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(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 May 1984

on State aids under Sicilian Regional Law No 87 of 5 August 1982 providing for measures in respect of agricultural loans and urgent assistance for certain sectors of agricultural production

(Only the Italian text is authentic)

(84/562/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 856/84 [2], and in particular Articles 23 and 24 thereof, and the corresponding provisions of the other Regulations on the common organization of the markets in agricultural products,

Having given notice, pursuant to the first subparagraph of Article 93 (2) of the EEC Treaty, to the parties concerned to submit their comments [3], and having regard to those comments,

I

Whereas, pursuant to Article 93 (3) of the Treaty, the Italian authorities notified the Commission by letter of 7 September 1982, of a draft law of the region of Sicily promulgating measures in respect of agricultural loans and urgent assistance for certain production sectors; whereas on 29 September 1982 the Italian authorities informed the Commission that the draft law had been adopted by the Regional Assembly as Law No 87 of 5 August 1982; whereas the Commission requested additional information which it required for its assessment, which the Italian authorities supplied on 29 October 1982 and 14 February 1983;

Whereas Articles 4 and 5 of the said Law provide for expenditure of Lit 500 million for 1982 and 1983 for the payment by the Region of a supplementary interest-rate subsidy to cover the increase in the maximum interest rate which occurred between allocation and actual payment of the subsidy for investments in the marketing of agricultural products under

— Article 9 of Regional Law No 9 of 9 May 1974,

— Article 9 of Regional Law No 22 of 18 July 1974,

— Article 2 (first and third paragraphs) of Regional Law No 23 of 28 July 1978,

— Article 3 of Regional Law No 197 of 13 August 1979 and Regional Law No 125 of 23 April 1975;

Whereas Article 8 authorizes expenditure of Lit 4 500 million with effect from 1 September 1983 for the financing of the following provisions:

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 90, 1. 4. 1984, p. 10.
[3] OJ No C 201, 28. 7. 1983, p. 5.

— Article 2 (third paragraph) of Regional Law No 23 of 28 July 1978,

— Article 3 of Regional Law No 197 of 13 August 1979,

— Article 12 of Regional Law No 47 of 27 May 1980,

— Article 43 of Regional Law No 97 of 6 May 1981,

providing for

— subsidies of up to 70 % on the purchase, construction, extension and modernization of facilities for the preservation, processing and sale of agricultural products,

— interest-rate subsidies on loans covering the difference between the subsidies referred to in the previous indent and the overall investment costs,

— 70 % subsidy plus interest-rate subsidy over 20 years on the balance of the aid not covered by the subsidy to allow of implementation of EAGGF projects approved but not financed owing to lack of funds ;

Whereas Article 9 provides for an increase of Lit 5 000 million in the revolving fund, introduced by Article 3 of the Law of 7 February 1963, No 12, at the Istituto regionale per il credito alla Cooperazione (IRCAC) for the granting of 15-year loans at 7,5 % with a two-year redemption-free period in the case of agricultural cooperatives or their consortia in respect of investments designed to adapt and improve processing or marketing structures ;

Whereas Article 15 provides for the extension of eligibility for the benefits provided for in Articles 30 and 31 of Regional Law No 97/81 to include producers' groups already formed under Law No 306 of 8 July 1975 and/or Law No 674 of 20 October 1978 when the Law under consideration came into force, including,

— aid for milk producers belonging to cooperatives and consortia amounting to Lit 4 500 per hectolitre of milk delivered to those bodies in an attempt to reduce milk collection, transport and refrigeration costs,.

— aid for associated chease producers amounting to Lit 4 500 per hectolitre of milk produced in Sicily and used in the manufacture of Caciocavallo, Pecorino siciliano and Canestrato misto cheeses ;

Whereas the above aids fall within the scope of Articles 92, 93 and 94 of the Treaty by virtue of the specific provisions contained in the legislation on the common organization of markets ;

Whereas, after a preliminary examination of Law No 87 of 5 August 1982, the Commission took the view that the aids provided for in Articles 4, 5, 8 and 9 to assist the creation or modernization of packaging, processing and marketing facilities for agricultural products were not limited in accordance with the pre-existing Community criteria ;

Whereas the extension to producers' groups of

— the subsidy provided for in Article 30 of Law No 97/81 of Lit 4 500 per hectolitre of milk delivered to cooperatives and consortia for milk producers belonging to those bodies to reduce milk collection, transport and refrigeration costs and

— the subsidy provided for in Article 31 of Law No 97/81 of Lit 4 500 per hectolitre of Sicilian milk used by associated cheese producers for processing into Caciocavallo, Pecorino siciliano and Canestrato misto cheeses

is contrary to Article 24 (1) of Regulation (EEC) No 804/68, which lays down that 'aids the amount of which is fixed on the basis of the price or quantity of products ... shall be prohibited' ;

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Whereas to ensure that the abovementioned limits and conditons were observed, the Commission initiated the procedure laid down in Article 93 (2) of the Treaty in respect of the measures referred to above and gave notice to the Italian Government to submit its comments ;

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

III

Whereas, in their reply of 17 June 1983 to the Commission, the Italian authorities failed to show that Article 15 did not constitute an infringement ; whereas the social objective of the aid does not constitute grounds for waiving the prohibition provided for in Article 24 of Regulation (EEC) No 804/68 ;

