II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 30 November 1988

on Decree-Law No 370/87 of 7 September 1987 of the Italian Government subsequently converted into Law No 460 of 4 November 1987 on production and marketing, including new standards for the production and marketing of wine sector products

(Only the Italian text is authentic)

(89/228/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine [1], as last amended by Regulation (EEC) No 2964/88 [2], and in particular Article 76 thereof,

After giving notice to the parties concerned, in accordance with Article 93 (2) of the EEC Treaty, to submit their comments [3],

Whereas :

I

1. By letter of 14 September 1987, recorded as received on 14 October 1987, the Permanent Representation of Italy to the European Communities notified the Commission of Decree-Law No 370 of 7 September 1987 concerning the production and marketing of wine sector products.

2. The scheme involved an aid for producers of rectified concentrated grape must, provided for in Article 1 (1) of the Decree-Law, and the fixing of a maximum price for rectified concentrated must for users of must on which the aid had been paid, provided for in Article 1 (2) of the Decree-Law.

II

1. By letter No SG(87)D/15201 of 11 December 1987 the Commission informed the Italian Government that it had decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of this aid scheme.

2. In the same letter the Commission informed the Italian authorities that it considered the aid to be an operating aid incompatible within the common market and therefore ineligible for an exception pursuant to Article 92 of the Treaty.

It also considered that :

— the aid for producers of rectified concentrated must provided for in Article 1 (1) of the Decree-Law, and

— the fixing of a maximum selling price for rectified concentrated must for users of must on which the aid had been paid, provided for in Article 1 (2) of the Decree-Law

constituted schemes infringing Council Regulation (EEC) No 822/87. The Commission argued that these rules must be seen as forming a complete and comprehensive system leaving Member States no power to take any complementary measures.

This means that the proposed schemes do not therefore qualify for any of the exceptions provided for in Article 92 (3) of the Treaty. The aid is therefore incompatible with the common market within the meaning of Article 92 of the Treaty.

[1] OJ No L 84, 27. 3. 1987, p. 1.
[2] OJ No L 269, 29. 9. 1988, p. 5.
[3] Letters of 7 March 1988 from the Commission to the Governments of the other Member States and communication to the other parties concerned (OJ No C 69, 15 March 1988, p. 4).

This being so, the Commission decided to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of these measures.

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

It also gave notice to the other Member States and to the other parties concerned to submit their comments.

III

By letter of 22 January 1988, the Italian Government replied to the Commission's letter of notice.

1. It announced the conversion into law (Law No 460 of 4 November 1987), with amendments, of Decree No 370 of 7 September 1987: the main provisions concerning the aid scheme are the following:

   — Article 1 (1) provides in principle for the grant to must producers of an aid per degree of alcohol and per litre of rectified concentrated must produced from grapes grown in Italy, and

   — Article 1 (5) lays down, nonetheless, that the aid will be paid directly to producers of table wines, wines with a registered designation of origin (DOC) and wines with a registered and guaranteed designation of origin (DOCG) for the 1987/88 wine year;

   — Article 1 (2) provides for fixing a maximum price for concentrated grape must.

   The Minister of Agriculture's Decree No 480 of 21 November 1987 fixes the aid referred to in Article 1 (5) at Lit 3 300 per degree of alcohol and per litre of concentrated grape must for the 1987/88 marketing year.

2. The following comments were submitted:

   (a) The purpose of the scheme introduced by the Decree-Law and the Law is to correct a situation in the Community in which distortions are created by the existence of certain areas where the oenological practice of enrichment with sucrose is permitted, and of others — including Italy — where enrichment is permitted only via the use of concentrated grape must or rectified concentrated grape must.

   Enrichment using the last two products is clearly more expensive than enrichment through the use of sucrose.

   The Community therefore provided for aid for producers using concentrated grape must and rectified concentrated grape must to increase the alcoholic strengtth of their wine. This aid should in theory have closed the gap between the respective costs of the two oenological procedures, but there in fact remains a considerable difference between the two, favouring those producers who use sucrose.

   That is why the Italian Government asked the Commission, in memorandum No B/11699 of 12 September 1987, to grant a Community aid to top up that already granted in accordance with Commission Regulation (EEC) No 2287/87 [1], as last amended by Regulation (EEC) No 3627/87 [2]. In that memorandum, the Minister for Agriculture argued that if an aid of this nature placed too great a strain on the Community budget the problem could be solved by using national resources.

