COMMISSION

COMMISSION DECISION

of 17 June 1998

on aid measures for farming under Laws Nos 44/89 and 57/92 of the Region of Lazio (Italy)

(notified under document number C(1998) 1893)

(Only the Italian text is authentic)

(Text with EEA relevance)

(1999/233/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 given notice to the parties concerned to submit their comments in accordance with the first subparagraph of Article 93(2) [1],

Whereas:

I

(1) By letter of 11 February 1993, Italy's Permanent Representative to the European Communities notified the Commission, pursuant to Article 93(3) of the Treaty, of a draft Law of the Region of Lazio providing for measures in favour of agricultural production.

The notification was recorded under aid No 106/93.

The Italian authorities provided further information by letter of 8 July 1993, and telex of 30 September 1994.

(2) It transpired during the examination of the measures in question that the text, notified as a draft, had come into force as Lazio Regional Law No 57/92, amending Law No 44/89, which had never been notified pursuant to Article 93(3). The provisions of both these instruments were then registered as non-notified aid under reference NN 90/93.

(3) By letter of 21 March 1995, the Commission notified the Italian Government of its decision to initiate the procedure provided for in Article 93(2) of the Treaty with regard to the measures concerned in favour of agricultural crops.

The Commission gave the Italian Government notice under the procedure to submit its comments.

The Commission also gave notice to the other Member States and to other parties concerned to submit their comments, by publishing a notice in the *Official Journal of the European Communities* [2].

(4) The Italian authorities submitted their comments by fax of 11 May 1995, by letter of 15 December 1995, and, in response to the Commission's telex of 22 July 1996, by letter of 21 August 1996. No other comments were submitted.

II

(5) The measures in respect of which the Commission initiated the Article 93(2) procedure consist of subsidised loans which the Region of Lazio grants for the purchase of agricultural land, where such purchase is

[1] OJ C 267, 14. 10. 1995, p. 9.

[2] OJ C 267, 14. 10. 1995, p. 9.

likely to rationalise the distribution of land-ownership among persons actually working the land (either individually or in partnership), together with reduced-interest loans to cooperatives and groups of cooperatives purchasing land for the purpose of extending or constructing premises for the processing, packaging and marketing of agricultural products from the holdings of the partners.

Differing rates are applied, depending on the location of the land being purchased (mountain areas: 30 % of the reference rate; less-favoured areas: 40 %; other areas: 60 %).

The reference rate for land improvement loans is set every two months by the Ministry of Agriculture.

(6) The Commission, in its letter of notice, considered that, when assistance such as that provided for in Law No 44/89 is granted at the level of primary production, the rates applied must not exceed the maximum rates set by the Commission, namely 35 % and 75 % in mountain areas and less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas [1], repealed and replaced by Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures [2].

Where the aid is granted to firms processing or marketing agricultural products in regions not covered by Objective 1, the rate must not exceed:

— 55 % for projects included in an operational programme or satisfying at least one of the criteria in Article 1 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products [3], repealed and replaced by Council Regulation (EC) No 951/97 of 20 May 1997 on improving the processing and marketing conditions for agricultural products [4];

— 35 % for other projects.

Furthermore, the aid must comply with the sectoral restrictions laid down in the selection criteria set out in point 2 of the Annex to Commission Decision 90/342/EEC on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products [5] used in the framework of Regulation (EEC) No 866/90 mentioned above. In 1994 these criteria were replaced by those contained in Commission Communication 94/C 189/04 [6].

(7) The Commission initiated the Article 93(2) procedure in respect of the aid measures in question, noting that Regional Law No 44/89, as amended by Regional Law No 57/92, offers no guarantee of compliance with those sectoral restrictions and does not ensure compliance with the limits set by the Commission on the amount of aid to investment at the level of primary production of agricultural products or at processing and marketing level.

The amount of the interest subsidy (and therefore the net subsidy equivalent) varies, in each case where it is applied and throughout the duration of the loan, as a function of the reference rate set every two months by the Government for land improvement loans.

(8) As there is no legal provision in these instruments to prevent the degree of aid intensity from exceeding what is permissible, or to ensure compliance with sectoral restrictions at the level of processing, the Commission cannot regard the aid as compatible with the provisions of the Treaty governing State aid.

III

(9) Under Article 92(1) of the Treaty, any aid granted by a 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 is, in so far as it affects trade between Member States, incompatible with the common market.

The aid measures in question constitute aid within the meaning of Article 92(1) of the Treaty.

They place farming enterprises in a more favourable economic position than their competitors which do not receive assistance. They distort or threaten to distort competition, therefore, in the manner indicated.

