COMMISSION DECISION

of 11 October 1982

concerning Italian national Law No 423/81 of 1 August 1981 on measures for agriculture

(Only the Italian text is authentic)

(82/744/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 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EEC) No 1183/82 of 18 May 1982 [2], and in particular Articles 23 and 24 thereof,

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal [3], as last amended by Regulation (EEC) No 2916/79 of 28 December 1979 [4], and in particular Article 24 thereof,

Having regard to Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organization of the market in pigmeat [5], as last amended by the Act of Accession of Greece [6], and in particular Article 21 thereof,

Having regard to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine [7], as last amended by Regulation (EEC) No 2144/82 of 27 July 1982 [8], and in particular Article 59 thereof,

Having regard to Council Regulation (EEC) No 1837/80 of 27 June 1980 on the common organization of the market in sheepmeat and goatmeat [9], as last amended by Regulation (EEC) No 1195/82 of 18 May 1982 [10], and in particular Article 23 thereof,

After giving notice to the parties concerned to submit their comments [11] pursuant to the first subparagraph of Article 93 (2), and having regard to those comments.

I

Whereas on 5 October 1981 the Commission requested the Italian Government to notify National Law No 423/81 under Article 93 (3) of the EEC Treaty and not to apply to that Law until the Commission had made known its decision; whereas the Italian Government forwarded a description of the Law in a letter dated 5 November 1981; whereas the Italian Government provided additional information, in particular in its letter dated 8 February 1981;

Whereas Article 1 of Law No 423/81 authorizes expenditure of Lit 50 000 million for 1981 in favour of the autonomous regions and provinces of Trente and Bolzano to enable them to pay their winemaking cooperatives and associations thereof interest rate subsidies of 9 % for one year on the loans they have taken out in order to assist their members with the preservation and storage of table wine and DOC, must and concentrated must;

Whereas Article 2 of Law 423/81 authorizes expenditure of Lit 40 000 million for 1981 in favour of the autonomous regions and provinces of Trento and Bolzano to enable them to pay the national associations of cooperatives subsidies towards the administrative costs incurred by the cooperatives in connection with the harvesting, preservation, treatment, processing and marketing of wine products, livestock products and milk and milk products;

Whereas the first and second paragraphs of Article 3 of Law No 423/81 authorize expenditure of Lit 80 000 million for 1981 in favour of the autonomous regions and provinces of Trento and Bolzano to enable them to pay subsidies towards the administrative costs incurred by the cooperatives and associations thereof in connection with the harvesting, marketing and treatment of wine products, livestock products, milk and milk products;

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 140, 20. 5. 1982, p. 1.
[3] OJ No L 148, 28. 6. 1968, p. 24.
[4] OJ No L 329, 24. 12. 1979, p. 15.
[5] OJ No L 282, 1. 11. 1975, p. 1.
[6] OJ No L 291, 19. 11. 1979, p. 17.
[7] OJ No L 54, 5. 3. 1979, p. 1.
[8] OJ No L 227, 3. 8. 1982, p. 1.
[9] OJ No L 183, 16. 7. 1980, p. 1.
[10] OJ No L 140, 20. 5. 1982, p. 22.
[11] OJ No C 107, 28. 4. 1982, p. 1.

Whereas the third paragraph of that Article authorizes expenditure of Lit 40 000 million for 1981 in favour of the regions and to the autonomous provinces of Trento and Bolzano to enable them to pay subsidies for the collection and transport of milk to procducers, whether single or in association;

Whereas these aids come under Articles 23 and 24 of Regulation (EEC) No 804/68, Article 24 of Regulation (EEC) No 805/68, Articles 21 of Regulation (EEC) No 2779/75, Articles 92 to 94 of the EEC Treaty pursuant to Article 59 of Regulation (EEC) No 337/79, and Article 23 of Regulation (EEC) No 1837/80;

Whereas the Commission found, after a preliminary examination of Law No 423/81, that the measures provided for in Article 1 thereof, for which there is no provision in the Community rules on wine, constitute an aid for the operation of the cooperatives and therefore cannot be justified under Article 92 of the Treaty and must be regarded as incompatible;

Whereas the Commission also found, as regards the aid provided for in Article 2 and in the first, second and third paragraphs of Article 3, that these measures, in view of the size of the budget planned, by their nature as operating aids, by their link with production costs and in view of the lack of any arrangements pointing to structural improvement in the relevant sector, are incompatible with the common market under Article 92 (1) of the EEC Treaty and qualify for none of the derogations provided for in paragraph 3 of that Article;

Whereas, in view of the foregoing, the Commission initiated the procedure laid down in Article 93 (2) of the EEC Treaty in respect of the abovementioned measures and gave notice to the Italian Government to submit its comments;

Whereas the Commission gave notice to the other Member States and to parties concerned other than the Member States to submit their comments.

