II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 July 1990

concerning aid provided for in Italian Law No 120/87 to assist certain areas of the Mezzogiorno affected by natural disasters

(Only the Italian text is authentic)

(91/175/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 given the parties concerned the opportunity to submit their comments, in accordance with Article 93,

Whereas :

I

By letter dated 2 May 1988, the Commission asked the Italian authorities for information concerning extension of the deadline for the submission of applications for aid under Article 32 of Law No 219/81 [1] in respect of industrial investment to be carried out in enterprise zones located in those parts of Campania, Basilicata and Apulia affected by the earthquakes in November 1980 and February 1981 (the deadline expired on 31 December 1982).

By letter dated 19 July 1988, the Italian authorities sent the Commission Decree Law No 8 of 26 January 1987, as amended by Law No 120 of 27 May 1987 [2], Article 8 of which provides for extension of the deadline in question.

By letter dated 15 November 1988, the Commission requested additional information on the various aid measures provided for in Law No 120/87.

By letter dated 6 January 1989, the Italian authorities sent the Commission the information requested.

In view of the fact that the regions referred to above already benefit from aid to assist the Mezzogiorno under Law No 64/86 [3], the Commission considered that, in particular because of their additional nature, the said measures were not compatible with the common market and it therefore initiated, on 18 October 1989, the procedure provided for in Article 93 (2) of the Treaty. The procedure also concerned other aid provided for in Articles 3 (5), 4 (4), 6 (14 ter) and 8 of Law No 120/87.

By letter dated 3 November 1989, the Commission gave the Italian authorities notice to submit their comments and, by a notice published in the *Official Journal of the European Communities* [4], gave other interested parties notice to submit their comments.

By letter dated 20 February 1990 from the office of the Italian Permanent Representative, the Italian authorities submitted their comments to the Commission.

One trade organization submitted comments to the Commission, which forwarded them to the Italian authorities.

[1] *Gazzetta Ufficiale* No 134, 18. 5. 1981.
[2] *Gazzetta Ufficiale* No 93, 22. 4. 1987.
[3] *Gazzetta Ufficiale* No 61, 14. 3. 1986. The aid scheme in question was authorized by Commission Decision 88/318/EEC; OJ No L 143, 10. 6. 1988.
[4] OJ No C 2, 5. 1. 1990, p. 2.

II

The aid measures to which this procedure relates are as follows:

(a) measures increasing to 75 % for small and medium-sized enterprises in certain areas of the Mezzogiorno affected by natural disasters in the period 1980-86 the intensity of the subsidies provided for in Article 9 of Law No 64/86 introducing the new Mezzogiorno scheme (Articles 3 (5) and 6 (14 ter) of Law No 120/87) [1];

(b) measures extending the deadline for the submission of applications for aid pursuant to Article 32 of Law No 219/81 (Article 8 (2) of Law No 120/87);

(c) measures raising to Lit 50 billion the investment ceiling provided for in Article 32 of Law No 219/81 (Article 8 (2 bis) and (2 ter) of Law No 120/87) and increasing the number of areas in which such aid applies (in particular, Article 8 (7) of Law No 120/87 and Article 10 (3) of Decree Law No 474/87) [2];

(d) measures introducing new aid in the service sector with an intensity of up to 60 % net grant equivalent for investment of less than Lit 45 billion and up to 45 % net grant equivalent for investment above that amount (Article 8 (3) of Law No 120/87);

(e) measures providing for exemption from VAT for all operations connected with re-industrialization measures in such areas (Article 4 (4) of Law No 120/87).

With regard to the measures referred to at (a), namely the increase in the subsidies provided for in Article 9 of Law No 64/86, the Italian authorities argued that the Commission had not opposed similar aid (grants equivalent to 75 % of investment costs) provided for in Article 32 of Law No 219/81 and that the Minister responsible for special assistance in the Mezzogiorno had accepted that the areas eligible for aid under Article 6 (14 ter) of Law No 120/87 would have to be limited to the municipalities worst hit by the earthquakes that occurred between 1980 and 1986.

In addition, the Italian authorities informed the Commission that the measures in question had not yet been implemented.

With regard to the measures referred to at (b) and (c), the Italian authorities stated that the aim of the provisions was to allow the industrial development programme embarked on under Article 32 of Law No 219/81 to be completed.

They also stated that, after five years, it was felt necessary to adapt the original investment ceiling by increasing it to Lit 50 billion in order to make the aid provided for in Article 32 of Law No 219/81 sufficiently attractive, the purpose of such aid being to promote a process of forced industrialization that had been made necessary both by the structural nature of the economic depression in the areas in question and by the worsening of the situation after the earthquake.

With regard to the measures referred to at (d), namely those introducing aid for service-sector companies, the Italian authorities stated that the aim of such measures was, in parallel with the process of industrialization in the areas concerned, to promote the development of services connected with such activities and that, in practice, only 30 projects had been accepted for such aid. The projects concerned hotels, restaurants and service stations.

Lastly, with regard to the measures referred to at (e), the Italian authorities pointed out that the exemption from VAT provided for in Article 4 (4) of Law No 120/87 was intended to stimulate the industrialization process in underdeveloped areas affected by a major earthquake and that an identical measure had been adopted following the earthquake which hit Friuli in 1976.

