II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 13 March 1996

on aid granted by the region of Liguria (Italy) for agricultural cooperatives

(Only the Italian text is authentic)

(96/559/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 234/68 of 27 February 1968 on the establishment of a common organization of the market in live trees and other plants, bulbs, roots and the like, cut flowers and ornamental foliage [1], as last amended by Regulation (EC) No 3290/94 [2] and in particular Article 11 thereof, as well as the corresponding provisions of the other regulations governing the common organization of the markets in agricultural products,

Having given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93 (2),

Whereas:

I

1. By letter dated 19 August 1993, recorded as received on 30 August 1993, the Italian Permanent Representative to the European Communities notified to the Commission in accordance with Article 93 (3) of the EC Treaty draft Law No 292/93 of Liguria (hereinafter referred to as 'draft Law No 292/93'), on aid for agricultural cooperatives. In reply to the Commission's requests for further details of 16 September 1993 and 29 November 1993, the Italian authorities sent additional information to the Commission by letters dated 22 October 1993 and 13 January 1994.

By letter of 22 March 1994, the Commission informed the Italian Government of its decision to initiate the procedure under Article 93 (2) of the Treaty with regard to the special subsidies provided for in Article 1 of draft Law No 292/93, which it considered to constitute operating aid which could not qualify for the derogations in Article 92 of the Treaty and which had, therefore, to be deemed incompatible with the common market.

In accordance with the procedure, the Commission gave notice to the Italian Government to submit its comments. Through a publication in the *Official Journal of the European Communities* [3], the Commission also gave notice to the other Member States and interested parties to submit their comments.

The Italian Government submitted its comments by telex on 6 May 1994, recorded as received on 10 May 1994, and on 12 December 1994, recorded as received on 13 December 1994.

2. Article 1 of draft Law No 292/93 provides for the award of aid to cooperatives to meet their debts.

[1] OJ No L 55, 2. 3. 1968, p. 1.
[2] OJ No L 349, 31. 12. 1994, p. 105.
[3] OJ No C 159, 10. 6. 1994, p. 3.

The aid is to reduce liabilities resulting from:

(a) non-subsidized bank loans taken out in the past to:

— finance investments such as the construction of buildings and the purchase of equipment and machinery,

— cover the cooperatives' start-up costs,

— cover the cooperatives' administrative and operating costs;

(Article 1 (2) (a))

(b) reduced-rate land improvement loans taken out between 1 January 1981 and 31 December 1984 (a period of particularly high interest rates in Italy) for investments;

(Article 1 (2) (b))

(c) liabilities incurred by members of the cooperative for products delivered but not yet paid for.

(Article 1 (2) (c))

The beneficiaries are any cooperatives harvesting, processing and marketing agricultural products (mostly floricultural products) which submit a restructuring plan. The plan — which must describe the cooperatives' economic standing, set out the solutions it proposes and include a financial commitment on the part of its members to the cost of restructuring — was submitted to the public authorities for approval.

The total aid amounts to Lit 2,6 billion. The aid may, in cases 2 (a) and 2 (c) above, cover up to 50 % of the liabilities in question. In the case of 2 (b), the subsidies correspond to an adjustment in the subsidized rate of interest on the land improvement loans, which may not exceed the difference between the interest rate fixed when the loans were taken out and the current subsidized interest rate.

In their letter of 13 January 1994, the Italian authorities said in relation to the measures under Article 1 (2) (a) of draft Law 292/93 that 'the aid rates ... comply with the limits laid down in Regulation (EEC) No 866/90' and that the recipient cooperatives 'have undertaken investments falling within the objectives of Article 1 of Regulation (EEC) No 866/90'.

3. Article 8 of the draft Law 292/93 provides for its entry into force only after a favourable decision by the Commission as to its compatibility under Articles 92 and 93 of the Treaty.