II

Whereas the Italian Government replied on 28 May 1982 to the Commission's letter of 7 April 1982; whereas the Italian Government stated in particular that

(a) since the measures provided for in Article 1 of Law No 423/81 fall into the category of administrative credits as provided for in Article 2 (4) (b) of national Framework Law No 1760/1928 providing for the grant of interest rate subsidies on loans taken out for one year by farmers' associations to enable them to pay advances to their members in connection with the preparation, treatment, processing and joint sale of their produce, they should receive sympathetic consideration from the Commission;

(b) the measures provided for in Article 2 of the said Law do not constitute operation aids for the national associations of cooperatives but aids for launching such bodies;

(c) the measures provided for in the first and second paragraphs of Article 3 of Law No 423/81 are not operating aids intended to reduce the production costs of cooperatives and associations thereof but measures intended — in a period of serious crisis — to ensure a minimum return on the capital used by the associated bodies;

Whereas the Italian Government therefore hoped that these measures might qualify for the derogation provided for in Article 92 (3) (c) of the EEC Treaty or the derogation provided for in Article 92 (3) (b) of the said Treaty, as they were designed to remedy a serious disturbance in the Italian economy;

Whereas, as regards the measures provided for in the third paragraph of Article 3 of Law No 423/81, the Italian Government stated that when the Law was applied there would be no reference to the quantities of milk produced and/or transported.

III

Whereas the authorization of expenditure of Lit 50 000 million for 1981 — provided for in Article 1 of Law No 423/81 — in favour of the regions and of the autonomous provinces of Trento and Bolzano to enable them to pay their wine-making cooperatives and associations thereof interest rate subsidies of around 9 % for one year on the loans they have taken out in order to assist their members with the preservation and storage of table wine and DOC, must and concentrated must has a direct effect on production costs and on the selling price of table wine, DOC, must and concentrated must;

Whereas these measures, which are additional to the system of subsidies provided for under the common organization of the market in wine, therefore constitute an operating aid which is compatible neither with the common market in general nor with the specific provisions governing the said organization.

IV

Whereas

(a) the expenditure authorizations provided for in Article 2 of law No 423/81 and in the first and second paragraphs of Article 3 of that Law in favour of the regions and of the autonomous provinces of Trento and Bolzano to enable them to pay, respectively, the cooperatives and associations thereof (Article 2) and the national associations of cooperatives (first and second paragraphs of Article 3) subsidies towards the administrative costs incurred by the cooperatives in connection with the harvesting, preservation, treatment, processing and marketing of wine products, livestock products and milk and milk products, and

(b) the authorization of expenditure of Lit 40 000 million for the collection and transport of milk provided for in the third paragraph of Article 3

have a direct effect on competition and on intra-Community trade;

Whereas the arguments put forward by the Italian Government cannot be entertained;

Whereas the interest rate subsidies on loans taken out for one year provided for in Article 1 of Law No 423/81 are granted for must, table wine and DOC wine in respect of two operations only, namely preservation and storage, and the Commission has hitherto reserved its position under Article 93 (1) of the EEC Treaty with regard to administrative credits only in cases where they are granted in respect of all the operations involving one or more agricultural products; whereas, on the other hand, it has always opposed aids of this type where they are granted in respect of a single operation, as their direct and quantifiable effect on competition and intra-Community trade assimilates them to an operating aid;

Whereas, moreover, this measure is incompatible with the provisions of the common organization of the market in wine;

Whereas, as regards the measures provided for in Article 2 of Law No 423/81, the Italian Government has forwarded to the Commission no text having the force of law demonstrating that the funds provided for in that Article will be used not for the purpose indicated therein but to permit the launching of national associations of cooperatives;