III

These measures taken as a whole constitute State aid within the meaning of Article 92 (1), since they have the effect of reinforcing existing regional aid or of introducing new aid which favours the recipient firms in the Mezzogiorno.

In particular, the aid distorts competition and affects trade between Member States, since the recipient firms export some of their production to other Member States; in addition, to the extent that such firms do not export, national production is favoured in that the scope for firms established in other Member States to export their products to the Italian market is reduced [3].

Trade is also affected by the influence which the aid might have on the location decisions of recipient firms. In so far as the aid causes firms to choose a location in the assisted areas or to relocate from one Member State to another, the production at, and the supply of output from, the new location change trade patterns between Member States.

[1] Article 9 of Law 64/86 provides for capital grants ranging from 15 % to 30 % or 40 % depending on the size of the investment. Such aid may be combined, within certain limits, with subsidized loans provided for in the same Article.

[2] *Gazzetta Ufficiale* No 37, 15. 2. 1988.

[3] See Judgment of the Court of 13 July 1988 in Case 102/87 French Republic v. Commission [1988] ECR 4067.

In view of the above, the aid measures are caught by the general ban laid down in Article 92 (1). Since they were not notified in advance in accordance with Article 93 (3), they are illegal on the grounds that they have infringed procedural rules.

IV

With regard to the exceptions to the abovementioned ban, it should be borne in mind that the aid is intended to favour the industrial development of certain areas in the Mezzogiorno which have been affected by natural disasters; the aid is not therefore intended to make good the damage caused by the natural disasters themselves, other provisions having been adopted for this purpose under Law No 219/81 or other laws.

Consequently, the exemption provided for in Article 92 (2) (b) is not applicable. The aid is regional aid and can be deemed compatible with the common market only if it qualifies for exemption under Article 92 (3) (a) and (c).

Such exemptions may be applied only when the Commission is satisfied that market forces alone would be insufficient to lead the recipients towards behaviour that would serve one of the objectives specified in the exemption clauses provided for in Article 92.

To grant such exemptions in cases where there is no such causal link would be to jeopardize trading conditions between Member States and to allow competition to be distorted without any compensatory benefit to the Community.

In applying the principles set out above to regional aid schemes, the Commission must satisfy itself that the regions concerned are suffering from problems which are serious enough, in comparison with the situation in the rest of the Community, to justify the grant of aid at the level proposed. The scrutiny must show that the aid is necessary to achieve the objectives specified in Article 92 (3) (a) or (c). The Commission can exercise discretion in this area, taking account of economic and social factors in a Community context.

In particular, the exemption provided for in Article 92 (3) (a) is applicable to aid intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

The Commission considers that the standard of living is abnormally low or that there is serious underemployment where, in a Level II region, GDP/PPS (gross domestic product/purchasing power standards) amounts to 75 % or less of the Community average [1]; in 1988, it accepted in its Decision authorizing Law No 64/86 introducing the new aid scheme for the Mezzogiorno that the areas concerned by the aid measures in question were eligible for regional aid under Article 92 (2) (a).

Under that Decision, the Commission approved maximum aid levels ranging from 28,07 % to 73,78 % net grant equivalent, depending on the circumstances and the region; however, under Articles 3 (5) and 6 (14 ter) of Law No 120/87, which are the subject of this procedure, these levels were all increased without any time-limit to the maximum level of 75 % in the areas of the Mezzogiorno affected by natural disasters between 1980 and 1986.

The Commission takes the view moreover that an increase in regional aid in areas affected by natural disasters may be justified, for limited periods, only if the natural disaster has brought about a major change in the socio-economic situation in the whole of a region or several regions, as was the case with the earthquakes which hit Irpinia in November 1980 and February 1981.

It was for this reason that it did not oppose the measures introduced for this purpose under Article 32 of Law No 219/81 directly after the earthquake took place.

Since the other earthquakes which occurred between 1980 and 1986 and the landslide at Senise were not of the same magnitude and bring about a major change in the socio-economic situation in the regions concerned, the Commission considers that there are no grounds for granting aid in excess of the amounts provided for in Article 9 of Law No 64/86 and that, consequently, the measures introduced under Articles 3 (5) and 6 (14 ter) of Law No 120/87 (see point II (a) above) are incompatible with the common market within the meaning of Article 92 (1) of the Treaty.

However, as regards the provisions of Article 8 of Law No 120/87 relating to Article 32 of Law No 219/81 (see points II (b) and (c) above), the Commission considers that they may be deemed compatible with the common market provided they are intended solely to allow the activities begun under Article 32 of Law No 219/81 to be completed, but not stepped up.

[1] See Commission communication on the method for the application of Article 92 (3) (a) and (c) to regional aid (OJ No C 212, 12. 8. 1988, p. 2).

It should be stressed that, several years after the disaster, the problems of the areas affected by the earthquakes in November 1980 and February 1981 no longer have the seriousness, urgency or specificity to justify the adoption of further extraordinary measures such as those provided for in Law No 219/81.

