II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 12 January 1993

concerning an AIMA national programme on aid which Italy plans to grant for the private storage of carrots

(only the Italian text is authentic)

(93/154/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 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 1754/92 [2], and in particular Article 31 thereof,

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

Whereas :

I

By letter of 20 December 1991, recorded as received on 28 January 1992, the Permanent Representation of Italy to the European Communities notified the Commission, pursuant to Article 93 (3) of the Treaty, of a national programme concerning aid for the private storage of carrots established by AIMA (Italian intervention agency).

The programme was based on a decision of the CIPE *(Comitato Interministeriale per la Programmazione Economica)* of 4 December 1990, which, in its last two paragraphs, specified that the programme could be implemented only after notification to the European Commission and verification of its compatibility with Community rules.

The measure involves the granting, for a period of four months, of aid totalling Lit 2,46 billion for the conservation of a maximum overall quantity of 45 000 tonnes of carrots.

The Italian Government justified the measures on the grounds of the difficulties affecting the market in carrots.

II

By letter No SG(92) D/5210 of 14 April 1992, 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.

In the same letter the Commission informed the Italian authorities that it considered the aid to be an operating aid incompatible with the Commission's standing philosophy regarding the application of Articles 92, 93 and 94 of the Treaty ; a measure of this sort has the direct effect of artificially reducing cost prices and improving the conditions under which the producers concerned produce and dispose of their products as compared with other producers in other Member States who do not qualify for comparable aid.

The measure in question is therefore capable of distorting competition and affecting trade between the Member States and meets the criteria laid down in Article 92 (1) of the Treaty without qualifying under the exceptions provided for in Article 92 (2) and (3).

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 180, 1. 7. 1992, p. 23.
[3] OJ No C 160, 26. 6. 1992, p. 2.

Moreover, the measure constitutes an infringement of Regulation (EEC) No 1035/72.

That Regulation must be considered a comprehensive, exhaustive system which bars the Member States from taking any supplementary measures.

Under the procedure provided for in Article 93 (2), 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 25 May 1992 the Italian Government replied to the Commission's letter of 14 April 1992, submitting the following comments.

According to the Italian authorities, carrots are subject to the market organization in fruit and vegetables only in a purely formal way. Since the product in question does not, at Community level, benefit from any aid measure or direct or indirect support, it would be reasonable to consider carrots as substantively outside the common organization of the market concerned.

Hence, carrots fall within Council Regulation No 26 [1], as amended by Regulation No 49 [2], and the Commission, applying only Article 93 (1) and (3), first sentence, of the Treaty, may only make recommendations in respect of the aid in question.

The absence of a market organization for carrots means, according to the Italian authorities, that aid for the private storage of carrots cannot be classified as operating aid, non-permissible under the competition rules of the Treaty.

IV

With regard to the arguments put forward by the Italian authorities, the following points must be stressed.

Carrots are included in the list of products governed by the common organization of the market in fruit and vegetables (cf. Article 1 (2) of Regulation (EEC) No 1035/72).

Hence, they are subject to all the rules of that market organization.

Each common organization of the market is characterized by the fact that, for a given sector, all possibility of national market organization measures is ruled out, being replaced by Community measures.

The Italian authorities may no longer — even in critical market situations — apply measures other than specified by the rules governing the common organization of the market in fruit and vegetables. That organization is to be seen as a complete and exhaustive system which leaves Member States no power whatsoever to take any supplementary measures with regard to the operation of the market organization concerned.

The measure in question 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.

This conclusion is not invalidated by the fact that the market organization in question does not provide for specific aid measures for carrots.

The absence of such measures reflects the Community legislator's intention to limit itself to the rules laid down by the market organization concerned, judging them to be sufficient to regulate the market in question.

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

V

During the 1991 marketing year, Italian production of carrots was estimated at 475 500 tonnes (from an area of 11 100 hectares), which represents approximately to 18 % of the average annual Community production of carrots over the period 1988 to 1990.

The quantities concerned in the case of the aid in question amount to a maximum of 45 000 tonnes of carrots (i.e. 9,5 % of Italian production and 1,7 % of average Community production).

The impact of the aid on intra-Community trade could therefore be substantial.

VI

Aid for the private storage of carrots would, if granted, constitute an operating aid for the benefit of producers, producer groups and associations, and traders active in this sector. Such aid, if granted, would enable the recipients to reduce storage costs and to benefit from more advantageous prices than would have been the case without the State aid. The measure could, therefore, distort competition between recipients of the aid and other non-recipient operators in the same sector in Italy and elsewhere in the Community.

Morever, a reduction in storage costs would reduce the general costs of marketing the product in question and enable Italian producer groups and associations and interested traders to sell the product in Italy and in the other

[1] OJ No 30, 20. 4. 1962, p. 993/62.
[2] OJ No 53, 1. 7. 1962, p. 1571/62.

Member States on more favourable terms. The aid would make them more competitive on the markets of the other Member States and is therefore likely to affect trade between Member States.

The measure in question therefore fulfils the criteria set out in Article 92 (1) of the Treaty according to which the aid to which it relates is incompatible with the common market.

The exceptions to such incompatibility, set out in Article 92 (2), are clearly not applicable to the aid in question. Those set out in Article 92 (3) relate to objectives pursued in the Community's interest and not only in the interest of individual sectors of the national economy. These exceptions are to be strictly interpreted when examining any regional or sectoral aid or any case of individual application of general aid schemes.

In particular, such exceptions can be granted only in cases where the Commission can establish that the aid is necessary for achievement of one of the objectives set out in those provisions. To allow such exceptions in respect of aid which does not offer the benefits set out would amount to allowing trade between Member States to be affected and competition to be distorted without justification from the point of view of the Community interest and would give an unfair advantage to operators in certain Member States.

In the case in point, the aid does not offer such benefits. The Italian Government was unable to provide any justification, and the Commission could find none, showing that the aid in question met the conditions required for the application of one of the exceptions set out in Article 92 (3) of the Treaty.

This is not a measure intended to promote an important project of common European interest as mentioned in Article 92 (3) (b), given that its likely effects on trade run counter to the common interest. Neither is the measure aimed at remedying a serious distrubance in the economy of the Member State concerned within the meaning of the same provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) for aid intended to facilitate or promote the economic development of certain regions or of certain activities, it should be noted that the measure in question, as an operating aid, cannot bring about a lasting improvement in the conditions obtaining in the enterprises attracting the aid since, once the supply of aid stopped, the structural situation of the enterprise would be the same as before State intervention began to operate.

Consequently the proposed aid measure cannot qualify for any of the exceptions provided for in Article 92 (2) and (3) of the Treaty.

Moreover, it is considered that the aid in question involves a product 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 support, this being an area where the Community now has exclusive powers.

The granting of the aid in question ignores the principle that Member States no longer have the right to act independently in the matter of farmers' incomes within the framework of a common organization of the market by the granting of such aid. Even if an exception pursuant to Article 92 (3) of the Treaty had been conceivable in the case of the agricultural product in question, the fact that the aid infringes the market organization in question makes it impossible to apply any such exception.

The aid in question must be considered incompatible with the common market and may not be granted,

HAS ADOPTED THIS DECISION:

Article 1

Aid for the private storage of carrots, as provided for in the national programme of AIMA (Italian intervention agency) of 27 November 1991, on the basis of a decision of 4 December 1990 by the CIPE *(Comitato Interministeriale per la Programmazione Economica)* is incompatible with the common market within the meaning of Article 92 of the Treaty and must therefore not be granted.

Article 2

Italy shall inform the Commission within one month of being notified of this Decision, of the measures it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 12 January 1993.

For the Commission

René STEICHEN

Member of the Commission