(10) In the case under consideration the aid measures for the purchase of land may be granted for all agricultural products.

[1] OJ L 128, 19. 5. 1975, p. 1.
[2] OJ L 142, 2. 6. 1997, p. 1.
[3] OJ L 91, 6. 4. 1990, p. 1.
[4] OJ L 142, 2. 6. 1997, p. 22.
[5] OJ L 163, 29. 6. 1990, p. 71.
[6] OJ C 189, 12. 7. 1994, p. 5.

They may harm Community trade, for example, by hampering imports or facilitating exports, namely by disturbing from the outside the market's own regulating forces. There is no need for Community trade actually to be affected; the potential adverse effect is sufficient. Where the beneficiary of a subsidised loan finds himself competing with enterprises from other Member States there are grounds for believing that the Community market is affected.

As the aid measures in question may concern all the product sectors which are subject to a common organisation of the market, all aid is liable to affect trade between Member States and constitute in addition a distortion of competition in the common market.

(11) It should be underlined in this connection that even the relatively modest scale of an aid scheme or of the recipient enterprises does not automatically mean that trade between Member States will be unaffected.

In the light of the above, the aids in question are State aids which satisfy the terms of Article 92(1) of the Treaty.

The principle of incompatibility laid down in Article 92(1) of the Treaty is subject, however, to exceptions.

IV

(12) The exceptions to the incompatibility contained in Article 92(2) clearly do not apply, and the Italian authorities have not relied on them as a defence.

(13) The exceptions contained in Article 92(3) must be interpreted strictly when any regional or sectoral aid programme or individual case of application of a general aid scheme is scrutinised.

They may, in particular, be granted only where the Commission can establish that the aid is necessary for attaining one of the objectives listed in that Article. Granting an exception to an aid that is not designed to attain any of those objectives would amount to permitting trade between Member States to be affected, and to allowing distortions of competition that are unjustified in terms of the Community interest and, at the same time, authorising undue benefits for operators in certain Member States.

(14) In this case, the aid schemes are not designed to attain objectives of this nature. The Italian Government has not provided any evidence to show that they satisfy the requirements for the application of any of the exceptions contained in Article 92(3).

It does not constitute a measure to promote the execution of an important project of common European interest as defined in Article 92(3)(b) given that, in view of the impact it may have on trade, it is contrary to the common interest. Nor is it a measure for remedying a serious disturbance in the economy of the Member State concerned, as defined in that provision.

The aid was not notified as a regional aid within the meaning of Article 92(3)(a) of the Treaty. It does not seek to implement demonstrable investments or to create jobs, and, to that extent, does not contribute to the lasting development of the region. On the contrary, it has a sectoral objective in that it concerns the agricultural sector.

(15) In the case of the aid to facilitate the development of certain activities (sectoral aid), the Commission is prepared to consider it compatible with the common market under Article 92(3)(c), provided that it:

— does not adversely affect trading conditions to an extent contrary to the common interest, and

— facilitates the development of certain economic activities.

As it is aid within the meaning of Article 92(1), by definition it distorts or threatens to distort competition, but under Article 92(3)(c), it is automatically incompatible only where it does so to an extent contrary to the common interest. In any event, it is necessary that the aid be granted in accordance with the relevant Community rules.

(16) When evaluating aid of the type referred to in Article 93(3)(c) of the Treaty the Commission applies Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures [1], as replaced by Regulation (EC) No 950/97 [2], and Regulation (EEC) No 866/90 [3].

V

(17) As to the aid to promote investment in the processing and marketing of agricultural products referred to in the third paragraph of Article 3 of Regional Law No 44/89, the Italian authorities stated in their fax of 11 May 1995 that they had

[1] OJ L 218, 6. 8. 1991, p. 1.
[2] OJ L 142, 2. 6. 1997, p. 1.
[3] OJ L 91, 6. 4. 1990, p. 1.

never actually implemented it. By letter of 21 August 1996, they forwarded to the Commission Regional Law No 60 of 19 December 1995 repealing the third paragraph of Article 3 of Regional Law No 44/89.

In view of the above, the Commission concludes that there is no longer any need to initiate the Article 93(2) procedure notified in its letter of 21 March 1995 as regards investment in the processing and marketing of agricultural products.

(18) As to the investment in primary production, the Italian authorities said, in their letter of 15 December 1995, that the information provided removed all doubt concerning the grant of aid for the purchase of land to encourage direct ownership by the people working the land.

On this point, the Commission informed the Italian authorities, in its telex of 22 July 1996, that the draft Regional Law notified in their letter of 15 December 1995 (later approved and adopted as Regional Law No 60/95 referred to in the preceding point) did not entirely address the comments made by the Commission when initiating the procedure.