II

Under the Article 93 (2) procedure, Italy provided the following clarifications:

The Italian authorities declared that the aid component intended to reduce the liabilities resulting from bank loans to fund investments (first indent of 2 (a)) 'meets the conditions regarding sectoral limits laid down in point 2 of the Annex to Commission Decision 90/342/EEC and comply with the objectives of Article 1 of Regulation (EEC) No 866/90'.

Moreover, 'any further aggravation of the cooperatives' financial position would entail their bankruptcy, which would have an adverse effect on employment'.

As regards the other proposed aids, the Italian authorities said that the aid would be a special, one-off payment and that, at Lit 2,5 billion, its scale was truly modest and could not distort competition.

Furthermore, the Italian authorities said that the market in flowers would not be distorted by the activities of the cooperatives and that the activities would be important for environmental and scenic reasons.

III

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.

The aid in question is intended to ensure the survival and operation of the recipient cooperatives which, without this aid, would be eliminated from the market or else obliged to improve their economic efficiency.

It therefore improves the economic standing of the beneficiary undertakings *vis-à-vis* their competitors who do not receive this assistance. It accordingly distorts or threatens to distort competition as described above.

Given the value of trade in live plants and flower products (exports from Italy to the rest of the Community in 1993: ECU 179,59 million; imports from the rest of the Community to Italy: ECU 303,07 million [1]), the aid is likely to affect trade between the Member States by encouraging national production, processing and marketing to the detriment of operators in the other Member States.

[1] Eurostat-Comext.

In this regard it should be noted that neither the arguments adduced by the Italian Government nor the relatively small scale of the beneficiary undertaking nor the relatively low level of the aid granted, automatically rules out the possibility of adverse effects on trade between Member States.

In view of the foregoing, the measures in question are State aid fulfilling the criteria laid down in Article 92 (1) of the Treaty.

IV

1. There are, however, exceptions to the principle of incompatibility laid down in Article 92 (1) of the Treaty.

2. The exceptions on incompatibility under Article 92 (2) obviously do not apply and have not been invoked by the Italian authorities.

3. The exceptions under Article 92 (3) must be interpreted strictly when scrutinizing any regional or sectoral aid programme or any individual application of general aid schemes.

   These exceptions may be allowed in particular only where the Commission can establish that the aid is needed to achieve one of the objectives in question. To allow an exception 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.

4. In the case in point, the aid offers no such guarantee. The Italian Government has not supplied, nor has the Commission found, any proof that the aid in question fulfils the conditions required for the application of any of the derogations provided for in Article 92 (3) of the Treaty.

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

6. The Commission would state the following in reply to the comments made by the Italian Government:

   As regards the argument put forward that the cooperatives would have to declare bankruptcy without this aid, it is normal that the forces at work in a market economy may bring about the demise of uncompetitive undertakings.

   However, as the Commission pointed out when opening the procedure under Article 93 (2) of the Treaty, the aid may be deemed compatible with the common market only under the following, highly specific conditions:

   (a) the aid must relate to financial burdens for loans taken out to fund investments already made;

   (b) the cumulative subsidy equivalent of any aid granted when the loans were taken out must not exceed the levels generally accepted by the Commission, namely, in the case of investments in processing or marketing, 55 % for projects complying with the sectoral plans or one of the objectives of Article 1 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products [1], as last amended by Regulation (EC) No 2843/94 [2], and 35 % for other projects, without being excluded by the selection criteria referred to in point 2 of the Annex to Commission Decision 90/342/EEC [3], applied by analogy for assessing aid pursuant to Article 92 of the Treaty;

   (c) the aid in question must be linked to readjustments in the rates of new loans taken out in response to changes in interest rates or must relate to agricultural holdings submitting viability guarantees, in particular in cases where the financial burdens resulting from existing loans are such that the holdings may be endangered and possibly go bankrupt.

   The purpose of these criteria is to ensure that the aid is granted only to a cooperative which, although profitable in principle, has encountered serious cash-flow problems as a result of specific and unforeseeable circumstances which cannot be attributed to the manager of such cooperative, following an investment designed permanently to improve agricultural structures.

