II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 14 February 1995

concerning aid granted by the Region of Sardinia (Italy) in the fisheries sector (temporary withdrawal of vessels)

(Only the Italian text is authentic)

(Text with EEA relevance)

(95/195/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

After giving notice to the parties concerned, pursuant to the abovementioned Article, to submit their comments and having regard to those comments,

Having regard to the following:

I

On 24 September 1991, the Italian authorities notified the Commission of Regional Law No 25 of 22 July 1991 (Region of Sardinia) concerning the fisheries sector and containing provisions, *inter alia*, on aid to be granted for the temporary withdrawal of fishing vessels. The objectives of the Law were the creation of conditions permitting biological recovery in the waters around Sardinia and the adjustment of the capacity of the local fishing fleet to available resources. The fishing effort was to be reduced, in particular, through the cessation of fishing activities during certain periods and the payment of compensatory premiums to owners. The budget for the abovementioned measures for 1991, 1992 and 1993 totalled Lit 57,150 billion.

II

The Commission examined this aspect of the Regional Law in the light of the relevant provisions of Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector [1], as amended by Regulation (EEC) No 3944/90 [2].

Under the Law, the aid for the temporary withdrawal of vessels was granted on the basis of the following parameters and criteria for vessels which it was found difficult to classify under Community rules: vessels less than ten years old with a gross registered tonnage of more than 30 tonnes received a daily premium exceeding the amounts laid down in Annex IV to Regulation (EEC) No 4028/86 (from 30 to 70 grt: Lit 400 000; 70 to 100 grt: Lit 600 000; more than 100 grt: Lit 900 000). Furthermore, for aid for temporary withdrawal to be considered compatible with the common market, it was necessary for the premium to be paid, pursuant to Article 23 (2) (a) of Regulation (EEC) No 4028/86, solely in respect of vessels measuring not less than 12 metres in length between perpendiculars. The Law in question, however, provided for the payment of premiums for vessels of less than 4 grt (which are generally less than 12 metres in length) which meant that, in principle, the measure was not in accordance with the aforementioned provision of Regulation (EEC) No 4029/86. Consequently, on 14 October 1991,

[1] OJ No L 376, 31. 12. 1986, p. 7.
[2] OJ No L 380, 31. 12. 1990, p. 1.

the Commission requested information on the conditions for granting the premium from the Italian authorities. The Italian Government replied on 12 December 1991 regarding the justification for paying the aid for vessels less than 12 metres long, stating that these vessels were responsible for overfishing in coastal waters vital for the reproduction and growth of resources. No argument was put forward, however, in response to the Commission's other objections, the Italian Government stating only that the measures in question fulfilled a social need and that the level of the premium had to be sufficient to compensate for the technical laying-up of the vessels. In view of the lack of information on which to establish that the measures in question were in accordance with the relevant Community rules, the Commission decided to open the procedure laid down in Article 93 (2) of the Treaty with regard to the aid and by letter of 15 January 1992 gave notice to the Italian Government to submit its comments and to amend the Regional Law in question to bring it into line with Community rules.

III

On 18 February 1992, the Italian Government submitted its comments under the procedure, saying that the aid was an exceptional measure with a purely local impact and that, consequently, the effect on competition was very limited. The Italian authorities recognized that the premiums for temporary withdrawal exceeded the amounts laid down in Community rules and that they did not comply with the condition laid down in Article 23 of Regulation (EEC) No 4028/86. They stressed, however, that the rates of premium laid down in the Regional Law were maximum levels and that Article 4 of the Law provided for the application of the rate considered most appropriate by the authorities. They also pointed out that, because of the structure of the regional fleet (in particular the age of vesels and the composition of the fleet), the number of undertakings benefiting from the scheme was extremely small. In addition, almost all Sardinian vessels were more than ten years old. The Italian authority made no mention of any intention to amend the Law as requested by the Commission in its letter of 15 january 1992.

By letter dated 9 September 1992, the Italian authorities notified the Commission, under the same procedure, of a Regional Law of 24 July 1992 amending the Regional Law under examination in order, according to the explanatory memorandum, to bring it into line with the relevant Community rules. The draft amendment, however, contained no provision on the length of vessels or on the level of premiums for temporary withdrawal. The Commission pointed this out to the Italian authorities who, by letter dated 28 September 1993, submitted the text of a bill bringing the 1991 Regional Law into line with Community rules. By letter dated 17 November 1993, the Commission confirmed to the Italian authorities that the position was now in order and that there was no longer any incompatibility with Community rules. The Commission asked the Italian authorities whether, given that Regional Law No 25 had been published in 1991, any aid had been paid for temporary withdrawal before the abovementioned amendment. It also asked whether the legislative amendment was yet in force. By letter received by the Commission on 21 March 1994, the Italian authorities confirmed that aid had been paid during 1991, 1992 and 1993 and that, given the criteria applicable during that period (which were those laid down in Regional Law No 25 of 1991), the amounts laid down in Community rules had been exceeded. The amounts had, however, been exceeded by a small margin, namely around Lit 157 million per year solely in 1991 and 1992, corresponding to 0,8 % of the annual total provided for by Regional Law No 25 of 1991. The Italian authorities also informed the Commission in the same letter of the adoption of the Law amending Regional Law No 25 of 1991 to bring it into line with Community rules as demanded in the Commission's letter of 17 November 1993.