   Faced with a situation in which a solution was required urgently, the Italian authorities found themselves obliged to tackle the problem at national level.

   Rectified concentrated grape must is produced mainly from grapes harvested in zone C III, for which the Community lays down (Article 45 (1) of Regulation (EEC) No 822/87) that aid may be granted for the enrichment of the harvest if the patterns of trade in musts and coupage wines cannot otherwise be maintained. The amount of aid granted by the Community in zone C III was insufficient, in comparison with the aid granted in other zones, to maintain the patterns of trade in musts and coupage wines. Following the introduction of Community aid, exports of musts and coupage wines from zone C III dropped to insignificant levels.

   (b) Aid for rectified concentrated grape must was granted for mainly technical reasons, similar to those which explain why sucrose may be used in other Member States; the product is completely neutral, producing no adverse organoleptic effect in the finished product (wine). In the light of these considerations, the aid scheme could not be seen as incompatible with Article 92 (1) of the Treaty, since it cannot affect trade between Member States and does not favour the production of Italian wine over the wine of other producer countries in the Community and, in this respect, there is equal treatment in economic terms. Moreover, as provided for in Article 92 (3) of the Treaty, the aid may be considered to be compatible with the common market in the sense that it is intended to promote the economic development of the wine sector in certain regions thanks to a more

[1] OJ No L 209, 31. 7. 1987, p. 26.
[2] OJ No L 341, 3. 12. 1987, p. 24.

widespread use of must for the manufacture of rectified concentrated grape must, which means a reduction in the quantity of surplus wine, without affecting trading conditions to an extent contrary to the common interest.

(c) The purpose of the provision on the fixing of the maximum selling price for rectified concentrated grape must, which came into force on 1 September 1988, is to see that the aid actually benefits wine producers enriching their wine and does not assist speculation by manufacturers of rectified concentrated grape must.

To this end paragraph 4 of Article 1 of Law No 460 lays down that the aid must be paid only to duly-approved producers of rectified concentrated grape must and not, as has been the practice hitherto, to purchasers of the product.

The maximum price, fixed by the Ministry of Agriculture and Forestry, following consultation with national bodies operating in the wine sector, takes account of expenditure incurred in the purchase of the rectified concentrated grape must and of the aid for which the manufacturers of this product will qualify.

The obligation under the Law to pay the aid directly to manufacturers of rectified concentrated must will have a twin effect:

(1) it will favour users of rectified concentrated grape must, who will benefit from the aid at the moment of purchase, and

(2) it will focus inspections on a small number of operators — the manufacturers of rectified concentrated must.

IV

With regard to the arguments put forward by the Italian authorities, the Commission considered, on the basis of the information available, that the amount of Community aid provided for in Regulation (EEC) No 2287/87 (1987/88 marketing year) was sufficient and complied with the criteria of Regulation (EEC) No 822/87; the Italian Government's request that the aid be increased was therefore considered to be unjustified. The Italian authorities having been informed of this, it was not for them to implement any independent national measures outside the scope of the market organization. According to information which has reached the Commission, moreover, it would appear that some aid has already been granted.

The rules on the organization of the market in wine must be seen as forming a complete and comprehensive system, leaving Member States no power to take any complementary measures.

The aid scheme is therefore incompatible with the common market and does not qualify for any of the exceptions provided for in Article 92 (3) of the Treaty.

In view of the above, the arguments put forward by the Italian authorities cannot be accepted.

V

Some 76 million hectolitres of wine were produced in Italy during 1986/87, i. e. around 36 % of Community production.

Italy exported some 10,8 million hectolitres, around 2,8 million to non-member countries and 8 million to the other Member States. Exports took up 14,2 % of the country's production (10,5 % for exports to the other Member States). The market share of Italian exports represented 31,7 % of overall Community exports of wine during 1986/87.

Italy imported some 448 000 hectolitres of wine, 443 000 of which came from the other Member States.

Italian exports of grape must (non-concentrated, concentrated, rectified, etc.) totalled 66 400 tonnes in 1987 [1], around 58 000 tonnes of which (87 %) went to the other Member States and 8 400 tonnes to non-member countries. Italy is second only to Greece as a Community exporter, with a market share of around 24 % of all Community exports.

Imports into Italy from the other Member States totalled around 19 000 tonnes, i. e. almost all Italian imports of must. Italy is the fourth biggest Community importer (12,4 % of all Community imports).

Community aid for the use in winemaking of concentrated grape must and rectified concentrated grape must in respect of the 1986/87 wine year (Commission Regulation (EEC) No 2556/86 [2]) involved 944 650 hectolitres in Italy; a total of 1 246 producers received aid.

VI

1. Articles 92 to 94 of the Treaty apply to production of and trade in wine sector products by virtue of Article 76 of Regulation (EEC) No 822/87.

[1] One tonne = about 10 hectolitres.
[2] OJ No L 228, 14. 8. 1986, p. 14.

The aid gives a special advantage to the must producers to whom it is granted since it will facilitate, artificially, a more widespread utilization of must for the manufacture of rectified concentrated must.

It also benefits users in that it is accompanied by a scheme fixing a ceiling price for the sale of concentrated must for which aid has been granted.

Nevertheless, as regards the 1987/88 wine year, the aid is being granted directly to the users of concentrated must. In this form it brings a financial advantage to producers of wine by reducing their production costs; this adventage is felt indirectly by the producers of concentrated must, in that it encourages, artificially, the use of that product. The scheme therefore distorts competition between Italian producers qualifying for the aid and producers of the same products elsewhere in the Community.

Moreover, to the extent that only must produced from grapes of Italian origin may be used, the benefits of the aid are reserved exclusively for Italian grape growers.

By favouring the utilization and production of concentrated must, this state aid measure may bring about an increase in the utilization of concentrated must and therefore in its production; it could also affect trade in concentrated must and wine between the Member States.

The aid scheme therefore meets the criteria set out in Article 92 (1) of the Treaty on incompatibility with the common market.

2. The exceptions from incompatibility with the common market provided for in Article 92 (2) are clearly inapplicable in this case.

Moreover, this aid scheme must be considered to be an operating aid for the undertakings involved; the Commission has always opposed this type of aid on principle since the granting thereof is not linked to any conditions which would allow it to qualify for one of the exceptions provided for in Article 92 (3).

3. These products are subject to a market organization, and there are limitations on Member States' powers to intervene directly in the operation of market organizations comprising a system of common prices, this being an area where the Community now has exclusive powers. The aid scheme therefore ignores the principle whereby the Member States no longer have the power to make unilateral arrangements relating to farmers' incomes.

The degree of infringement caused by the aid and by the price fixing is compounded by the fact that it comes on top of the Community aid provided for in Article 45 of Regulation (EEC) No 822/87. The Community aid is granted to users of concentrated must for the enrichment of certain wines. The State aid and the fixing of a maximum selling price for concentrated must could serve to increase the production of must and wines; they could also result in increased EAGGF guidance and guarantee expenditure. In view of this, the aid scheme must be considered to be contrary to the common interest.

Moreover, Article 1 (1) of Law No 460 of 4 November 1987 lays down that the grant of aid to must producers is restricted to grapes grown in Italy. This distinction between Italian produce and imported produce constitutes discrimination within the meaning of Article 30 *et seq.* of the Treaty.

4. Even if an exception pursuant to Article 92 (3) of the EEC Treaty had been conceivable, the fact that the aid scheme infringes the market organization in question rules out the application of any such exception to it.

5. The aid is consequently illegal to the extent that it has been granted in infringement of the third sentence of Article 93 (3) of the Treaty. It is also incompatible with the common market within the meaning of Article 92 of the EEC Treaty.

6. To the extent that initial payments may already have been made pursuant to the Ministry of Agriculture's Decree No 480 of 21 November 1987, this Decision is without prejudice to any measures the Commission has the intention to take shortly as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund,

HAS ADOPTED THIS DECISION:

Article 1

The aid which is provided for in Article 1 of the Italian Government's Decree-Law No 370 of 7 September 1987, converted into Law No 460 of 4 November 1987 on new standards for the production and marketing of wine sector products and on the penalties for failure to comply with Community rules on agriculture, the amount of which for 1987/88 is determined in accordance with Decree No 480 of 21 November 1987, is illegal in that it infringes Article 93 (3) of the Treaty. It is also incompatible with the common market and must be abolished.

Article 2

The Italian Government shall inform the Commission, within two months of being notified of this Decision, of the measures it has taken to comply therewith.

Article 3

The Commission reserves the right to take measures, in response to the granting of this illegal aid, as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 November 1988.

For the Commission

Frans ANDRIESSEN

Vice-President