COMMISSION DECISION

of 30 May 1984

concerning the aids provided for in Law No 105 of 5 August 1982 of the Region of Sicily amending the regional budget and the budget of the State Forests Office of the Region of Sicily for 1982

(Only the Italian text is authentic)

(84/563/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 the Council Regulations on the common organization of the markets in agricultural products, and in particular Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1018/84 (2),

Having given notice to the parties concerned to submit their comments (3), in accordance with the provisions of the first subparagraph of Article 93 (2) of the Treaty,

I

Whereas, by letter of 7 September 1982, the Italian Government notified the Commission of Law No 105 of 5 August 1982 of the Region of Sicily amending the regional budget and the budget of the State Forests Office of the Region of Sicily for 1982;

Whereas the Italian authorities provided further information by letter of 20 June and telexes of 25 July and 22 October 1983;

Whereas Article 39 of the Law in question authorizes expenditure of Lit 3 798,9 million in respect of 1982 for the refinancing of the measures provided for in Article 36 of Regional Law No 83 of 12 August 1980 providing for the grant to cooperatives, consortia and producer groups of additional aid on account of the increase in investment costs incurred as a result of the rise in construction costs;

Whereas Article 42 of the Law authorizes expenditure of Lit 2 000 million in respect of 1982 for the refinancing of the measures provided for in Articles 1 and 3 of Regional Law No 23 of 28 July 1978 and Article 2 of Regional Law No 197 of 13 August 1979 providing for subsidies of 60 to 70 % for producers' associations, cooperatives and consortia for modernizing plants for preserving and processing agricultural and animal products, and advances on these subsidies amounting to 30 % of the total;

Whereas Article 51 of the Law authorizes expenditure of Lit 1 650 million in respect of 1982 for the refinancing of the measures provided for in Article 22 of Law No 85 of 12 August 1980 providing for subsidies of 12 % of the purchase price for each quintal of Sicilian durum wheat purchased by millers;

Whereas these aids fall within the scope of Articles 92 to 94 of the Treaty by virtue of the specific provisions in the Community Regulations on the common organization of markets;

II

Whereas the Commission, having conducted a preliminary examination of Law No 105 of the Region of Sicily of 5 August 1982, has found that the aids arising out of the application of Articles 39 ad 42, intended to encourage the setting up or modernization of installations for packaging, processing or marketing agricultural products, are not limited by reference to the rates of aid generally allowed by the Commission;

Whereas the subsidy arising out of the application of Article 51, amounting to 12 % of the purchase price of durum wheat by millers, is an operating aid entailing no lasting improvement of the structures of the sector concerned; whereas the aid is therefore incompatible with Community rules;

Whereas, in view of the foregoing, the Commission, by letter of 25 March 1983, 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;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 107, 19. 4. 1984, p. 1.
(3) OJ No C 201, 28. 7. 1983, p. 4.

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

III

Whereas, in their replies to the letter of notice, the Italian authorities gave no formal assurances that the maximum rates requested by the Commission in the case of the investment aids arising out of the application of Articles 39 and 42 of the Law would be complied with ; whereas, furthermore, the Italian authorities gave no information liable to change the position of the Commission wih regard to the aid arising out of Article 51 ;

IV

Whereas, as regards the aids arising out of the application of Articles 39 and 42 of the Law, the Commission has made a clear distinction in previous statements of its position between on the one hand, projects forming part of national or regional programmes approved by the Commission pursuant to Council Regulation (EEC) No 355/77 (1), as last amended by Regulation (EEC) No 3164/82 (2), located in less-favoured areas within the meaning of Council Directive 75/268/EEC (3), as last amended by Directive 82/786/EEC (4), for which aid of up to 75 % of the total investment may be granted, and on the other, projects located outside these areas or not forming part of such programmes, which should be subsidized for up to 50 % of the total investment only ; whereas these aids of a very high level must nevertheless leave a sufficient share for the recipient of the aid in the financing of the project ; whereas a financial participation of 25 % or 50 % should be a minimum below which there is a risk of activities developing which could affect trade to an extent contrary to the common interest, by setting up enterprises which operated at a loss and which could not survive for long without further aid, while producing products which could not necessarily be disposed of without EAGGF intervention ;

