II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 17 December 1986**

**prohibiting an aid consisting of a subsidy on the sale on animal feed granted by the region of Abruzzi**

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

(87/417/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 93 (2) thereof,

Having regard to Council Regulation (EEC) No 1117/78 of 22 May 1978 on the comon organization of the market in dried fodder [1], as last amended by Regulation (EEC) No 1985/86 [2], and in particular Article 9 thereof, and the corresponding provisions of the other Regulations on the common organization of the market in agricultural products,

Having invited the parties concerned [3], pursuant to Article 93 of the EEC Treaty, to submit their comments and having regard to those comments,

Whereas :

I

By letter dated 17 June 1985 the Italian Government notified, in accordance with Article 93 (3) of the EEC Treaty, Law No 25 of the region of Abruzzi of 11 April 1985 on the further amendment of Regional Law No 31 of 3 June 1982. Law No 25 amends in particular Article 66 of Regional Law No 31/82 of 3 June 1982, as amended and supplemented by Regional Laws Nos 7/83 of 25 January 1983 and 66/83 of 15 September 1983.

Article 66 provided — with a view to the implementation of a pilot project to encourage farmers in the region to increase permanently the profitability of their land under fodder — for the grant of degressive aids, subject to a time limit, to stockfarmers in the region for the sale of animal feed manufactured from fodder produced there. The aid granted by the region consisted of :

— subsidies of up to 10 % of the market value of each feed unit produced, and

— subsidies of up to 20 % of the same value for farmers in mountain or less-favoured areas.

In addition, agricultural producers in the region were required to have a minimum participation of 80 % in the assets and management of the undertakings producing animal feed in the region. Those undertakings were required to use exclusively, and in certain conditions as a priority, fodder produced in the region.

In view of its promotional objective, the aid was regarded as being compatible with the common market under Article 92 (3) (c) of the Treaty, for the period 1982 to 1985. The Commission informed the Italian Government to this effect by letter dated 4 November 1982.

Article 1 of Law No 25/85 amended Article 66 of Law No 31/82, as supplemented and amended, by providing that cooperatives could in future use the fodder available in the region without being required to do so exclusively or as a priority. Article 3 of that Law extended the aid arrangements for 1986 and 1987.

[1] OJ No L 142, 30. 5. 1978, p. 1.
[2] OJ No L 171, 20. 6. 1986, p. 4.
[3] OJ No C 84, 12. 4. 1986, p. 4.

II

After having considered Law No 225/85 the Commission informed the Italian Government, by letter of 19 February 1986, among other things that it was initiating the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the measure concerned.

The Commission notified the Italian Government that the period taken into consideration in 1982 had expired and that an increase in the production of fodder and animal feed has been recorded in the region during the period 1982 to 1985; the measure therefore appeared to have achieved its aim. The Commission considered, moreover, that there was no justification for extending the period for two years since animal feed requirements in the region seemed to be an adequate incentive for encouraging the production of basic fodder products. The Commission pointed out, moreover, that this situation had even led the regional authorities to alter the criteria of Article 66 of Law No 31/82 so that cooperatives receiving the aid were no longer required to buy their raw materials exclusively and as a priority in the region as a means of encouraging the production of fodder there.

In view of the foregoing, the Commission took the view that the continued grant of aid for the purchase of animal feed could no longer qualify for the exemption provided for in Article 92 (3) (c) of the Treaty since the aid was now an operating aid that had no lasting effect on the development of the sector concerned.

The Commission therefore gave notice to the Italian Government, the other Member States and parties concerned other than the Member States to submit their comments, and received comments from them.

III

By letter dated 13 May 1986 the Italian Government replied to the Commission's letter of 19 February 1986, stressing in particular that:

— the aid in question had been granted degressively for three years,

— the region of Abruzzi had endeavoured to keep it a pilot project,

— the measure had been slow in getting under way and, as a result, had only begun to show a return towards the end of 1985, and

— it had therefore been necessary to keep the provisions in force for 1986 and 1987.

IV

1. The Italian authorities have failed to fulfil their obligation under Article 93 (3) of the EEC Treaty, firstly, by neglecting to notify Law No 25/85 at the draft stage and, secondly, by bringing it into force before the Commission had an opportunity of expressing its view on it.

2. Article 66 of Law No 31/82, as amended and supplemented, provided for aid to be granted by the region during the period 1982 to 1985 for the implementation of a pilot project to encourage farmers to increase permanently the profitability of their land under fodder in Abruzzi. To that end the region provided for the grant of degressive aids, subject to a time limit, for the sale of animal feed by stockfarmers in the region who were members of cooperatives producing animal feed from fodder produced in the region.

On 4 November 1982, the Commission delivered a favourable opinion in respect of the aid, bearing in mind its status as a pilot project subject to a time limit and involving a degressive amount.

The amendments provided for in Law 25/85 of 11 April 1985, consisting of the deletion in Article 66 of the requirement that cooperatives producing animal feed buy their fodder exclusively and, under certain conditions, as a priority in the region, and for the extension of the scheme for 1986 and 1987, are such that the measure can no longer be regarded as a pilot project. The aid has already been granted for four years, from 1982 to 1985, and during that period has led to an increase in the levels of fodder and animal feed production. According to the information provided by the Italian authorities, the quantity of fodder supplied for processing by producers who are members of cooperatives was approximately 119 000 quintals in 1983 and approximately 245 000 quintals in 1986, while animal feed production in 1983 amounted to around 521 000 quintals and in 1986 to approximately 1 million quintals.

Furthermore, the amendment of Article 66 consisting of the deletion of the clause that all fodder purchased must be produced in the region also indicates that the aims of the aid have changed.