Whereas, as regards the measures provided for in the first and second paragraphs of Article 3 of the said Law, the Italian Government has not provided the Commission with any information proving that this aid can assist the development of the recipient sectors or remedy the disturbance in the Italian economy;

Whereas, as regards the third paragraph of Article 3 of the Law in question, the fact that the Italian Government has undertaken to leave out all reference to the prices and quantities of milk when applying the aid does not alter its nature as an operating aid which is incompatible with Community provisions;

Whereas the abovementioned measures therefore meet the criteria of Article 92 (1) of the Treaty;

Whereas Article 92 (1) of the Treaty establishes the principle that aids which meet its criteria are incompatible with the common market; whereas the derogations from such incompatibility provided for in paragraph 3 of the said Article must be interpreted strictly when any national or regional measure is examined; whereas, in particular, they may be granted only where the Commission can establish that the aid is necessary for the achievement of one of the objectives enumerated in that provision;

Whereas to grant such derogations to aids which did not have this compensating feature would be equivalent to allowing damage to trade between Member States and distortions of competition without any justification in terms of Community interest, and, consequently to allowing unjustified advantages for certain Member States;

Whereas, in this case, the aids provided for in Article 2 and the second and third paragraphs of Article 3 of Law No 423/81 do not have this compensating feature;

Whereas the Italian Government has been unable to provide, or the Commission to detect, any justification for finding that the aids in question fulfil the conditions for applying one of the derogations provided for in Article 92 (2) and (3) of the Treaty;

Whereas these are not measures to promote the economic development of areas within the meaning of Article 92 (3) (a) and (c) of the Treaty, since they are in no way likely to promote the development of the regions and the autonomous provinces of Trento and Bolzano or of the products concerned and are operating aids with no structural effect; whereas the situation of the regions and of the autonomous provinces of Trento and Bolzano and of the various products concerned will not be durably altered after the measures have been terminated;

Whereas the measures do not constitute an important project of common European interest or aid to remedy a serious disturbance in the Italian economy; whereas, therefore, Article 92 (3) (b) of the Treaty does not apply;

Whereas, moreover, the measures constitute operating aids for the farmers concerned; whereas the Commission has always opposed such aids, as they do not fulfil the conditions which would enable them to qualify for the derogation provided for in Article 92 (3) (c) of the Treaty since, because they are not very effective, they are not likely to facilitate development, as that provision requires;

Whereas in the current situation on the markets in wine, livestock products and milk and milk products even a small amount of aid adversely affects trading conditions to an extent contrary to the common interest;

Whereas there is therefore no reason for the Commission to exempt the measures in question from the charge of incompatibility by allowing them to qualify for the derogation provided for in Article 92 (3) (c) of the Treaty;

Whereas, in view of the foregoing, the aids provided for in Articles 1 and 2 and the first, second and third paragraphs of Article 3 of Law No 423/81 do not fulfil the conditions enabling them to qualify for one of the derogations provided for in Article 92 (3) of the Treaty;

Whereas, moreover, by providing for the grant of interest rate subsidies in Article 1 of Law No 423/81 — a measure which directly affects the selling price of wine and must produced in Italy — the Italian authorities have disregarded the principle whereby Member States no longer have the power to act unilaterally to influence the level of prices of products covered by a common organization of the market,

HAS ADOPTED THIS DECISION:

Article 1

1. The following are incompatible with the common market and must therefore no longer be granted:

(a) the interested rate subsidies for the preservation and storage of wine and grape must provided for in Article 1 of Law No 423/81;

(b) the subsidies towards the administrative costs incurred by the national associations of cooperatives in connection with the harvesting, preservation, treatment, processing and marketing of wine products, livestock products and milk products provided for in Article 2 of the said Law;

(c) the subsidies towards the administrative costs incurred by the cooperatives and their associations in connection with the harvesting, preservation, treatment, processing and marketing of wine products, livestock products and milk products provided for in the first and second paragraphs of Article 3 and the subsidies for the collection and transport of milk provided for in the third paragraph of Article 3 of the said Law.

2. Article 1, Article 2 and the first, second and third paragraphs of Article 3 of Law No 423/81 must be amended so that these measures are abolished and the relevant provisions deleted from the Law.

Article 2

The Italian Republic shall take the measures necessary to comply with this Decision within one month of notification thereof and shall so inform the Commission immediately.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 October 1982.

For the Commission

Poul DALSAGER

Member of the Commission