Whereas the subsidy for the purchase of durum wheat by millers, arising out of the application of Article 51 of the Law, is an operating aid with no lasting beneficial effect on structures ; whereas the abovementioned measure artificially favours Sicilian producers in relation to those in other regions of Italy and other Member States and is therefore liable to affect trade between Member States ;

Whereas it follows from the above that the aids decided upon by the Italian 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 Treaty ;

Whereas Article 92 (1) of the Treaty states that aids of the type mentioned therein are essentially incompatible with the common market ;

Whereas the prohibition contained in Article 92 (1) of the Treaty may not be waived under Article 92 (2), since the exceptions set out therein are clearly not applicable in the present case ;

Whereas the exceptions to incompatibility set out in Article 92 (3) stipulate that the objectives must serve the Community interest and not only that of specific sectors of the national economy ; whereas these exceptions must be interpreted strictly when examining any programme of aid for a particular region or sector or any individual case of the application of general aid schemes ; whereas exceptions may be granted only in cases where the Commission can establish that the aid is necessary for the achievement of one of the objectives set out in those provisions ;

Whereas allowing these exceptions in respect of aids not offering such an offsetting 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 lead to an unfair advantage for certain Member States ;

Whereas, in the case in point, the investment aids, where they exceed the limits prescribed above, and the aid for the purchase of durum wheat by millers, give no evidence of an offsetting benefit ; whereas the Italian authorities were unable to provide any justification, and the Commission could find none, showing that the aids in question fulfilled the conditions for allowing one of the exceptions set out in Article 92 (3) of the Treaty ;

Whereas none of these measures is liable to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment, to promote the execution of a 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 Treaty is not applicable ;

(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 enterprises set up as a result of excessive aids may prove not to be viable and to be unable to survive without further aid, while producing products which are in surplus, the disposal of which may increase the financial burden on the European Agricultural Guidance and Guarantee Fund ; whereas these aids are therefore liable to affect trading conditions to an extent contrary to the common interest ;

Whereas, moreover, the subsidy for the purchase of durum wheat is an operating aid for the recipient enterprises of a purely protective nature ; whereas, in general, the Commission has always been opposed to such aids since, as a rule, they do not in themselves fulfil the conditions for eligibility for the exception provided for in Article 92 (3) (c) of the Treaty, as they are not likely to facilitate development as laid down in that provision ;

Whereas, moreover, in view of the comparable economic situation facing enterprises in all Member States, with stagnating or falling incomes and sharply rising production costs, and taking into account the considerable or even fierce intra-Community competition in most agricultural products, these aids are liable to affect trading conditions to an extent contrary to the common interest ;

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

Whereas, in view of the foregoing, these aid measures do not fulfil the conditions required for eligibility for one of the exceptions under Article 92 (3) of the Treaty ;

Whereas this Decision does not prejudice the consequences the Commission may draw from the payment of the abovementioned aids as regards the financing of the common agricultural policy by the EAGGF,

HAS ADOPTED THIS DECISION :

Article 1

1. That part of the aids arising out of the application of Articles 39 and 42 of Law No 105 of 5 August 1982 of the Region of Sicily exceeding :

(a) the limit of 75 % of expenditure allowed for projects located in mountain, hill or 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 the provisions of Article 92 of the EEC Treaty and therefore may not be granted.

2. The aid arising out of the application of Article 51 of Law No 105/82 is incompatible with the provisions of Article 92 of the EEC Treaty and therefore may not be granted.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 May 1984.

For the Commission

Poul DALSAGER

Member of the Commission