3. The measure is therefore an operating aid for stockfarmers in the region, who by virtue of this subsidy can buy animal feed at more advantageous prices than if there were no aid. It therefore distorts competition between stockfarmers in Abruzzi and those in other Member State.

The lowering of production costs made possible by this aid, and the consequent reduction in selling prices, helps create new market outlets, or at least maintain existing ones with the result that stockfarmers in Abruzzi will be encouraged to increase their output; this will enable them, firstly — by virtue of, among other things, economies of scale — to reduce their costs and, secondly, to increase their competitiveness on Italian markets and the markets of the other Member States.

Consequently, the aid — the impact of which is directly linked with the quantities of feed produced and sold to stockfarmers — puts economic operators in Abruzzi in these sectors in a more favourable competitive position on the Italian and Community markets. Livestock producers, should they be unable to sell their entire production on their domestic markets, would channel it towards the markets of the other Member States where they could offer it at a lower price than they could charge without the benefit of the aid. A cut of up to 20 % in the price of animal feed implies, in so far as the price of animal products, in poultry for example, is concerned, a reduction of around 10 to 15 % in production costs. In the poultry sector, feed costs account for around 80 % of farm production costs. An aid that reduces their impact represents, therefore, a considerable economic advantage on a surplus market such as that in animal products.

For these reasons, the aid is liable to affect trade between Member States, with stockfarmers being encouraged to increase their output on account of the drop in their production costs.

4. In a situation where all of this aid was not passed on to stockfarmers in full, the subsidy would also constitute an operating aid for undertakings manufacturing animal feed. The latter, by receiving aid calculated on the basis of the number of fodder units produced and sold, are encouraged to increase their production in order to benefit from the economies of scale. The increase in the quantity of feed produced in Abruzzi reduces by an equal amount imports from other Member States. In 1985 feed imports amounted to around 320 000 tonnes, i. e. around 3,2 % of total Italian feed production. For this reason, here too, the measure distorts competition between producers of animal feed in Abruzzi and those in other Member States, and affects intra-Community trade.

5. The measures in question consequently meet the criteria of Article 92 (1) of the Treaty, which provides that aids that meet the criteria it sets out are incompatible in principle with the common market.

6. The aids in question clearly do not qualify for any of the exemptions from such incompatibility provided for in Article 92 (2). Those provided for in paragraph 3 of that Article specify objectives pursued in the interest of the Community and not only in that of particular sectors of the national economy. The exemptions must be interpreted strictly, especially when any regional of sectoral aid programme is being examined.

The exemptions may be granted in particular only where the Commission can show that the aid is necessary for attaining one of the objectives referred to in those provisions. To grant the benefit of the exemptions to aid which does not involve any such offsetting advantage would amount to authorizing the undermining of trade between Member States and the distortion of competition without any justification in the Community interest, and, at the same time, to unwarranted advantages for some Member States.

In the case under consideration, examination of the aid in question does not disclose the existence of any such offsetting advantage. The Italian Government has been unable to provide, and the Commission to detect, any evidence to show that the aid concerned meets the requirements for the application of one of the exemptions provided for in Article 92 (3) of the Treaty.

It is not a matter of measures to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) given that, by virtue of their potential effects on trade, they are contrary to the common interest.

The measure has already been applied for four years, from 1982 to 1985, and has achieved its promotional objective, adopted by the Commission in 1982, by resulting in an increase in the levels of fodder and feed production.

For that reason it seem unjustified to prolong the measure until the end of 1987 since, by ceasing to be a promotional aid, it is now a simple operating aid which can no longer bring about a lasting improvement in the conditions in which the recipient undertakings are operating.

Accordingly, the aid to be regarded as an operating aid for the undertakings concerned represents a type of aid to which the Commission has in principle always been opposed, by virtue of the fact that its grant is not made subject to conditions that would qualify it for one of the exemptions provided for in Article 92 (3) (a) and (c).

The aid in question does not therefore meet the requirements to qualify for one of the exemptions under Article 92 of the Treaty and must be regarded as being incompatible with the common market; the Italian authorities must take the measures necessary to ensure that the aid is not granted, and that Articles 1 and 3 of Regional Law No 25 of 11 April 1985 concerning the aid which is the subject of the complaint are abolished not later than 31 March 1987, a period that should allow the Italian authorities to take the necessary measures.

This Decision is without prejudice to any action the Commission may take to recover the abovementioned aid from the recipients, and in respect of the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund, where it is shown that the aid was granted before the completion of the review procedure provided for in Article 93 (2) of the EEC Treaty,

HAS ADOPTED THIS DECISION:

*Article 1*

1. The aid consisting of a subsidy of 10 % and 20 % of the value of a fodder unit, provided for in respect of 1986 and 1987 by Article 66 of Law No 31 of the region of Abruzzi of 3 June 1982, which is the framework law for the development of agriculture in Abruzzi for 1982 to 1985, as amended and supplemented by Regional Laws Nos 7/83 of 25 January 1983 and 66/83 of 15 September 1983, as it results from the amendments introduced by Articles 1 and 3 of Regional Law No 25 of 11 April 1985, is incompatible with the common market by virtue of Article 92 of the EEC Treaty.

2. The aid concerned may not be granted and the relevant provisions of Articles 1 and 3 of Law No 25 of 11 April 1985 must be deleted by 31 March 1987 at the latest.

3. The Italian Government shall inform the Commission, within two months from the date of notification of this Decision, of the measures it has taken to comply therewith.

*Article 2*

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 December 1986.

*For the Commission*

Frans ANDRIESSEN

*Vice-President*