Concerning the aid for the purchase of land other than for the purpose of establishing facilities for the processing and marketing of agricultural products (provided for in paragraph 3 of Article 3 of Regional Law No 44/89, now repealed), the Commission, when initiating the procedure, said:

'[. . .] the wording of Regional Law No 44/89 [. . .] does not serve to enforce the limits set by the Commission on the intensity of aid to investment at the level of primary production [. . .].

Consequently, as there is no legal provision in these instruments to prevent the degree of aid intensity from exceeding what is permissible [. . .] the Commission cannot regard the aid as compatible with the provisions of the Treaty governing State aid. [. . .]'

The Italian authorities did not submit any comments in response to this letter from the Commission.

(19) The aid for the purchase of land granted before 9 June 1997 is to be studied in the light of Regulation (EEC) No 2328/91. As the measures concerned are still in force, they are to be examined also in the light of Regulation (EC) No 950/97, replacing Regulation (EEC) No 2328/91, which entered into force on 9 June 1997.

The measures fall within the scope of the first indent of Article 12(5) of Regulation (EEC) No 2328/91, which has been replaced by Article 12(2) of Regulation (EC) No 950/97.

Under the above provision together with Article 35 of Regulation (EEC) No 2328/91, as replaced by Article 37 of Regulation (EC) No 950/97, Articles 92, 93 and 94 of the Treaty apply to the aid measures in question.

(20) The Commission's established practice [1] is normally to authorise aid for the purchase of land, under the Regulation referred to in the preceding point, up to 35 % of eligible expenditure in the less-favoured areas.

In setting the maximum rate for aid for the purchase of land at 35 %, the Commission, in line with its established practice, applied by analogy the rate provided for in general for investments in farm holdings, referred to in the proposed relevant measures on aid granted by the Member States in the livestock and livestock-products sector (letter No 75/29416 of 19 September 1975).

(21) The Commission's established practice further concedes the possibility of increasing the rate of aid from 35 % to a maximum of 75 % for investment in less-favoured areas under Directive 75/268/EEC. In raising the rate to 75 %, the Commission considered that land in less-favoured areas, by its nature, is less productive than that in other areas. This principle, and hence the need for a higher rate in less-favoured areas, were acknowledged in so far as investment in primary production is concerned in Regulation (EEC) No 2328/91 and Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures [2].

(22) However, since it is uncertain, for the reasons set out above, whether the aid measures for the purchase of land provided for in Regional Law No 44/89 and Regional Law No 57/92 amending Regional Law No 44/89 comply with the maximum rates of 35 % and 75 % for the abovementioned less-favoured areas, the Commission has concluded, on the basis of the information available, that the measures concerned cannot be regarded as compatible with the rules of competition set out above,

[1] State aid Nos N 682/97 (OJ C 67, 3. 3. 1998), N 156/97 (OJ C 347, 18. 11. 1997), N 797/96 (OJ C 245, 12. 8. 1997) and N 940/96 (OJ C 231, 30. 7. 1997).
[2] OJ L 93, 30. 3. 1985, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The aid schemes provided for in Regional Law No 44/89 and Regional Law No 57/92 on aid for the purchase of land are unlawful since they have been granted in breach of the procedural rules contained in Article 93(3) of the Treaty.

Those aid schemes are, furthermore, incompatible with the common market under Article 92 of the Treaty and must be abolished where they fail to comply with the maximum rates of 35 % or 75 % in the less-favoured areas defined in Articles 21 to 25 of Regulation (EC) No 950/97.

Article 2

1. Italy shall recover the aid granted under Regional Law No 44/89 as amended by Law No 57/92 where it exceeds the maximum rates of 35 % or 75 %, respectively:

(a) in the mountainous and less-favoured areas within the meaning of Directive 75/268/EEC in the case of aid granted up to 9 June 1997;

(b) in the less-favoured areas defined in Articles 21 to 25 of Regulation (EC) No 950/97 in the case of aid granted after 9 June 1997.

2. Aid granted in excess of the abovementioned maximum rates shall be recovered within two months of the date of notification of this Decision. Recovery shall be made in accordance with the procedures and provisions of national law.

Amounts to be recovered shall bear interest from the date on which each aid is granted. Interest shall be calculated on the basis of the commercial rate, with reference to the rate used to calculate the subsidy equivalent for regional aids.

Article 3

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures it intends taking to comply with it, and within three months of its date of notification of the measures actually taken to comply with it.

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 June 1998.

For the Commission

Franz FISCHLER

Member of the Commission