COMMISSION DECISION

of 30 November 1988

on a national aid scheme for beef in Italy

(Only the Italian text is authentic)

(89/217/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal (1), as last amended by Regulation (EEC) No 571/89 (2), and in particular Article 24 thereof,

After giving notice to the parties concerned, pusuant to Article 93 (2) of the EEC Treaty, to submit their comments (3),

Whereas :

I

1. On 29 January 1988, in the light of information it had received, the Commission asked the Italian authorities for information as to the existence of an aid scheme for beef.

The Italian Government did not reply within the time limit laid down.

2. The measure in question was as follows :

According to AIMA (Italian State Intervention Agency for Agricultural Produce) circular No 226/C of 22 January 1988, a decision had been taken by the CIPE (Joint Ministerial Committee for Economic Planning) that the beef hindquarter belonging to the same half-carcase as a forequarter sent into intervention could, after freezing, be left on consignment with the same intervention store.

The aid paid — Lit 2 000 per kilogram (ECU 1,35 per kilogram) — was, according to the circular referred to above, intended to offset part of the market transport costs of the goods left on consignment, and the loss of value of the meat as a result of freezing.

The scheme, which became applicable on 1 February 1988, was intended to cover up to 6 500 tonnes of beef for five weeks. The anticipated total cost of the aid was Lit 13 000 million (ECU 8,125 million).

The requirements applicable were as follows :

— the hindquarter had to be presented when the forequarter was sent into Community intervention,

— the meat could, after freezing, be removed from the store 72 hours or more but not more than 150 days after being placed in storage,

— the person storing the meat could ask that the hindquarter be boned under the supervision of the AIA (Associazione Italiana Allevatori — Italian Stockfarmers' Association) and could then store the resulting boneless meat,

— the application for the storage of the hindquarter had to be submitted at the same time as that for the buying in of the forequarter,

— the aid became payable 90 days after the product had been put into storage, provided that the payment in respect of the forequarter sent into intervention had been made.

II

1. By letter of 8 February 1988 the Commission notified the Italian Government that it had decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aid scheme in question.

2. In its letter the Commission informed the Italian authorities that it felt that the scheme constituted operating aid which could have no lasting effect on the development of the sector concerned ; the effects of the measure would cease to be felt as soon as the scheme itself was withdrawn. The Commission pointed out that, in its opinion, such schemes were in principle incompatible with the common market.

The Commission added that the Community rules for beef and veal constituted a fully comprehensive system which precluded the introduction, by a Member State, of supplementary income-support schemes for beef/veal producers.

Furthermore, the Italian Government's measure supplemented those already adopted by the Community. Commission Regulation (EEC) No 828/87 of 23 March 1987 specifying products in the beef and veal sector which are eligible for buying in (4), as amended by Regulation (EEC) No 654/89 (5), lays down that only Category A, Class U, R and O Forequarters are eligible for intervention in Italy.

(1) OJ No L 148, 28. 6. 1968, p. 24.
(2) OJ No L 61, 4. 3. 1989, p. 43.
(3) OJ No C 41, 13. 2. 1988, p. 3.
(4) OJ No L 80, 24. 3. 1987, p. 8.
(5) OJ No L 71, 15. 3. 1989, p. 38.

The purpose of that Regulation is to ensure that the hindquarters are marketed at once. The national scheme constituted private storage aid and, thanks to it, Italian operators could store their products whereas operators in the other Member States were forced to dispose of theirs at once or perhaps bear the cost of storing them.

Moreover, the aid, which in effect encouraged the storage of hindquarters, could have been seen by Italian operators as a further incentive to send meat (forequarters) into intervention, and thereby possibly result in an increase in the EAGGF expenditure concerned. It was thus contrary to the common interest.

The proposed aid accordingly constituted an infringement of Community rules.

3. Under the procedure referred to above, the Commission gave notice to the Italian Government to submit its comments.

The Commission also gave notice to the other Member States and to parties concerned other than Member States to submit their comments.

III

By letter of 12 February 1988 the Italian Government replied to the letter in which the Commission had formally requested it to submit its comments.

The Italian authorities confirmed both the existence of the aid and the information which the Commission had received.

They stated that the scheme had not been notified to the Commission, since it had only shortly before then been adopted by the CIPE (on 21 January 1988), and that the requests submitted by the Commission showed that such notification would have been superfluous, since the Commission was already aware of the aid and all the details pertaining thereto.

Moreover, the Italian Government could not submit its comments within the time limit set by the Commission in its letter, since the time allowed was very short.

According to the Italian authorities:

(a) the hindquarters were not purchased by the intervention agency, since the product remained the storer's sole property;

(b) the scheme did not constitute private storage aid since payment of the aid was not conditional on a minimum storage period of four months. The aid was in fact a contribution towards the cost of freezing, to enable producers to keep their products for a longer period. The purpose of the measure was to prevent a further market slump; in short, it meant fewer forequarters would go into intervention;

(c) it was not a production aid but a measure which aimed, in the common interest, at restoring more suitable market conditions;

(d) it did not affect intra-Community trade, since Italy's self-sufficiency in beef/veal is barely 60 % and the surpluses of the other Member States are marketed in Italy;

(e) it was adopted in the light of a particularly dramatic situation, in which prices expressed in Ecus had suffered sharp falls, of more than 15 %, compared with the same period a year earlier.