[1] OJ No L 91, 6. 4. 1990, p. 1.
[2] OJ No L 302, 25. 11. 1994, p. 1.
[3] OJ No L 163, 29. 6. 1990, p. 71.

As regards the various measures provided for in Article 1 of draft Law No 292/93, the legislative text notified by the Italian authorities and the additional information and comments sent subsequently do not contain any evidence that all the criteria listed above have been met in all cases.

As regards the source of the financial instability affecting the recipient cooperatives, under the criteria set out in (a) above, only the cost of loans undertaken for financing investments are taken into account. On this basis the aid measures described under the second and third indents of I.2 (a), and I.2 (c) cannot be deemed compatible with the Commission's consistent practice on aid for cooperatives in difficulty.

While the aid measures described in the first indent of I.2 (a) and in I.2 (b) are linked to investments satisfying condition (a) above, they do not, however, comply with the relevant Community rules on the basis of the criteria set out in point (b).

Although the Italian authorities have declared that the objectives of Article 1 of Regulation (EEC) No 866/90 and the sectoral restrictions have been complied with — an affirmation that was never, incidentally, included as a condition for eligibility for the aid in draft Law No 292/93 itself — the Commission notes that the information enabling it to calculate the subsidy equivalent was never supplied to it, despite its requests for further information and even though this had been the subject of the decision to initiate the procedure provided for in Article 93 (2) of the Treaty.

Futhermore, as regards the stipulation on viability set out in (c) above, the Italian authorities have not provided, nor has the Commission found, any parameter or other economic criterion on which to establish the viability of the recipient cooperatives.

Viability is not, moreover, a *sine qua non* for the grant of aid but is solely one of several 'priority criteria for granting the aid' under Article 4 of the draft Law.

In addition, the Commission had noted in its decision initiating the procedure that the cooperatives' difficulties must be due to events beyond their control. The information received from the Italian authorities does not, on the other hand, rule out the possibility that the proposed aid seeks, at least in part, to defray expenditure arising from the unprofitable management of the cooperatives.

As the aid measures provided for in Article 1 of the draft Law No 292/93 do not satisfy all the conditions described under (a), (b) and (c), they cannot have any lasting effect on the development of the sector concerned and are therefore incompatible with the Commission's consistent practice.

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 guidelines in question were adopted by the Commission after the procedure provided for in Article 93 (2) of the Treaty was initiated in 1994; they define the general handling of aid for rescuing and restructuring aid in all sectors.

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

Under the guidelines, rescue aid must consist, *inter alia*, of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates.

The guidelines also state: '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/recovery programme submitted in all relevant detail to the Commission'.

As none of the above conditions have been met, the aid in question cannot be justified as aid designed to rescue or restructure ailing firms.

Consequently, the Commission notes that these measures do not qualify for the derogations provided for in points (a) and (c) of Article 92 (3) regarding aid to promote the economic development of areas of certain economic activities.

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

8. As regards the activities of the cooperatives, their important positive impact on the environment and their major role in the scenic landscape of Liguria, the Italian authorities, in putting forward those considerations, have supplied no information as to whether the purpose of the aid was (first and foremost) to protect the environment, and if so, to what extent.

   The Commission cannot therefore accept the justifications put forward by the Italian Government.

9. In view of the foregoing, the aid cannot qualify for any of the derogations provided for in Article 92 of the Treaty and are to be considered incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid provided for in Article 1 of draft Regional Law (Liguria) No 292/93 is incompatible with the common market under Article 92 of the EC Treaty and shall not be granted.

Article 2

Italy is required to abolish the provision referred to in Article 1 within two months of the date of notification of this Decision.

Article 3

Italy shall inform the Commission within two months of the date of notification of this Decision, of the measures it has taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 March 1996.

For the Commission

Franz FISCHLER

Member of the Commission