COMMISSION DECISION

of 9 March 1983

concerning aid for fuel granted by the Italian Government to Sicilian fishermen

(Only the Italian text is authentic)

(83/246/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 the Region of Sicily has been granting aid for fuel in the fishing sector since 1973 ; whereas this aid was not notified to the Commission until December 1977 when it was extended for 1978 ; whereas, following the exceptional increase in the cost of energy products in late 1973 and early 1974, the Commission had authorized Member States to grant aids of this type in 1974 and 1975 ;

Whereas the Commission authorized the granting of the Sicilian aid in 1978 ; whereas this decision was based on the fact that the market situation for fishery products in Sicily was such that this aid did not seem liable to affect trade between the Member States ;

Whereas, at the beginning of 1979, the Italian authorities notified the Commission of two Sicilian draft laws, one extending the aid for fuel for 1979, the other providing for the introduction of structural measures for the rationalization of fishing in Sicily ; whereas, in June 1979, on the basis of the latter draft law, the Commission authorized the extension of the aid for fuel for 1979, with the request that it be discontinued in the near future ;

Whereas, in January 1980, the Commission authorized the extension of the aid for fuel envisaged by the Sicilian authorities until 30 June 1980 ; whereas, however, the Commission added that, in view of the introduction of the structural measures at the beginning of 1980 and developments with regard to competition, extension of the aid beyond 30 June was inappropriate ;

Whereas, in accordance with Article 93 (3) of the EEC Treaty, the Italian Government notified the Commission by letters dated 26 August 1980 and 10 December 1980 from its Permanent Representation to the European Communities of Sicily's intention to extend the aid for fuel in the fishing sector in force until 30 June 1980 for the second half of 1980 ;

Whereas the aid amounted to Lit 100 for each kilogram of fuel used and the sum set aside for the purpose was Lit 5 000 million ;

Whereas, in accordance with Article 93 (3) of the EEC Treaty, the Italian Government notified the Commission by letter dated 6 April 1981 from its Permanent Representation to the European Communities of its intention to extend this aid for fuel for 1981 ;

Whereas the basic terms for granting the aid had not been changed but the rate had risen to Lit 150 per kilogram of fuel used and the sum set aside for this aid for 1981 was Lit 14 000 million ;

Whereas, in accordance with Article 93 (3) of the EEC Treaty, by letter dated 21 January 1982 from its Permanent Representation to the European Communities, the Italian Government notified the intention of the Sicilian authorities to extend and increase in 1982 the regional aid for fuel granted in the fishing sector in 1981 ;

Whereas the rate of aid was to rise from Lit 150 to Lit 250 per kilogram of fuel used and the sum of Lit 25 000 million was to be set aside for the purpose ;

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[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.

Whereas, following initial scrutiny, the Commission took the view that the aid in question constituted operating aid granted with no actual reciprocal commitment on the part of the beneficiaries, that it has 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, on 9 February 1981, 12 June 1981 and 22 March 1982, sent the Italian Government letters giving it notice to submit its comments ;

II

Whereas, in its replies to the Commission dated 6 April 1981, 21 January 1982 and 2 April 1982, the Italian Government justified the extension of the aid beyond 30 June 1980 on the grounds of the crisis in the sector, due primarily to the absence of fishery agreements with the coastal countries, which had resulted in a sharp fall in resources, the rise in production costs, the continuing search for new fishing banks, which means longer outward and return journeys, and the introduction, inevitably slow, of the structural measures approved in 1980 ; whereas it stressed that the measure is exceptional despite its extension which is in fact restricted to periods of six months or one year at most ; whereas it emphasized that Italy's increasing trade deficit in fishery products demonstrates the worsening problems facing Italian fishing and showed that Italian fishermen could not be competing with fishermen elsewhere in the Community ; whereas, in its reply dated 2 April 1982, it stated that the rate of aid for 1982 would after all not be altered and would remain at Lit 150 per kilogram of fuel used ; whereas, lastly, it considered that the Commission's reasons for approving the Sicilian aid for fuel up to the end of the first half of 1980 remain totally valid ;

Whereas several Member States and several other parties concerned 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 fisheries aids harmonized within the Community ;

III

Whereas the subsidy of Lit 100 per kilogram of fuel used for the second half of 1980 and the subsidy of Lit 150 per kilogram of fuel used for 1981 and 1982 have had a direct impact on the production costs of beneficiaries and have given them a definite advantage over the other Community fishermen ;

Whereas the fact that this aid has been granted since 1973 means that it is no longer exceptional ; whereas the Commission made it clear to the Italian Government that extension of the aid for fuel beyond 30 June 1980 was inappropriate ;

Whereas the specific factors involved in the crisis in the Sicilian fishery sector are such that it can be resolved more satisfactorily by structural measures, notably those provided for by the Law introducing measures for the rationalization of fishing in Sicily, approved by the Commission ;

Whereas the increase in Italian imports of fishery products does not negate the impact of the aid on intra-Community trade and competition ; whereas, on the contrary, the sharp rise in Sicilian exports to the other Member States demonstrates that the impact of the aid on competition is growing ;

Whereas the aid in question represented 40 % of the price of fuel in July 1980, 52 % in July 1981 and 40 % in July 1982 ;

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, the Italian market received approximately 60 % of its requirements from the landings made by its own fishermen, approximately 30 % from imports from non-member countries and approximately 10 % from imports from the other Member States, and Italy exports 20 % of its production, half of which goes to the other Member States ;

Whereas, moreover, for a number of years all Community fishermen have been faced with a very sharp increase in the cost 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 Italian Government is liable 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 lays down the principle that aids fulfilling the criteria laid down therein is incompatible with the common market ; whereas exceptions to this principle, which are the only exceptions relevant to the case in point, are set out in paragraph 3 of the said Article and refer to objectives pursued 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 any aid programme of a

regional or sectoral nature or any individual case of application of general aid schemes is scrutinized; 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 compensation benefits 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 compensating benefits in the case in point; whereas the Italian Government was unable to provide any evidence, and the Commission could find none, showing 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, Article 92 (3) (a) and, on regional criteria (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 Italian economy; whereas Article 92 (3) (b) of the Treaty is accordingly inapplicable;

Whereas aid for the purchase of 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 beneficiaries; 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 aid to mitigate the social consequences of a crisis must be linked with restructuring objectives for the sector in question and be subject to action by beneficiaries 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 for fuel for Sicilian fishermen as provided for by the Italian Government for the second half of 1980, for 1981 and for 1982 is incompatible with the common market under Article 92 of the EEC Treaty. Such aid must accordingly be discontinued.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 9 March 1983.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission