II

*(Acts whose publication is not obligatory)*

# COMMISSION

## COMMISSION DECISION

**of 24 February 1993**

**concerning an AIMA national programme on aid for the benefit of olive oil producer organizations and associations thereof**

**(Only the Italian text is authentic)**

(93/468/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 136/66 of 22 September 1966 on the establishment of a common organization of the market in oils and fats [1], as last amended by Regulation (EEC) No 2046/92 [2], and in particular Article 33 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

By letter dated 5 November 1991, the Permanent Representation of Italy to the European Communities notified the Commission, in accordance with Article 93 (3) of the EEC Treaty, of a national programme concerning aid for olive oil producer organizations and associations thereof established by AIMA (the Italian intervention agency).

The programme in question was based on a decision of the CIPE (Joint Ministerial Committee for Economic Planning) of 4 December 1990, which, in its last two paragraphs, stipulates that the programme could be implemented only after notification to the Commission and verification of its compatibility with Community rules.

The programme involves an aid of Lit 6 billion for olive oil producer organizations and associations thereof to finance the activities for which they are responsible under the relevant Community rules.

The Italian authorities invoked Article 8 (2) of Commission Regulation (EEC) No 3061/84 [4], as last amended by Regulation (EEC) No 1318/92 [5], which provides for the possibility for Member States, under certain conditions, to grant aid to producer organizations and associations thereof.

The Italian authorities moreover indicated that they considered such aid to be justified on the grounds that olive oil production in the 1990/91 marketing year was very low and that therefore the aid granted to producer organizations and associations thereof under Regulation (EEC) No 3061/84 was also very low.

II

1. By letter dated 14 April 1992 the Commission notified the Italian Government that it had decided to initiate the procedure provided for in Article 93 (2) of the EEC Treaty in respect of the aid scheme in question.

[1] OJ No 172, 30. 9. 1966, p. 3025/66.
[2] OJ No L 215, 30. 7. 1992, p. 1.
[3] OJ No C 164, 1. 7. 1992, p. 2.
[4] OJ No L 288, 1. 11. 1984, p. 52.
[5] OJ No L 140, 23. 5. 1992, p. 11.

2. In that letter the Commission informed the Italian authorities that it had felt, on the basis of the information available on olive oil production at that time, that the aid scheme in question constitued an infringement of the common organization of the market in oils and fats and that such a scheme could therefore not qualify for any of the exceptions provided for in Article 92 (3) of the Treaty.

Since the rule in question were to be seen as forming a complete and comprehensive system leaving Member States no power to take any complementary measures, the national measures envisaged are incompatible with the common market within the meaning of Article 92 of the EEC Treaty. Under Community rules, this type of national aid scheme is allowed only under the conditions laid down in those rules, which, in the case under consideration, are not fulfilled (see Chapter IV).

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 dated 10 June 1992, the Italian Government replied to the Commission's letter of notice. It submitted the following comment:

(a) according to the Italian authorities, the producer organizations concerned are different from those provided for in Regulation (EEC) No 1360/78 [1], as last amended by Regulation (EEC) No 3808/89 [2] in that they have a bureaucratic and administrative structure the function of which is to carry out the checks required for the grant of the olive oil production aid provided for in the Community rules. The aid under consideration is granted so that the permanent structures of these organizations can exist and function;

(b) since production in the 1990/91 marketing year was very low, the amount withheld from production aid, as provided for by the Community rules for the purpose of contributing to the financing of the control costs of the producer organizations, was also low;

(c) reference to Article 8 of Regulation (EEC) No 3061/84 was made *mutatis mutandis*;

(d) the activities of the organizations have no effect on the market, and the aid in question cannot therefore affect trade in olive oil.

By telex message dated 10 December 1992 the Italian authorities replied to the questions which had been put by the Commission on 22 October 1992, confirming that the producer organizations and associations thereof, to which the aid was to be paid, carry out only those checks necessary for the grant of the production and provided for by Community rules.

The Italian authorities also stated that the said organizations and associations were financially autonomous and that their members were consequently responsible for any debts and/or excess receipts. If the aid in question were not granted, the costs of the said organizations would have to be borne by their members.

IV

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

1. The claim that the nature of the organizations concernend is different from that of the producer groups covered by Regulation (EEC) No 1360/78 does not appear to be a valid one. Although the nature of the organizations under consideration may be different, the members of those organizations are producer groups, cooperatives or operators dealing on the market in olive oil. An aid granted to such an organization clearly has positive effects also for its members, which, on account of the aid, enjoy better conditions. Indeed, the grant of the aid would result in a reduction of the organization's operating costs and hence in a reduction of the financial costs of its members, which, consequently, would see their commercial position reinforced as compared with that of other competitors for the products concerned.

2. It is a fact that production in the 1990/91 marketing year was low and that the amount resulting from the retention on production aid to be paid to producer organizations and/or associations of such organizations was low also, but it should be pointed out that the mechanism involved is one established by the Council as part of the market organization. The point should also be made that Council Regulation (EEC) No 2262/84 of 16 July 1984 [3], as last amended by Regulation (EEC) No 593/92 [4], reduces the checks to be carried out by producer organizations and associations thereof by laying down that each Member State is to set up an agency responsible for certain controls and activities as part of the production aid arrangements.

3. The fact that Article 8 of Regulation (EEC) No 3061/84 was referred to *mutatis mutandis* has no impact on the outcome of the appraisal. The aid under consideration will always remain incompatible

[1] OJ No L 166, 23. 6. 1978, p. 1.
[2] OJ No L 371, 20. 12. 1989, p. 1.
[3] OJ No L 208, 3. 8. 1984, p. 11.
[4] OJ No L 64, 10. 3. 1992, p. 1.

with the common market. The system provided for by the said Regulation allows national aid to be granted only under the conditions laid down in that Regulation.

However, even if the Italian authorities wish to refer to that provision, it should be pointed out that in the context of the production aid provided for in Article 5 of Regulation (EEC) No 136/66/EEC, provision is made in Article 20 (d) of that Regulation for a percentage of the amount of Community production aid to be withheld to contribute towards the financing of the activities of producer organizations and associations thereof.

The amount withheld was fixed for the 1990/91 marketing year by Council Regulation (EEC) No 1314/90 [1] at 1,5 % of production aid. According to the definitive production figures in Italy notified by the Italian authorities, the resulting amount was ECU 1,55 million.

Article 8 (1) of Regulation (EEC) No 3061/84 lays down that the unit amounts to be paid to the producer organizations and associations thereof are to be fixed on the basis of forecasts of the overall sums resulting from the aid retained.

The unit amount fixed for the associations is paid for each member of the producer organizations of which an association is composed and the unit amount fixed for the producer organizations in paid for each individual production aid application submitted. The amounts in question are fixed for each Member State producer of olive oil.

These amounts were fixed for the 1990/91 marketing year by Commission Regulation (EEC) No 1381/91 [2]. With regard to Italy, the resulting overall sum was ECU 1,145 million for the associations and ECU 0,452 million for the producer organizations with a negative balance of ECU 0,047 in relation to the sum of ECU 1,55 million resulting from the retention (1,5 %) of production aid.

Article 8 (2) of Regulation (EEC) No 3061/84 lays down that in cases where the balance is negative, Member States may contribute to an amount not exceeding that balance. In the case under consideration, the Italian authorities could therefore only have contributed an amount not exceeding ECU 0,047 million whereas the national aid provided for amounts to around ECU 3,6 million.

It should be pointed out that the aid Article 8 (2) of Regulation (EEC) No 3061/84 explicitly lays down that Member States may grant amounts which differ from those specified in Article 8 (1) (a) but in no circumstances may the latter amounts be exceeded. Member States may therefore not exceed the amounts in question.

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

4. The claim that the activities of the organizations concerned cannot affect the market can be countered in the same way as was the claim made in point I.

The members of the producer organizations and associations thereof recipients of the aid would be in a more favourable situation than other operators in other Member States not receiving the same aid.

Indeed, if the aid under consideration were given, the members of the said organizations would not have to bear expenditure they otherwise would have had to.

V

During the 1990/91 marketing year, Italian olive oil production was 148 000 tonnes, that of the Community 994 000 tonnes. In that period, imports of olive oil into Italy from the other Member States amounted to 299 000 tonnes and imports from third countries to 105 700 tonnes. Exports of olive oil from Italy to the other Member States stood at 48 000 tonnes and exports to third countries at 66 500 tonnes.

On the world market the European Community is the leading olive oil producer and also the largest consumer.

World production stands at 1 450 000 tonnes. Consumption in the Community is 1 210 000 tonnes and world consumption is 1 683 000 tonnes. In other words, trade in this product takes place predominantly within the Community.

Hence, a special advantage, like the one under consideration, given to the operators of one of the major producing countries such as Italy, is likely to have a substantial impact on intra-Community trade.

VI

1. Articles 92, 93 and 94 of the EEC Treaty apply, by virtue of Article 33 of Regulation (EEC) No 136/66, to the production of and trade in olive oil.

The aid in question gives a special advantage ot the olive oil producer organizations and associations thereof and to their members. It 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.

[1] OJ No L 132, 23. 5. 1990, p. 5.
[2] OJ No L 130, 25. 5. 1991, p. 67.

The aid could finance activities which could influence the market. The members receiving the aid could use it to reduce their overhead costs in respect of the various activities they engage in such as harvesting, storage, processing and marketing, and consequently to reinforce their commercial position in Italy and elsewhere in the Community. The aid would make the members of the recipient bodies more competitive on the markets of the other Member States and is therefore likely to affect trade between Member States.

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

2. The exceptions to such incompatibility, set out in Article 92 (2), are clarly not applicable to the aid in question. Those set out in Article 93 (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 necssary 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 rise to 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 EEC 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 common interest.

Neither is the measure aimed at remedying a serious disturbance 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 for the beneficiaries of the aid since, once the supply of aid stopped, the situation of the beneficiaries would be structurally 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 EEC Treaty.

3. Moreover, it is considered that the aid in question involves a product subject to a market organization, and there are limitations on Member State's powers to intervene in the operation of market organizations comprising a system of common prices and a system of aid to producer groups, this being an area where the Community now has exclusive powers.

Martket organizations are to be considered as complete and comprehensive systems, leaving Member States no power to take measures which could influence, in this case, the market in olive oil or to grant additional aid to producer groups.

The grating of the aid in question ignores the conditions laid down by the market organization in oils and fats which, as far as this measure is concerned, is to be considered as a set of rules which allow such aid to be granted only under the conditions laid down.

The aid in question must therefore be considered as infringing Community rules.

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

5. The aid must consequently be considered incompatible with the common market and may not be granted,

HAS ADOPTED THIS DECISION :

*Article 1*

Aid amounting to Lit 6 billion for olive oil producer organizations and associations thereof envisaged by the CIPE (Joint Ministerial Committee for Economic Planning) of 4 December 1990 and provided for in the national programme of AIMA (the Italian intervention agency) of 28 October 1991 is incompatible with the common market within the meaning of Article 92 of the EEC Treaty in so far as it exceeds the authorized ceiling for Italy (for the 1990/91 marketing year) pursuant to Article 8 of Regulation (EEC) No 3061/84. Accordingly, the aid may be granted only up to ECU 0,047 million (Lit 82 788 150).

*Article 2*

Italy shall inform the Commission within two months 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, 24 February 1993.

*For the Commission*

René STEICHEN

*Member of the Commission*