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*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 11 January 1984**

**on the aid provided for in Campania to support the production of apricots**

**(Only the Italian text is authentic)**

(84/224/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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 3284/83 [2], and in particular Article 31 thereof,

After having given notice, pursuant to the provisions of the first subparagraph of Article 93 (2) of the EEC Treaty, to those concerned to submit their observations [3],

I

Whereas by letter dated 28 March 1983 the Italian Government, pursuant to Article 93 (3) of the EEC Treaty, notified the draft Law of the region of Campania laying down provisions for rationalizing the cultivation of apricots ;

Whereas the measure provides for the grant, in 1982, of Lit 1 000 million to apricot producers ; whereas this amount is payable in the form of a subsidy of Lit 200 000 per hectare, which may be increased to Lit 700 000 per hectare in areas especially suited to the cultivation of apricots ;

Whereas the Commission, after having examined the aid, informed the Italian Government by letter dated 3 June 1983 that the subsidy, granted by reference to areas cultivated and reserved on a priority basis for producers who, in absence of suitable cultivation techniques, encountered marketing difficulties during the 1980/81 marketing year, constituted an infringement of the common organization of the market in fruit and vegetables ; whereas, for these reasons and in view of the fact that the measure cannot be justified in the light of the provisions of Article 92 of the EEC Treaty, the Commission initiated the procedure laid down in Article 93 (2) of the Treaty and gave the Italian Government notice to submit its comments ;

Whereas in accordance with that procedure the Commission gave the other Member States and interested parties other than Member States notice to submit their comments ;

Whereas by letter No 6772 of 2 August 1983 the Italian Government replied to the Commission's letter of 3 June 1983, drawing its attention to the fact that the measures complained of should be considered in the light of Council Directive 72/159/EEC ;

Whereas the text of the draft Law contains nothing from which it can be inferred that the aid provided for is governed by Directive 72/159/EEC ; whereas an aid granted per hectare that is not conditional on the making of investments and is not calculated in relation to investments made or to be made constitutes an income subsidy and is not to be considered in the light of the said Directive ; whereas the Italian Government's reply has no foundation, therefore, in the draft Law for the region ;

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 325, 22. 11. 1983, p. 1.
(3) OJ No C 221, 18. 8. 1983, p. 2.

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Whereas the subsidy in question artificially promotes the increase or — at least — the maintenance at current levels of apricot production in Campania; whereas it can reasonably be assumed, moreover, that this aid may in practice result in the product being supplied at prices lower than those which would have to be charged in the absence of such assistance from the public authorities;

Whereas the payment of a price supplement ensuring a guaranteed price to apricot producers constitutes a national intervention measure which affects the income of those producers; whereas it is therefore an infringement of the provisions governing the common organization of the market in fruit and vegetables;

Whereas there are limitations on the power of Member States to intervene directly in the operation of the common organization of markets that include a common price system, which henceforth fall within the Community's exclusive competence; whereas this principle is based on the established case law of the Court of Justice; notably on the judgment delivered on 23 January 1975 in Case 51/74 [1]; whereas that judgment stresses in general, as stated by the Advocate-General in his opinion in Case 10/79, that once the Community has legislated for establishment of a common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine it or create exceptions to it; whereas in doing so they must have regard not only to its express provisions but also to its aims and objectives;

Whereas the granting of the aid referred to fails to recognize the principle that Member States are no longer empowered to legislate unilaterally on farmers' incomes, where there is a common organization of the market, by granting aids of this type.

III

Whereas the measures are liable to affect intra-Community trade and disturb competition by favouring Italian producers at the expense of producers in other Member States who are called upon to sell the same product on the Community market but are not in receipt of comparable aids;

Whereas the measures in question consequently satisfy the criteria of Article 92 (1) of the EEC Treaty; whereas that Article provides that aids which satisfy the criteria which it sets out are incompatible, as a matter of principle, with the common market;

Whereas the measure is not one which will encourage the economic development of regions where the standard of living is abnormally low or where there is serious under-employment, nor is it a measure intended to promote an important project of common European interest, or to remedy a serious disturbance in the economy of the Member State in question, and accordingly Article 92 (3) (a) and (b) of the EEC Treaty is inapplicable;

Whereas, moreover, the exceptional subsidy for the income of farmers concerned is an operating aid for the recipient farms of a purely protective nature; whereas, in general, the Commission has always been opposed to such aids, since they are not likely to facilitate in a lasting manner the development of activities in the sector concerned;

Whereas, moreover, in view of the comparable economic situation facing farmers in all the Member States, with stagnating or falling incomes and sharply rising production costs, and taking into account the appreciable or even keen intra-Community competition in most agricultural products, this aid is likely to affect the conditions of trade to an extent contrary to the common interest;

Whereas, accordingly, there is no factor which would enable the Commission to declare that the measure under consideration is not incompatible, by invoking the exception provided for in Article 92 (3) (c) of the EEC Treaty;

Whereas, therefore, the Italian Government's aid measure does not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the EEC Treaty;

Whereas, moreover, even if it had been possible to envisage an exception under Article 92 (3) of the EEC Treaty, the fact that the aid, in respect of the product concerned, infringes the market organization in question makes it impossible to apply any such exception,

[1] P. Van der Hulst's Zonen v. Produktschap voor Siergewassen ((1975) ECR 79).

HAS ADOPTED THIS DECISION:

*Article 1*

The subsidy of Lit 200 000 per hectare, which is increased to Lit 700 000 per hectare in areas that are especially suited to the production of apricots, provided for in the draft Law of the region of Campania laying down provisions for rationalizing the cultivation of apricots is incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

Consequently, the draft Law may not be adopted and the aid referred to above may not be granted.

*Article 2*

Italy shall take the measures necessary to ensure compliance with this Decision. It shall inform the Commission thereof within one month from notification of this Decision.

*Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 January 1984.

*For the Commission*

Poul DALSAGER

*Member of the Commission*