It should also be pointed out that, in order to take proper account of the special nature of the enterprise zones provided for in Article 32, Law No 219/81 already makes provision for measures that are far more favourable than those established by Law No 64/86, especially as regards the maximum aid levels (e. g. for investments of up to Lit 32 billion, the aid intensity may reach 75 %).

The Commission considers therefore that these measures are sufficiently attractive to promote the development objectives of the 20 enterprise zones initially specified under Article 32 of Law No 219/81 ; other measures, such as the increase in the investment ceiling from Lit 32 billion to Lit 50 billion, would constitute a further exception to the general aid scheme introduced by Law No 64/86 and would confer additional unjustified advantages on firms in those zones.

Consequently, the Commission considers that extension of the deadline provided for in Article 8 (1) and (2) of Law No 120/87 is compatible with the common market within the meaning of Article 93 (3) (a) provided that, on the one hand, the investment aid granted on the basis of Article 32 of Law No 219/81 is limited to the 20 enterprise zones initially specified [1] without any increase in their size (756 hectares of equipped surface area) and that, on the other, the investment ceiling applied in granting the aid does not exceed Lit 32 billion.

In order to enable the Commission to check that the aid granted under the scheme introduced pursuant to Article 32 of Law No 219/81 following extension of the deadline provided for in Article 8 of Law No 120/87 complies with the conditions laid down, the Italian Government should present it, by 31 March 1991, with a report on the implementation of such aid.

Finally, as regards the aid provided for in Articles 8 (3) and 4 (4) of Law No 120/87 (see point II (d) and (e) above), the Commission considers that the observations of the Italian authorities are relevant and that the aid may be deemed compatible with the common market pursuant to Article 92 (3) (a).

V

Since the Italian Government did not notify the aid, as it should have done under Article 93 (3) of the EEC Treaty, the Commission was not able to state its position on the measures before their implementation.

Consequently, as the aid in question is illegal and incompatible with the common market pursuant to Article 92 (1), it should be withdrawn and the previous situation restored, in accordance with the case law of the Court of Justice [2].

Repayment should be carried out in respect of :

— aid granted pursuant to Articles 3 (5) and 6 (14 ter) of Law No 120/87 ;

— aid granted pursuant to Article 8 (2) bis and ter of Law No 120/87 as regards investments exceeding Lit 32 billion ;

— the difference between the investment aid granted under Article 32 of Law No 219/81 in enterprise zones other than the 20 zones initially specified (or on sites extending such zones) and the amount of aid which would normally have been granted to such firms on the basis of Article 9 of Law No 64/86.

The aid should be recovered in accordance with the procedures and provisions of national law, notably those concerning interest on arrears on State claims if repayment of the aid has not taken place within a period of two months from the date of notification of this Decision,

HAS ADOPTED THIS DECISION :

Article 1

The provisions of Articles 3 (5) and 6 (14 ter) of Law No 120/87, which increase to 75 % the grants specified in Article 9 of Law No 64 of 1 March 1986 on assistance for firms in certain areas of the Mezzogiorno affected by natural disasters, are illegal and incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty.

[1] S. Mango sul Calore, Calaggio, Porrara, Lioni-Nusco-S. Angelo, Conza della Campania, Morra de Sanctis, Calitri, Calabritto, Oliveto Citra, Contursi, Palomonte, Buccino, Nerico, S. Nicola di Melfi, Valle di Vitalba, Baragiano, Balvano, Tito, Isca di Pantanelle, Viggiano.

[2] Jugdment of the Court of 21 March 1990 in Case C 142/87 *Tubemeuse* (not yet reported).

Any aid awarded on the basis of such provisions shall be repaid.

Article 2

The aid provided for in Article 32 of Law No 219 of 14 May 1981 and granted following extension of the deadline laid down in Article 8 (2) of Law 120/87 is compatible with the common market provided that it is limited to investment carried out in such parcels of the 20 enterprise zones initially specified as had not been allocated on 30 September 1986.

The aid provided for in Article 32 of Law No 219/81 and granted in breach of the conditions referred to above for investment outside the abovementioned 20 zones or on sites extending such zones is illegal and incompatible with the common market under Article 92 (1). However, repayment shall relate only to the difference between the amount of aid received and the amount of aid that would normally have been granted for the same project on the basis of Article 9 of Law No 64/86.

Article 3

The aid granted pursuant to Article 8 (2 bis) and (2 ter) of Law No 120/87 in respect of investment in excess of Lit 32 billion is illegal and incompatible with the common market under Article 92 (1). Such aid shall therefore be repaid.

Article 4

The incompatible aid referred to in Articles 1, 2 and 3 shall be repaid within two months from the date of notification of this Decision.

Article 5

The aid authorized by this Decision shall be granted in compliance with the specific rules in force or yet to be introduced for aid granted in certain sectors.

Article 6

Italy shall present to the Commission by 31 March 1991 a report setting out detailed information on the aid granted on the basis of Article 32 of Law No 219/81 and shall inform the Commission, within two months of the date of notification of this Decision, of the measures it has taken to comply herewith.

Article 7

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 July 1990.

For the Commission

Leon BRITTAN

Vice-President