By letter dated 21 June 1994, received by the Commission on 27 June 1994, the Italian Government sent the Commission the text of the Regional Law on the temporary withdrawal of fishing vessels adopted on 29 April 1994 and published in the *Official Journal of the Region of Sardinia* of 7 May 1994, bringing Regional Law No 25 of 1991 into line with Community rules. The Law obliged the regional authorities to apply the rates laid down in Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products [1] for all the measures provided for in the Regulation.

IV

The situation created by the adoption of Regional Law No 25 of 1991 described above must be examined in the light of all the structural rules applicable under the common fisheries policy. It should be pointed out that measures should promote the objective of achieving balance between available resources and the fishing effort. The granting of national aid must be justified in the light of this objective of the common fisheries policy and the conditions laid down in the relevant Community rules. The aid in question is likely to affect trade within the Community since the products covered by the aid are

[1] OJ No L 346, 31. 12. 1993, p. 1.

traded within the Community. Furthermore, the conditions laid down by the relevant Community rules applicable during the period in question — namely Regulation (EEC) No 4028/86 — concerning the maximum level of laying-up premiums, calculated on the basis of the tonnage and length of the vessels, were not complied with during the period that Regional Law No 25 of 1991 was in force and actually applied. This situation was not changed by the adoption, during that period, of an amendment to that Law to bring the regional legal framework into line with the requirements of Community rules. The measures provided for in Regional Law No 25 of 1991 concerning the temporary withdrawal of fishing vessels as described above therefore constitute illegal aid.

V

The exceptions to the general incompatibility of the aid set out in Article 92 (2) of the Treaty do not apply in this case in view of the fact that the scheme introduced by Regional Law No 25 of 1991, as regards the aspects considered in this case, are not within the scope of the said paragraph.

The same applies with regard to Article 92 (3) of the Treaty.

The Italian Government has supplied no information indicating that the scheme introduced by the Law falls within one of the categories eligible for one of the derogations provided for in Article 92 (3). The measures in question are covered by a Community legal framework which lays down precise parameters for, in particular, the amounts that can be paid and any financial assistance which is not in accordance with those parameters strengthens the position of certain operators compared with their competitors in the Community. The scheme provided for in Regional Law No 25 of 1991 therefore disturbs or threatens to disturb competition within the meaning of Article 92 (1) of the Treaty and thus none of the derogations provided for in Article 92 (2) and (3) of the Treaty apply to the scheme.

VI

In conclusion, the aid of Lit 314 million granted under the conditions described above is illegal, the Italian Government having failed to fulfil its obligations under Article 93 (3) of the Treaty. Furthermore, the aid is incompatible with the common market because it does not meet the conditions which are required to benefit from one of the derogations provided for in Article 92 (3) of the Treaty. The Commission may have recourse to a possibility made available to it by Article 93 (2) of the Treaty and the Court of Justice in its judgment of 12 July 1973 in Case 70/72 [1], confirmed by its judgment of 24 February 1987 in Case 310/85 [2], and require Member States to recover from beneficiaries aid which is considered incompatible with the common market.

In this case, the Commission has decided not to demand recovery of the aid owing to the time elapsing since the scheme was brought to the attention of the Commission and the publication of this Decision which would be difficult to justify in the light of the judgments of the Court of Justice concerning procedural time limits [3],

HAS ADOPTED THIS DECISION:

Article 1

The aid amounting to Lit 314 million granted by the Region of Sardinia in 1991 and 1992 under Regional Law No 25 of 22 July 1991 concerning the temporary withdrawal of fishing vessels is hereby declared illegal and incompatible with the common market.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 14 February 1995.

For the Commission

Emma BONINO

Member of the Commission

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[1] *Commission* v. *Germany*, [1973] ECR 813.
[2] *Deufil* v. *Commission*, [1987] ECR 901.
[3] Order of the Court of 11 July 1979 in Case 59/79 *(Fédération Nationale des Producteurs de Vins de Table* v. *Commission)*, [1979] ECR 2425 and its judgment of 24 November 1987 in Case 223/85, *RSV* v. *Commission*, [1987] ECR 4617.