II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 February 1996

on aid proposal by Friuli-Venezia-Giulia (Italy) for the economic development of mountain areas

(Only the Italian text is authentic)

(Text with EEA relevance)

(96/530/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,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products [1], as last amended by Regulation (EC) No 1538/95 [2], and in particular Article 23 thereof,

Having given notice to the parties concerned, pursuant to the first subparagraph of Article 93 (2) to submit their comments and having regard to those comments,

Whereas:

I

1. By letter dated 6 July 1993, recorded as received on 27 July 1993, the Italian Permanent Representative to the European Communities notified the Commission, in accordance with Article 93 (3) of the EC Treaty, of Regional Law (Friuli-Venezia-Giulia) No 496/93 on aid for the economic development of mountain regions. The Italian authorities provided further information to the Commission by letter dated 9 December 1993, recorded as received on 17 December 1993.

Since assessment of the provisions of the draft law in question falls within the powers of several Commission departments, the case-file was divided into two: Aid No 465/A/93 and Aid No 465/B/93. Aid No 465/B/93 refers to the measures provided for under Articles 10, 11, 12 and 15 of the draft law.

By letter SG(94) D/2424 of 21 February 1994, the Commission informed the Italian Government of its decision to initiate the procedure provided for in Article 93 (2) of the Treaty with regard to the measures provided for in Article 11 of Regional Law No 496/93 which appeared to constitute operating aid not qualifying for any of the derogations laid down in Article 92 of the Treaty and consequently to be regarded as incompatible with the common market.

The Commission, on the other hand, noted the Italian authorities' undertaking to abolish the aids under Articles 10 and 15 of the draft law. The Commission raised no objection to Article 12.

[1] OJ No L 148, 28. 6. 1968, p. 13.
[2] OJ No L 148, 30. 6. 1995, p. 17.

The Commission gave notice to Italy to submit its comments under the above procedure.

The Commission, through a notice in the *Official Journal of the European Communities*, also invited the other Member States and interested parties to submit their comments [1].

Comments were submitted only by the Italian Government, by letters dated 30 September 1994, recorded as received on 5 October 1994, and 20 December 1994, recorded as received on 27 December 1994, and by fax dated 11 May 1995, recorded as received on 15 May 1995.

2. The measures in question involve the award of extraordinary non-recoverable grants to milk and milk products cooperatives located in mountain areas in the municipalities listed in the Annex to Council Directive (EEC) No 75/273/EEC of 28 April 1975, with a view to meeting their liabilities in the 1992 financial year.

The expenditure accounting for these liabilities must relate to the years 1990, 1991 or 1992 and may not have been for the purchase of raw materials.

The cooperatives must submit a financial reconstruction plan and a declaration certifying the accuracy of the balance sheet submitted and cannot have received other aid.

3. The regional authorities gave assurances that the proposed aid would not be granted before the final decision of the Commission.

II

1. As part of the procedure, the Italian authorities gave the following explanations:

The budget amounts to lit 3 billion (about ECU 1,41 million). The aid is planned for a year and is non-cumulative. Aid would be provided on a one-off basis and would compensate fully any losses arising from expenditure on modernizing or restructuring the company or on marketing its products. It was explained that management losses originating in various ways were involved, for example those caused by credit not immediately due or quite simply as a result of current account debts due to insufficient capital.

2. The Italian authorities objected in the first place that the measures for which the Commission had initiated the procedure provided for in Article 93 (2) of the EC Treaty did not distort competition since they did not alter the workings of the common agricultural policy, did not reduce in any way the processing and marketing costs incurred by the cooperatives concerned and did not, moreover, increase productivity.

3. The Italian authorities contended that the proposed measures cannot be considered operating aid, since they are intended to reestablish the finances of cooperatives hampered by undercapitalization or debts not immediately due and to restore their operational and competitive standing.

4. The Italian authorities added that it had introduced the measures in question for socio-economic reasons, for example the restructuring and development of the cooperatives in question and, more importantly, because of the failure to grant regional aids for the transport of milk referred to in Article 8 (1) (1) of Regional Law No 16/67 notified on 24 March 1967, since the Commission had not delivered an opinion on the common market compatibility of the measures provided for in that Law.

Appropriate measures pursuant to Article 93 (1) of the Treaty (Aid No E 17/94) were applied to the aid referred to in the abovementioned Article 8 (1) (1). Paragraph 1 of the said Article had in effect been repealed by Regional Law No 36/92.

The Italian authorities contended that, had their debts not been met, the cooperatives would have gone bankrupt, with serious repercussions for that part of the region where the economy was already weak.

The Italian authorities concluded that the aid in question could not alter the conditions of trade to an extent contrary to the common interest and was therefore not incomaptible with the common market.

III

1. Article 23 of Regulation (EEC) No 804/68 on the common organization of the market in milk and milk products applies Articles 92 to 94 of the Treaty to the production and marketing of the products referred to in Article 1, save as otherwise provided in the Regulation.

2. Article 92 (1) of the Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, shall, in so far as it affects trade between Member States, be incompatible with the common market.

[1] OJ No C 155, 7. 6. 1994, p. 5.

The measures in question constitute aid granted through State resources. They are designed to ensure the survival and production of beneficiary undertakings which, without this aid, would have been forced either to withdraw from the market or else become more efficient.

They accordingly have the effect of improving the economic standing of the beneficiary undertakings *vis-à-vis* their competitors who do not receive this assistance. As a result, they distort or threaten to distort competition as described above.

Given the value of trade in milk and milk products (in 1993: Italian exports to the EC where worth ECU 405 660 000; Italian imports from the EC to totalled ECU 2 057 650 000; production in the sector in question: ECU 3 675 000 000 [1], including ECU 81 900 000 in the Friuli-Venezia Giulia region), it appears that the aids represent a quite significant share of the value of the quantities produced in the region and they are likely to affect trade between the Member States by favouring national production to the detriment of imports from the other Member States.

In this regard it should be emphasized that even if the amount of aid or the size of a beneficiary undertaking is relatively small, this does not automatically rule out the possibility of trade between the Member States being affected.

In the light of the foregoing, the aids in question are deemed State aids within the meaning of Article 92 (1) of the Treaty.

The Commission also feels that the arguments put forward by the Italian authorities, namely that the measures did not in any way reduce the costs to the cooperatives for processing and marketing and did not increase productivity, are irrelevant, since it has been concluded above that the aids come under Article 92 (1) of the Treaty.

3. The principle of incompatibility laid down in Articles 92 (1) does allow for exceptions, however.

IV

1. The derogations from the incompatibility rule laid down in Article 92 (2) obviously do not apply in this instance, nor have they been pleaded by the Italian authorities.

2. In the case of the derogations provided for in Article 92 (3), they must be evaluated in terms of their Community interest and not in terms of their interest to particular sectors of the national economy.

Those derogations must be interpreted strictly when any regional or sectoral aid programmes are being scrutinized or in any case where a general aid scheme is applied.

The derogations may be granted in particular only where the Commission has established that the aid is needed to achieve one of the objectives in question. To grant a derogation in the case of an aid not offering such a guarantee would allow trade between the Member States to be affected and would injustifiably distort competition to the detriment of the Community interest while at the same time unduly favouring the operators of certain Member States.

3. This aid offers no such guarantee. The Italian Government has supplied no proof that the aid in question fulfils the conditions required for the application of one of the derogations provided for in Article 92 (3), nor has the Commission found any.

4. The measures do not promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) since, by virtue of their possible effects on trade, the aids are contrary to the common interest.

Neither are they measures to remedy a serious disturbance in the economy of a Member State within the meaning of the same provision.

5. The Commission's remarks and conclusions on the comments submited by the Italian authorities are as follows:

As regards the grounds put forward, namely that without the aids the undertakings would be forced into bankruptcy, it should be remembered that market forces can result in the disappearance of uncompetitive undertakings, those in economically weak regions being no exception.

6. As the Commission indicated when it initiated the procedure provided for under Article 93 (2) of the Treaty, the aids can be deemed compatible with the common market only under the following, strictly defined conditions:

[1] Eurostat Economic accounts for agriculture and forestry, OPOCE, 1995.

— the aid must relate to the servicing of loans contracted for investments already made,

— the total subsidy equivalent of any aids granted when the loans were contracted plus the aid in question may not exceed the rates generally allowed by the Commission — that is to say, for investments in processing and marketing, 55 % for projects complying with sectoral programmes or one of the objectives in Article 1 of Regulation (EEC) No 866/90, and 35 % for other projects which are not otherwise excluded by the selection criteria laid down in point 2 of the Annex to Decision 90/342/EEC, applied by analogy for assessing aid in the light of Article 92 of the Treaty,

— the aids must be consecutive on adjustments to new loan rates due to changes in the interest rate or must relate to holdings offering viability guarantees, especially in cases where the servicing costs of existing loans are such that the holdings are at risk, or may possibily fail.

No condition has been imposed by the Italian authorities as to the origin of the debts of the cooperatives involved. Furthermore, the liabilities are covered in full and there is no evidence that the aids serve to cover the servicing costs of current loans contracted for investments.

7. In addition, the proposed measures do not comply with the Community guidelines on State aid for rescuing and restructuring firms in difficulty [1].

The said guidelines were adopted by the Commission after the procedure provided for in the Article 93 (2) of the Treaty was initiated in 1994, and they define the general conduct of aid for rescuing and restructuring firms in all sectors.

In the agricultural sector, the Member State may, if it so wishes, and as an alternative to the special rules (which were applied at the time the procedure was opened since no alternative was then available), apply the general guidelines to the individual beneficiaries.

Under the guidelines, rescue aid must include aid to improve liquidity, in the form of loan guarantees or loans bearing normal commercial interest rates.

The guidelines also state that the *sine qua non* of all restructuring plans is that they must restore the long-term viability of the firm within a reasonable time scale and on the basis of realistic assumptions as to its future operating conditions. Consequently, restructuring aid must be linked to a viable restructuring or recovery programme submitted in all relevant detail to the Commission.

As none of the above conditions are met, the aids in question cannot be justified as aids to rescue or restructure ailing firms.

The aid measures provided for in Article 11 of Regional Law No 496 are thus deemed operating aid. They cannot improve in any lasting way the circumstances and structural position in which the beneficiary producers find themselves.

Contrary to what the Italian authorities have claimed, the discharging of debts without a link to earlier investment may constitute operating aid.

As regards the argument advanced by the Italian authorities that the measures in question do not distort competition since they do not change the workings of the common agricultural policy, the Commission notes that such distortion can occur even where there is no change in the workings of the policy. The Commission therefore considers the argument irrelevant in assessing the compatibility of the measures with the common market.

Consequently, the Commission notes that these measures, by virtue of their operational nature, do not qualify for the derogations laid down in Article 92 (3) (a) and (c) regarding aid to promote or facilitate the economic development of areas or the development of certain activities.

8. The Italian authorities provided new grounds to justify the proposed aids in its comments of 20 December 1994:

While the wording of Article 11 of the Law in question still allowed for debts of whatever origin to be met, which had also been maintained in the description sent on 6 July 1993, the 'Giunta regionale' declared at its meeting of 23 November 1994 that 'the losses (...) stem from unexpected expenditure by the cooperatives operating in the milk and milk products sector as a result of the failure to grant aid for the transport of milk as provided for in Article 8 (1) (1) of Regional Law No 16/1967 (...).'

[1] OJ No C 368, 23. 12. 1994, p. 12.

The Italian authorities contend that this Law was notified to the Commission in 1967, that the Commission had no observations to make on it and that it has remained inoperative ever since.

The meeting also stipulated that the application for aid should be accompanied by a declaration from the cooperative's legal representative, in lieu of an affidavit, to the effect that the losses resulted from the causes mentioned above. The legitimate interests of the beneficiaries were thereby satisfied.

The Commission also considered these new arguments. However, it should be noted that this is a new scheme, as the Italian authorities have acknowledged in the description. This new scheme must be judged in the light of current laws and circumstances Thus, even though the Commission had approved in the past a scheme of measures in favour of the same beneficiaires, such approval could not predetermine the decision on another (new) scheme notified whose measures — while retaining the same beneficiaries — differed from those approved under the earlier scheme.

Furthermore, even on the hypothesis that the Commission's acquiescence in the old scheme could prejudice the decision on the new one, which the Commission does not concede, the Commission notes that in the relevant measures [1] it identified aid for the transport of milk as 'operating aid, incompatible with the common market pursuant to Articles 92 and 93 of the Treaty'. Italy, therefore, even were its reasoning accepted, cannot properly invoke the earlier aid.

As regards the declaration as to the origin of the losses, the Italian Government has not provided, nor has the Commission found, any proof of a causal link between the lack of aid for transport on the one hand and the losses incurred by the cooperatives in question on the other.

The Italian Government has, moreover, failed to provide any assurances that the amount of money involved in discharging the debts of each beneficiary would not exceed in any case the grant aid that beneficiary would have received for the transport of milk, had it been granted at the time.

In view of the above, the grounds put forward by the Italian Government are not accepted by the Commission.

This aid cannot therefore qualify as an exception under Article 92 of the Treaty and must therefore be regarded as incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aids provided for in Article 11 of Regional Law No 496/93 are incompatible with the common market pursuant to Article 92 of the EC Treaty and may not be granted.

Article 2

The Italian authorities shall abolish the provision referred to in Article 1 within two months of the date of notification of this Decision.

Article 3

The Italian Government shall inform the Commission, within two months of notification of this Decision, of the measures it has taken to comply therewith.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 February 1996.

For the Commission

Franz FISCHLER

Member of the Commission

[1] Commission's letter to the Italian Government SG(94) D/1782 of 9 December 1994, p. 3.