IV

1. The Italian authorities have failed to fulfil their obligations pursuant to Article 93 (3) of the Treaty, firstly by not notifying the Commission of the proposed measure and secondly by implementing it with effect from 1 February 1988 without a decision being taken by the Commission in that respect.

The resulting situation is particularly serious since, in substance, the scheme constitutes an infringement of the beef/veal market organization and is incompatible with the common market under Article 92 of the EEC Treaty.

2. Regarding the points put forward by the Italian authorities it should be emphasized that:

(a) the Commission did not claim that the measure consisted of buying in by the intervention agency, but that it was a national scheme which in effect encouraged private storage.

Since payment of the aid was conditional on the goods being placed on consignment, the Commission felt that the aid was designed to encourage operators to store the said goods by withdrawing them from the market and freezing them. The scheme is of major importance in economic terms, since the aid totals ECU 1 350 per tonne of hindquarters, whereas the corresponding Community scheme for 1987 provided for the granting of about ECU 500 per tonne for the private storage, for four months, of beef hindquarters;

(b) on the other hand the Commission took account of the fact that the measure designed to cover both the losses resulting from the freezing of the meat and the cost of taking the latter to market would result in the withdrawal from the market of a certain quantity of meat and would enable operators to store hindquarters. It is for that reason that the Commission regarded the scheme as an incentive to store beef hindquarters. Moreover, the Commission noted that, instead of reducing the number of forequarters sent into intervention, the measure — as stated in the AIMA decision of 22 January 1988 — concerned hindquarters and that, in order to qualify under the national aid scheme, those hindquarters had to be

presented when the forequarters were sent into intervention. The scheme could not, therefore, reduce the quantities sent into intervention; in fact, the opposite may well have been true, with operators being encouraged by the aid for hindquarters to send forequarters into intervention;

(c) the Commission feels, moreover, that contrary to the claims made by the Italian authorities, the aid could well have encouraged production, since it enabled producers to supply the products concerned and begin a new cycle of beef/veal production more rapidly. The measure would thus have had the effect of increasing production during the year in question;

(d) the scheme may have affected trade, since a unilateral change in a given component of the costs normally horne by the operators in question can disrupt the equilibrium on the market concerned. In this respect the measure may have enabled Italian operators to offer their meat at more favourable prices than operators in the other Member States who also supply beef to the Italian market but who do not receive aid under the Italian scheme in question; the effect of the aid may therefore be to reduce the quantities imported from the other Member States, thus affecting intra-Community trade;

(e) the Commission feels that measures designed to resolve difficulties on the beef/veal market should be taken at Community level, in particular in order to forestall even greater difficulties resulting from the introduction of unilateral national schemes which may adversely affect the situation in other Member States;

(f) accordingly, the grounds put forward by the Italian authorities cannot be regarded as valid.

V

1. Articles 92 to 94 to the Treaty apply, by virtue of Article 24 of Regulation (EEC) No 805/68, to the production of and the trade in the products covered by the aid.

The scheme gives an advantage to the operators concerned in that they can sell their products on better terms than operators who do not receive the aid. Operators who send beef into intervention may also, thanks to the aid, be in a position to pay a higher price to beef/veal producers than would otherwise be the case, given the conditions normally obtaining on the market in beef and veal.

The scheme therefore distorts competition between those receiving the aid and those — both in Italy and the other Member States — who do not.

2. Italy has to import beef/veal. According to the statistics for 1986, its gross domestic production was 919 000 tonnes and slaughterings totalled 1 179 000 head. Community consumption is 1 587 000 tonnes (the figure for human consumption is 27,7 kilograms per person per year).

Self-sufficiency is accordingly fairly low (58 %). The difference between total slaughterings and domestic consumption is covered by imports from the other Member States and from third countries (570 920 tonnes and 144 448 tonnes respectively). Exports to the other Member States and to third countries total 52 443 tonnes and 88 669 respectively [1].

Imports during the five-week period in which the scheme was applicable in Italy are put at about 55 000 tonnes.

The quantity of beef covered by the aid therefore corresponds to more than 10 % of those imports.

3. Although in Italy demand tends to exceed production, frequent use is made of public intervention. A total of 47 000 tonnes of beef was bought in in 1986.

During the period in question and contrary to the Italian authorities' claims, there was a net increase in the buying in of meat (forequarters) in the Community. This is clearly shown by a comparison of the quantities bought in from 1 February to 6 March 1988, when the scheme in question was in operation, i.e. a weekly average of about 1 100 tonnes, with the figure before and after that period: about 402 tonnes per week.

4. Moreover, with a view to underlining the economic importance of the aid, reference can be made to a similar Community scheme applicable, by way of Commission Regulation (EEC) No 2437/87 of 12 August 1987 providing for the grant of private storage aid fixed at a standard rate in advance in respect of carcases, half-carcases, hindquarters and forequarters from adult bovine animals, during a six-week period in 1987 [2]. About 12 000 tonnes of meat was placed in private storage under contract in Italy pursuant to that measure, which was adopted in the light of serious difficulties on the market in beef (third recital).

The Commission therefore feels that a very large quantity (6 500 tonnes of hindquarters alone) was withdrawn from the market as a result of the national scheme, with a direct impact both during the period of payment of the aid and the storage offtake period.

[1] All the figures are for 1986. Source: *Eurostat.*
[2] OJ No L 225, 13. 8. 1987, p. 13.

It can adversely affect been imports and, by the same token intra-Community trade in that product.

The scheme in question therefore fulfils the criteria set out in Article 92 (1) of the Treaty whereby such aids are in principle adjudged to be incompatible with the common market.

5. The exceptions provided for Article 92 (2) are evidently not applicable in this case. Those provided for in paragraph 3 of that Article specify the objectives concerned, which are to be pursued in the interest of the Community, and not in the exclusive interest of specific national economic sectors. A strict interpretation must be put on those exceptions when scrutinizing any regional or sectoral aid scheme or any individual application of a general aid scheme.

In particular those exceptions are allowed only in cases where the Commission has determined that the aid is required in order to achieve one of the objectives specified by the provisions in question. To allow an exception in the case of aid without imposing such a requirement would be tantamount to allowing trade between Member States to be adversely affected and competition to be distorted without any justification in terms of the Community interest and, by the same token, unwarranted benefits for same Member States.

In this particular case there is no evidence that such a requirement has been met. The Italian Government has not given, and the Commission has not found, any reasons for regarding the scheme in question as having fulfilled the requirements for an exception pursuant to Article 92 (3) of the Treaty.

It is not aid to promote the execution of an important project of common Eureopean interest within the meaning of Article 92 (3) (b) since it may, by way of its possible effect on trade, be contrary to the common interest.

Nor is it a measure designed to remedy a serious disturbance in the economy of the Member State concerned, within the meaning of that provision.

Concerning the exceptions provided for in Article 92 (3) (a) and (c) in respect of aid designed to promote or facilitate the economic development of areas or the development of certain economic activities as referre to in subparagraph (c), it should be pointed out that, being an aid scheme, the measure cannot bring about a lasting improvement in the conditions of the economic sector receiving the aid since, if the aid were to be discontinued, the said conditions would, in structural terms, be identical to those obtaining prior to the entry into force of the national measure.

Accordingly, the aid should be regarded as operating aid for the undertakings concerned, i.e. a type of aid which the Commission has, in principle, always opposed, since the conditions under which it is granted are not such as to make it eligible under the exceptions provided for in Article 92 (3) (a) and (c).

6. Moreover, for the products in question, which are covered by an EEC market organization, the extent to which Member States may take direct action in the operation of market organization featuring a common price is limited, since the Community now has sole jurisdiction over such matters.

Granting such aid in this sector is contrary to the principle whereby Member States may no longer take unilateral action on farmers' incomes via this type of aid, since the incomes in question are determined by measures which are provided for in the EEC market organization. Italy's aid is accordingly to be regarded as constituting an infringement of the market organization concerned.

There is further evidence that the measure constitutes an infringement, namely that the market withdrawals which it encourages supplement those currently in force under Regulation (EEC) No 828/87, on public buying in of forequarters.

By increasing the quantities sent into intervention the aid may also result in increased expenditure by the European Agricultural Guidance and Guarantee Fund.

In that respect it is to be regarded as contrary to the common interest. Even if an exception in the case of agricultural products had been possible under Article 92 (3) of the Treaty, it would have been precluded by the fact that the aid in question constitutes an infringement of the market organizations.

7. The aid in question is accordingly incompatible with the common market within the meaning of Article 92 of the Treaty.

8. This Decision is without prejudice to the conclusions which the Commissin may draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION :

Article 1

The aid scheme adopted by the CIPE (Comitato Interministeriale per la Pianificazione Economica) and implemented as set out in AIMA (Azienda di Stato per gli Interventi nel Mercato Agricolo) No 226/C of 22 January 1988 which provides for the payment of an amount in respect of beef hindquarters in order to offset to a certain extent :

— the loss of value which occurs when fresh meat is frozen, and

— the cost of taking the product to market

is illegal under 93 (3) of the Treaty. It is, moreover, incompatible with the common market.

Article 2

The Italian Governement shall inform the Commission, within two months from notification of this Decision, of the measures taken to ensure compliance with this Decision.

Article 3

The Commission reserves the right to draw conclusions from the granting of this illegal aid as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF).

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President