid payments for the promotion of the two abovementioned labels. The Commission invites Belgium to submit its observations on this possible injunction within 28 days of the date of notification of this decision.

As regards compliance with the positive criteria, the Commission notes that almost all the farms producing the products which are advertised by VLAM are small and medium-sized enterprises, and that a significant proportion of the products concerned are in surplus. Furthermore, the Commission notes that VLAM is involved in the promotion of quality products using specifications set by the producers organisations concerned. Therefore, at this stage of the procedure the Commission considers that these criteria are met by the aid under examination.

Furthermore, the aid does not exceed 50 % of expenditure since the trade contributes substantially over 50 % of the budget of VLAM through parafiscal charges.
Article 30 of the Treaty can be resolved, the promotion campaigns financed by VLAM could fall within the scope of the derogation provided for in Article 92(3)(c) of the Treaty.

The Commission has also examined the financing of the aid by a parafiscal charge in accordance with the decisions of the Court of Justice (see judgment of 26 June 1970 in Case 47-69, [1970] ECR 487).

The levies raised to fund the arable crop fund, the fruits and vegetables fund, and the non-edible horticulture fund are all based on acreage under cultivation or on a fee per company/farm. No duties are levied on products that are imported. Companies that work only with imported products are exempted from paying the levies per company in order to avoid an even indirect taxation of imports. The milk fund is financed by levies raised on the milk produced by Flemish farmers only.

The poultry, eggs and smaller animals fund is mostly financed by a fee per company active in the sector. Companies that process only imported products are exempt from charges. The levy for rabbits, which is collected at the slaughterhouse, is not raised on rabbits imported from other Member States.

The measure explicitly excludes taxes on imported products. As far as the fees per company or farm are concerned, a farm or company pays a fixed tax. The amount will be the same for everyone, irrespective of the fact that a part of the products may have been imported. Companies working only with imported products are excluded from the tax. Therefore, the measure cannot be considered as an equivalent to a customs duty.

For practical purposes the duties for the cattle fund and the pig fund are collected at the slaughterhouse. The duties are divided into a part that has to be paid by the producer and a part that has to be paid by the buyer of the meat. On cattle, sheep, goats, horses and pigs that are imported or that can be considered as imported. The milk fund is financed by levies raised on the milk produced by Flemish farmers only.

Under the judgment of the court of Justice (see C-72/92), aid may not be financed by parafiscal charges which are also levied on products imported from other Member States. Such a method of financing has a protective effect which goes beyond actual aid in that even if the rules ensure equal treatment for national and imported products, in practice the arrangements are bound to favour national producers, given that the measures are tailored to national specialisms, needs and shortcomings. Such a compulsory contribution constitutes a charge having an effect equivalent to customs duties prohibited by Articles 9 and 12 of the Treaty. Consequently, at this stage of the procedure it appears that the aid cannot be considered as compatible with the common market in view of the fact that it is financed from obligatory contributions which are also imposed on products imported from other Member States.

When examining aids which are financed by parafiscal levies, the Commission is also concerned to ensure that there is no cross-subsidisation so that the yield of a levy imposed on one sector is not used for the benefit of another sector. Where cross-subsidisation takes place, the risk of a distortion of the conditions of competition is particularly great. In this context, the Commission has noted the assurance provided by the Belgian authorities that the promotional contributions can only be introduced at the request and instigation of the representative professional organisations from the (sub)sectors concerned, and are also spent in accordance with the programme drawn up by those same organisations.

The Commission has also noted the assurances provided by the Belgian authorities that if VLAM decides to entrust the execution of certain tasks to outside organisations, the choice of the relevant organisation is made in a non-discriminatory and transparent manner as meant in Council Directive 92/50/EEC of 18 June 1992, in accordance with the rules on the awarding of contracts drawn up by the management board of VLAM on 28 March 1997, which ensure that all firms and organisations in Belgium or another Member State which are able to carry out contract work for VLAM are equally eligible to do so.

For the reasons given above, the Commission wishes to inform Belgium that, after examining the available information on the State aid in question, it has decided to initiate the procedure provided for in Article 93(2) of the Treaty, in respect of the promotion activities undertaken by VLAM and in respect of the financing of certain aids by parafiscal charges levied on the slaughter of cattle, sheep, goats, horses and pigs, in so far as it appears that these charges may also fall on imported products. The Commission has no objections against the measure as far as it concerns parafiscal charges levied on: arable crops, non-edible horticultural products, poultry eggs and smaller animals, and milk products.

In view of the doubts expressed by the Commission concerning the compatibility with Community law of the
promotional activities undertaken in favour of the labels “Flandria” and “Duke of Flanders”, the Commission reserves the right to suspend forthwith and pending the outcome of the investigation according to Article 93(2) of the Treaty any aid payments in favour of the promotion of the two abovementioned labels. The Commission invites Belgium to submit its observations on this possible injunction within one month of the notification of this decision.

As the aid is given without prior clearance by the Commission under Articles 92 and 93 of the Treaty, the aid is illegal. The Commission regrets that the Belgian authorities have not fulfilled their obligations under Article 93(3) of the EC Treaty and requests the Belgian Government to take adequate measures to respect this obligation for future measures.

Taking into account the abovementioned points the Commission hereby gives notice to Belgium to submit its comments and all information necessary to assess the elements of aid contained in the Belgian law within one month of receiving this letter. The Commission also requests the Belgian authorities to inform aid recipients of this letter.

The Commission reminds Belgium that Article 93(3) of the Treaty is suspensive in nature, and that, in accordance with the letter of 22 February 1995 to all Member States, unlawfully granted aid may, in accordance with national law and including interest calculated at the rates applicable to regional aid from the beginning of the aid period, be subject to repayment by the recipient.

The Commission hereby gives notice to the other Member States and interested parties to submit their comments on the aid/measure in question within one month following the date of this notice, to the following address:

European Commission, 
Directorate-General for Agriculture, 
Rue de la Loi/Wetstraat 200, 
B-1049 Brussels 
Fax (32-2) 296 21 51.

These comments will be communicated to the Kingdom of Belgium.