II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 August 1991

concerning aids granted by the Italian Government to the Italgrani SpA company for the setting-up of an agri-foodstuffs complex in the Mezzogiorno

(Only the Italian text is authentic)

(91/474/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,

After giving notice to the parties concerned, in accordance with Article 93 (2) of the EEC Treaty, to submit their comments (1),

Whereas :

I

By letter dated 17 July 1990, an agri-foodstuffs firm, in accordance with Article 175 of the Treaty, requested the Commission to take a decision on aids granted by the Italian authorities on 12 April 1990 for certain investments planned by Italgrani SpA, a company based in Naples.

On 7 September 1990 the Italian authorities forwarded, at the Commission's request, the decision of the CIPI (Interministerial Committee for the Coordination of Industrial Policy) of 12 April 1990 concerning the investment programme in question.

The programme is the subject of an agreement between the Minister for Measures concerning the Mezzogiorno and Italgrani SpA and falls within the terms of Law No 64 of 1 March 1986 on aid to the Mezzogiorno. The planned aid totals Lit 522,3 billion and is intended to finance investments amounting to Lit 964,5 billion.

The programme is an integrated production one, based principally on cereals, fruit, soya and beet, and involves total investments of Lit 669,5 billion in :

(in billion Lit)

Type of investment and location of installations	Investment sums		
	Fixed (a)	Stocks (b)	Total (a + b)
INVESTMENTS IN INDUSTRIAL TECHNOLOGY			
1. Starch manufacture — Taranto	210,0	24,5	234,5
2. Sugar chemistry — Corigliano Calabro	110,0	15,0	125,0
3. Fermentation, yeast/other — Calabria	39,0	2,0	41,0
4. Fermentation, citric acid and other — Calabria	31,0	3,0	34,0
5. Alcohol — Crotone	60,0	5,0	65,0
6. Vegetable proteins — Manfredonia	80,0	24,0	104,0
7. Biodegradable plastics — Naples	25,0	1,0	26,0
8. Pig-breeding — Potenza	15,0		15,0
9. Pig-breeding — Crotone	15,0		15,0
10. Fruit and vegetable canning — Calabria	10,0		10,0
TOTAL 1 to 10	595,0	74,5	669,5

(1) Communication to other Member States and interested parties published in OJ No C 315, 14. 12. 1990, p. 7.

Aid for investment in industrial installations amounts to Lit 296,96 billion, the remaining aid going to the construction of research centres (Lit 97,1 billion), the implementation of research projects (Lit 92,00 billion) and to industrial staff training (Lit 36,0 billion).

The following production capacities are envisaged :

(tonnes per annum)

Flour	90 000
Meal	60 000
Gluten	43 500
Animal feedstuffs	199 500
Starch,	357 000
of which	
— starch for dietary, pharmaceutical and ecological products	180 000
— fermentation	82 500
— biodegradable plastics	6 000
Residual starch placed on the market	88 500
Alcohol	
— Alcohol for human consumption	19 200
— Industrial alcohol	9 600
Vegetable proteins	
— Protein flour	112 750
— Other proteins	112 750
— Flour for animal feed	97 500
— Lecithin	2 610
— Soya oil (by-product)	49 590
Two battery pig farms	
Transfer of a flour mill from Foggia to Ortona	

Since the sectors involved are characterized by significant intra-Community trade the Commission has decided that the measures in question constitute aid within the meaning of Article 92 (1) of the Treaty and believes that they do not seem to qualify for the derogations provided for in Article 92 (3) and, in particular, in the provisions of Law No 64/86 in accordance with the conditions laid down in Article 9 of Commission Decision 88/318/EEC of 2 March 1988 on Law No 64 of 1 March 1986 on aid to the Mezzogiorno [1] authorizing the aid. It has therefore opened the procedure provided for in Article 93 (2) in respect of aids intended for :

— the setting-up of a starch factory and of a factory to be used directly or indirectly for the production of isoglucose,

— the production of seed oils,

— the production of meal and flour,

— the setting-up of pig farms,

— the establishment of stocks of the products listed in Annex II to the Treaty.

As regards the products listed in Annex II to the Treaty, the Italian authorities are required to comply with Article 9 of Decision 88/318/EEC which provides that Italy must respect existing and future Community rules and regulations governing the coordination of different types of aid for the products listed in Annex II. On the basis of the information available to it, the Commission considered that the Italian authorities had not taken account of the prohibitions or restrictions on the grant of aid to the starch, isoglucose, seed oils or pig farming industries or on the establishment of stocks of the products listed in Annex II to the Treaty. In particular they should have notified the programme agreement pursuant to Article 93 (3) of the Treaty, as the Commission had requested them by telex of 14 November 1986, in order to enable it to take a position on aids intended for the products listed in Annex II to the Treaty.

The Commission considered also that there were doubts as regards the level of the aids and that insufficient information had been given in support of the aids for research and training.

By letter dated 23 November 1990, therefore, the Commission gave the Italian Government notice to submit its comments under the procedure laid down in Article 93 (2) of the Treaty. The other Member States and parties concerned were informed thereof by a notice published in the *Official Journal of the European Communities* [2].

II

The Italian Government submitted its comments by letters dated 30 January and 28 May 1991.

Eight associations, a firm and Italgrani SpA submitted comments and these were sent to the Italian authorities on 8 April 1991.

The Italian Government and Italgrani SpA applied to the Court of Justice of the European Communities for the annulment of the Commission's letter of 23 November 1990 initiating the procedure laid down in Article 93 (2) (see Cases C-47/91 and C-100/91).

[1] OJ No L 143, 10. 6. 1988, p. 37.

[2] OJ No C 315, 14. 12. 1990, p. 7.

The information supplied by the Italian Government has enabled the Commission to find that the aid for research (research projects and the funding of research centres) complies with the conditions laid down in Decision 88/318/EEC.

The aid for training, consisting of aid for basic training, complies with the specific objectives of the European Social Fund and with the conditions laid down in Decision 88/318/EEC.

The aid for seed oils is for the production of highly purified vegetable proteins and lecithins for human dietetic and pharmaceutical use. The highly purified proteins and lecithins, when processed and prepared for human consumption, will form the basis of new foodstuffs intended primarily for catering purposes and as special dietary foods, that will make use of the positive and established features of the active ingredients of soya. The proteins and lecithins are to be extracted and purified by processes which are at the limits of current technology (e.g. using hypercritical gases) that will protect consumers against solvents or other residues harmful to health.

In order to obtain these advanced trial products, that are not yet widely available on the market, which is the aim of this part of the project, soya beans will have to be cracked and the oleaginous part removed (approximately 12 % by weight). The removal of the oil is a highly delicate part of the process since residues, however minimal, make the proteins unpalatable and have to be disguised with strong flavouring agents. The production of this oil therefore will only be residual.

In view of the above comments, the aids for research, training and seed oil may be regarded as compatible with the common market and qualify for the exemptions provided for in Law No 64/86.

III

By letters dated 23 and 24 July 1991, the Italian authorities substantially amended the investment programme originally planned and adjusted the relevant aids.

The new programme (1) modifies the original project as follows:

— the aid for the setting-up of a starch, meal and flour factory is withdrawn,

— the aid for the setting-up of large-scale pig farms is withdrawn,

— the aid to fund the establishment of stocks of Annex II products is withdrawn,

— annual production capacity is reduced from 357 000 tonnes to around 150 000 tonnes,

— the investments and aid for the production of sugar-based chemicals are increased and there will be no production of isoglucose,

— the investments and aid for the fermentation and citric acid industries are increased,

— the aids for research projects are increased.

The programme covers the following:

(in billion Lit)

Type of investment and location of installations	Investment sums			Total aid
	Fixed	Stocks	Total	
A. INVESTMENTS IN INDUSTRIAL TECHNOLOGY				
1. Starch manufacture — Taranto	(110,0)			—
2. Sugar chemistry — Corigliano Calabro	160,0		160,0	68,13
3. Fermentation, yeast and other — Calabria	70,0	16,0	86,0	37,15
4. Fermentation, citric acid and other — Calabria	50,0	14,0	64,0	29,36
5. Alcohol — Crotone	60,0	20,0	80,0	34,07
6. Vegetable proteins — Manfredonia	80,0		80,0	34,62
7. Biodegradable plastics — Naples	25,0	5,0	30,0	17,21
8. Fruit and vegetable canning — Calabria	10,0		10,0	7,63
TOTAL A	455,0	55,0	510,0	228,17

(1) The Italian authorities have confirmed that no aid will be granted to mills.

(in billion Lit)

Type of investment and location of installations	Investment sums			Total aid
	Fixed	Stocks	Total	
B. RESEARCH CENTRES				
Naples	110,0		110,0	74,98
Eufemia Lamezia	30,0		30,0	21,85
TOTAL B	140,0	0,0	140,0	96,83
C. RESEARCH PROJECTS	125,0		125,0	100,00
D. STAFF TRAINING (INDUSTRY)	40,0		40,0	36,00
GRAND TOTAL A + B + C + D	760,0	55,0	815,0	461,00

The Italian authorities also stated that the above aids, totalling Lit 461 billion, will be granted on condition that Italgrani SpA respects the following conditions in implementing the programme as a whole :

— the products processed or derived from starch must be produced solely from starch of Community origin,

— Italgrani SpA's starch production under the programme will be strictly limited to the quantities needed to meet its own requirements for the production of products derived and/or processed from starch,

— Italgrani SpA will not be able to place on the market any quantity of starch manufactured under the programme.

The starch production capacity provided for under the programme amounts to about 150 000 tonnes per annum ; the starch factory requires an investment of Lit 110 billion and will be set up at Taranto without recourse to aids. Initially, an investment of Lit 210 billion had been provided for (with aids) to this end and the starch production capacity had been 357 000 tonnes per annum.

IV

The measures envisaged by the Italian authorities are based on Law No 64/86 and consist of direct subsidies and interest-rate subsidized loans. The Commission regards these measures as aids within the meaning of Article 92 (1) because they give an advantage to Italgrani SpA and some of its products for which there is competition and trade between Member States. The following table shows the Italgrani products and the relative quantities which are the subject of trade between Italy and the other Member States (NIMEXE figures in tonnes for the year 1990) :

	EEC imports to Italy	Italian exports to the EEC	Italgrani production (1)
Maltose	0	28	23 400
High-maltose syrups	15	1 548	36 000
Fructose syrups	4	2 323	18 000
Crystalline fructose	0	1 741	16 200
Manitol	110	894	14 400
Sorbitol	5 716	4 688	27 000
Other hydrogenated glucoses	49 060	51 675	18 000
Glucoses and dextroses abv	1 248	1 825	9 000
Glucose for the light chemicals industry	1 478	16 123	9 000
Fermented yeasts			
Yeasts	6 637	3 287	16 500
Citric acid	0	7 265	18 000
Vegetable proteins			
— Texturized protein	1 163	779	112 750
— Lecithin	3 973	3 334	2 610
— Soya oil	4 106	6 047	49 590

(1) The starch production capacity of approximately 150 000 tonnes per annum provided for in the programme does not seem disproportionate by comparison with the quantities of the main products derived and/or processed from starch which Italgrani intends to produce and which are detailed in this column.

The Commission does not possess statistical data on production at a Community level of the products benefiting from the aids in question. However, it should be emphasized that glucose factories and their downstream products are part of the starch sector and as such in an industrial sector characterized by a high degree of competition.

There are many firms in the sector; they are large and highly capital-intensive units. Italgrani SpA has a relatively significant position in the sector.

The envisaged aids in favour of Italgrani would distort normal competition by reducing the costs of its capital investments and giving it an advantage over the other producers who do not have similar advantages.

In view of these considerations the aids in question are likely to affect trade between the Member States and to distort competition within the meaning of Article 92 (1) of the EEC Treaty.

V

Article 92 (1) of the EEC Treaty states that certain aids whose characteristics it mentions are incompatible in principle with the common market. As far as the derogations to this principle are concerned, those mentioned in Article 92 (2) of the Treaty are not applicable in this case, bearing in mind the nature and objectives of the aids in question.

Under Article 92 (3) of the Treaty, aids likely to be considered compatible with the common market must be assessed within a Community context, not merely within that of a single Member State. To preserve the smooth operation of the common market and take into account the principle stated in Article 3 (f) of the EEC Treaty, the derogations to the principle of prohibition which is the subject of Article 92 (1) of the Treaty, which are provided for in paragraph 3 of said Article, must be interpreted restrictively when any aid scheme or individual aid measure is examined.

In particular, the derogations may only come into play if the Commission finds that the free play of market forces, with no aids, would not in itself be sufficient to persuade potential beneficiaries to act in order to achieve one of the desired objectives.

In its abovementioned Decision 88/318/EEC the Commission, basing itself on these principles and in particular the derogation provided for in Article 92 (3) (a) of the Treaty, authorized the aids scheme in favour of the Mezzogiorno referred to in Law No 64/86 of 1 March 1986. However, the Commission decided to subject the grant of aid to, *inter alia*, compliance with the following two conditions:

— the maximum rates of the aids, and
— exclusions and specific limits in respect of aids intended for products listed in Annex II to the Treaty.

It should be noted in this respect that the levels of the aids in question (subsidies and interest rebates) are in line, thanks to changes made during the course of the procedure, with the limits fixed by Article 9 of Law No 64/86 [1] as authorized by the Commission in its Decision 88/318/EEC. The aids in question are listed in the following table:

(in billion Lit)

Type of investment and location of installations	Subsidy	Interest rebate	Total aids
A. INVESTMENTS IN INDUSTRIAL TECHNOLOGY			
1. Sugar chemistry — Corigliano Calabro	42,35	25,78	68,13
2. Fermentation, yeast and other — Calabria	23,45	13,70	37,15
3. Fermentation, citric acid and other — Calabria	19,25	10,11	29,36
4. Alcohol — Crotone	21,35	12,72	34,07
5. Vegetable proteins — Manfredonia	21,90	12,72	34,62
6. Biodegradable plastics — Napoli	10,02	7,19	17,21
7. Fruit and vegetable canning — Calabria	5,60	2,03	7,63
TOTAL A	143,92	84,25	228,17
B. RESEARCH CENTRES			
Napoli	66,00	8,98	74,98
Eufemia Lamezia	18,00	3,85	21,85
TOTAL B	84,00	12,83	96,83
C. RESEARCH PROJECTS	100,00	—	100,00
D. STAFF TRAINING (INDUSTRIAL)	36,00	—	36,00
GRAND TOTAL A + B + C + D	363,92	97,08	461,00

[1] These are the limits envisaged for aids intended for investments in priority sectors and locations. Depending on the volume of investments the limits may reach 73,78, 69,65 and 40,36 %.

As far as the second condition is concerned, it should be noted that the aids favour products falling within sectors for which there is currently no sectoral limitation under Article 9 of Decision 88/318/EEC. Consequently, the aids can in their present form be considered as compatible with the common market and therefore eligible for the measures provided for in the aid scheme under Law No 64/86.

However, one should not ignore the link between starch and the products eligible for the aids in question, in the sense that these products may be derived and/or processed from starch. The starch sector is extremely sensitive and vulnerable because, *inter alia,* of excess production capacity and increased international competition (1). For this reason the Commission long ago adopted a highly restrictive policy an aids to starch by opposing subsidies to European Agricultural Guidance and Guarantee Fund (EAGGF) investments and State aids at the national level. As a result, to respect the current equilibrium in the starch market, the Commission finds that the aids in question should be prevented from causing indirect effects on starch production which are incompatible with the objectives of the common organization of the market in cereals. This would be the case if Italgrani were able to place on the (Italian, Community or third country) market new quantities of starch.

Given the undertakings of the Italian authorities listed in Part III of this Decision, the Commission believes that it is necessary to subject the grant of all aids needed to implement the programme (as a whole) to strict compliance with the following conditions :

(a) the products processed or derived from starch must be produced by Italgrani using exclusively starch of Community origin ;

(b) Italgrani's production of starch under the programme — whose envisaged annual capacity is about 150 000 tonnes — will be strictly limited to the quantities needed to meet the requirements of its own production of products derived and/or processed from starch ; the starch production in question must therefore develop in accordance with the demand for derived and/or processed products and not increase beyond the level of that demand ;

(c) Italgrani can never place on the (national, Community or third country) market the quantities of starch produced under the programme ;

(d) the Italian authorities are obliged to take suitable control measures to ensure that the imperative conditions mentioned above are complied with ; a detailed annual report in this respect must be transmitted to the Commission before 30 June following the calendar year in question ;

(e) the Italian authorities are obliged to mention the four conditions above in the decision of the CIPI regarding approval of the programme contract which will be published in the *Gazzetta Ufficiale della Reppublica Italiana.*

As regards investment aids in favour of alcohol, given the overcapacity in the sector and the exclusion from Community financing of production installations under the terms of Council Regulation (EEC) No 866/90 (2), the Commission would like to remind the Italian authorities that the creation of new capacity is not desirable. This is a recommendation under the first sentence of Article 93 (3) of the Treaty, since alcohol is not yet subject to a common market organization,

HAS ADOPTED THIS DECISION :

Article 1

1. The award of aids totalling Lit 461 billion by the Italian Government to Italgrani SpA to implement the programme of investments referred to in the CIPI decision of 12 April 1990 as amended by letters of 23 and 24 July 1991, are hereby deemed compatible with the common market and may benefit from the measures provided for in Law No 64/86 of 1 March 1986 (aid in favour of the Mezzogiorno).

2. The abovementioned aids totalling Lit 461 billion may be granted only, however, subject to compliance by Italgrani with the following conditions when implementing the programme of investments :

— the products processed or derived from starch must be produced by Italgrani using exclusively starch of Community origin,

— Italgrani's production of starch under the programme — whose envisaged annual capacity is about 150 000 tonnes — shall be strictly limited to the quantities needed to meet the requirements of its own production of products derived and/or processed from starch ; the starch production in question must therefore develop in accordance with the demand for derived and/or processed products and not increase beyond the level of that demand,

— starch produced under the programme shall not be placed on the (national Community or third country) market,

(1) See the arguments developed in the abovementioned communication opening the Article 93 (2) procedure.

(2) OJ No L 91, 6. 4. 1990, p. 1.

Article 2

The Italian authorities shall be obliged:

— to take suitable control measures to ensure that the imperative conditions listed in Article 1 (2) of this Decision are complied with. A detailed annual report in this respect must be transmitted to the Commission before 30 June following the calendar year in question,

— to mention the three conditions set out in Article 1 (2) above in the decision of the CIPI regarding approval of the programme contract which will be published in the *Gazzetta Ufficiale della Reppublica Italiana,* as well as the annual control procedure provided for in the first indent of this Article.

Article 3

The Italian authorities shall inform the Commission, within two months of the notification of this Decision, of the measures which they have taken to comply herewith.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 August 1991.

For the Commission

Ray MAC SHARRY

Member of the Commission