Whereas, in introducing aids contrary to the common organization of the markets, the Italian authorities have disregarded the principle whereby the Member States are no longer entitled to take unilateral measures in respect of farmers' incomes under a market organization ; whereas the Council, when drawing up common organizations and when fixing the prices of agricultural products takes account of the various objectives and elements of common policy set out in Article 39 of the Treaty ; whereas it is clear that, in view of the diversity of these objectives, there are

priorities which a Member State may not unilaterally adjust without interfering with policy choices made at Community level and without the danger of disequilibria liable to affect trade between Member States;

Whereas, moreover, these measures confer upon Sicilian producers an unfair advantage over producers in other regions of Italy and other Member States; whereas these measures are therfore liable to affect trade between Member States;

Whereas the Italian authorities have not provided formal undertakings that the rates of aid requested by the Commission for investment aids in respect of packaging, processing and marketing provided for in Articles 4, 5, 8 and 9 of the Law in question will be observed; whereas the Commission has consistently made a distinction between projects forming part of national or regional programmes approved by the Commission pursuant to Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (1), as last amended by Regulation (EEC) No 3164/82 (2), located in mountain and hill farming areas and less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (3), as last amended by Directive 82/786/EEC (4), for which aids of up to 75 % of the value of the investment may be granted, and projects outside these areas or not forming part of such programmes, for which the maximum rate of aid is 50 %;

Whereas, if these rates are exceeded there is a risk of encouraging the creation of enterprises which are not viable without further aids and thus of developing lines of production which are liable to affect trading conditions to an extent contrary to the common interest by the production of products which cannot be disposed of without increased EAGGF aid;

IV

Whereas it follows from the foregoing that the aids provided for by the Sicilian regional authorities are liable to affect trade between 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 Treaty lays down the principle that aids of the type described therein are incompatible with the common market;

Whereas the prohibition laid down in Article 92 (1) cannot be lifted pursuant to paragraph 2 thereof since the derogations provided for therein clearly do not apply in the case in point;

Whereas, for the purposes of the review of all national and regional measures, the exceptions provided for in Article 92 (3) must be strictly interpreted; whereas they can be granted only if the Commission can establish that the aid is necessary for achieving one of the objectives set out in those provisions;

Whereas to allow such exceptions in the case of aids not offering any compensating benefit would amount to allowing trade between Member States to be affected and competition to be distorted without justification from the point of view of the Community interest and would, consequently, confer unfair advantages on certain Member States;

Whereas in the case in point the aids provided for in Article 15 of the Law in question, and those provided for in Articles 4, 5, 8 and 9 in so far as they exceed the levels fixed by the Commission, do not permit the finding of any such compensating benefit;

Whereas the Italian Government was unable to provide any justification, and the Commission could find none, showing that the aids in question qualified for one of the exemptions under Article 92 (3) of the EEC Treaty;

Whereas these are not measures to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment, or measures to promote the execution of an important project of common European interest, or measures to remedy a serious disturbance in the economy of the Member State concerned; whereas, consequently, Article 92 (3) (a) and (b) of the Treaty is not applicable;

Whereas the creation of enterprises through excessive aids is liable to establish non-viable units which cannot survive without further aids, while producing products of which there is a surplus and for which the costs of disposal are liable to add to the financial burden of the EAGGF; whereas, therefore, these aids cannot qualify as an exception under Article 92 (3) (c) of the EEC Treaty;

Whereas the aid provided for in Article 15 of the Law in question constitutes an infringement of the common organization of the market in milk and milk products; whereas an aid constituting an infringement cannot qualify as an exception under Article 92 (3) of the EEC Treaty;

(1) OJ No L 51, 23. 2. 1977, p. 1.
(2) OJ No L 332, 27. 11. 1982, p. 1.
(3) OJ No L 128, 19. 5. 1975, p. 1.
(4) OJ No L 327, 24. 11. 1982, p. 19.

Whereas, moreover, in view of the similar economic situation facing enterprises in all the Member States at present, with incomes marking time or actually falling, while production costs are rising sharply, and in view of the competition — which is often quite keen — within the Community in the case of most agricultural products, this aid is liable to affect trading conditions to an extent contrary to the common interest;

Whereas, in the light of the foregoing, the abovementioned aid measures do not satisfy the conditions to qualify as one of the exceptions under Article 92 (3) of the EEC Treaty;

Whereas this Decision is without prejudice to any conclusions which the Commission may draw, as regards the financing of the common agricultural policy by the EAGGF, from payment of the abovementioned aids,

HAS ADOPTED THIS DECISION:

Article 1

1. The aids provided for in Article 15 of Regional Law of Sicily No 87 of 5 August 1982 are incompatible with Article 92 of the EEC Treaty and with the common organization of the market in milk and milk products and may accordingly no longer be granted.

2. The portion of the aids provided for in Articles 4, 5, 8 and 9 of the Law referred to in paragraph 1 exceeding

(a) the limit of 75 % of expenditure permitted for projects in mountain and hill farming areas and less-favoured areas within the meaning of Directive 75/268/EEC and forming part of national or regional programmes approved by the Commission pursuant to Regulation (EEC) No 355/77; or

(b) the limit of 50 % in other areas or for projects not forming part of such programmes

is incompatible with Article 92 of the EEC Treaty and may no longer be granted.

Article 2

Italy shall inform the Commission within two months from notification of this Decision, of the measures taken to comply with the provisions of Article 1.

Article 3

The Decision is addressed to the Italian Republic.

Done at Brussels, 2 May 1984.

For the Commission

Poul DALSAGER

Member of the Commission