II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 8 February 1983

concerning aid for fuel granted by the Italian Government to fishermen operating in the Mediterranean

(Only the Italian text is authentic)

(83/312/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 accordance with Article 93 (3) of the EEC Treaty, the Italian Government notified the Commission by letter dated 28 March 1980 from its Permanent Representation to the European Communities of the text of Law No 57 of 29 February 1980 introducing extraordinary assistance for sea fishing, under which commercial fishermen operating in the Mediterranean were to be granted exceptional aid towards running costs for 1980 only ; whereas this Law took effect from 13 April 1980 ; whereas the detailed rules for implementing this Law were to be laid down by Ministerial Decree, the draft of which was notified to the Commission, under Article 93 (3) of the Treaty, by letter dated 13 May 1980 ;

Whereas it is clear from this Decree that the aid in question was directly linked to the consumption of fuel ; whereas it amounted to Lit 87 for each kilogram of fuel used and the sum set aside for the purpose was Lit 25 000 million ;

Whereas the aid described above falls within the scope of Articles 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 constituted operating aid granted with no actual reciprocal commitment on the part of the beneficiaries, 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 Italian Government formal notice to submit its comments ;

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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, in November 1981, the Commission learned that the Italian Government had decided to continue this aid in 1981 ; whereas, after being asked twice, on 17 November and 22 December 1981, to confirm this information, the Italian Government, by letter dated 11 January 1982, notified Decree-Law No 193 of 11 May 1981 extending the aid in question for the first half of 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 for the first quarter of 1981 and Lit 140 per kilogram of fuel used for the second quarter of 1981 ;

Whereas the sum set aside for this aid for the first half of 1981 alone was Lit 21 000 million ;

Whereas, on the grounds that this amounted to a renewal of the aid granted in 1980, the Commission initiated the procedure provided for in Article 93 (2) of the Treaty in respect of the above aid, and, to this effect, by letter of 24 February 1982, gave the Italian Government formal notice to submit its comments ;

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

II

Whereas, in its replies to the letters giving notice sent to the Commission on 13 August 1980 and 24 March 1982, the Italian Government gave the following reasons for granting aid for fuel in 1980 and 1981 : social reasons, the need to end discrimination between Sicilian fishermen already in receipt of aid for fuel, accepted by the Commission with certain provisos, and fishermen elsewhere, the fact that implementation did not distort competition between the Member States, its temporary nature, the absence of other measures in favour of sea fishing and, lastly, the low level of the aid, namely 30 % of the fuel price ;

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 subsidy of Lit 87 for each kilogram of fuel used, provided for in Article 7 of the Ministerial Decree laying down detailed rules for implementing Law No 57 of 29 February 1980, and the subsidy of Lit 150 for each kilogram of fuel used for the first quarter of 1981 and Lit 140 for each kilogram of fuel used for the second quarter of 1981, provided for in Article 2 of the Ministerial Decree of 25 July 1981, have had a direct impact on the production costs of recipients and have given them a definite advantage over the other Community fishermen ;

Whereas the comparison made by the Italian Government with the Sicilian aid does not appear relevant, firstly because the existence of an aid scheme somewhere in the Community can never be taken as justification for granting similar aid elsewhere, and secondly because the Commission's decision to authorize aid for fuel for Sicilian fishermen on a temporary basis, until 30 June 1980, was based on the low volume of trade in fishery products between Sicily and the rest of the Community, which is not the case for the rest of Italy ; whereas, moreover, the Commission decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the extension of the Sicilian aid for the second half of 1980, and for 1981 and 1982, notably because of the sharp increase in Sicilian exports to the other Community countries and because of the fact that, by virtue of its continued extension, the aid in question amounted to a permanent scheme ;

Whereas the aid in question amounted to 40 % of the price of fuel in January 1980 ;

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 Italian market receives 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 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 Italian 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 can 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 Italian Government was unable to provide any evidence, and the Commission could fine 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 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 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 for fuel for fishermen operating in the Mediterranean as provided for in Article 1 of Law No 57 of 29 February 1980 and as received under Article 1 of Decree-Law No 193 of 11 May 1981 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 Italian 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 Italian Republic.

Done at Brussels, 8 February 1983.

For the Commission

Giorgios CONTOGEORGIS

Member of the Commission