COMMISSION

COMMISSION DECISION
of 30 March 1999
on the State aid which the Region of Sardinia (Italy) granted to the milk sector

(notified under document number C(1999) 902)

(Only the Italian text is authentic)

(2000/580/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision(s) cited above [1] and having regard to their comments,

Whereas:

I

PROCEDURE

(1) Following a complaint, by letter dated 24 January 1996, the Commission requested the Italian Government to notify the aid measures covered by Decision No 47/17 of the Regional Executive of the Sardinia Region of 24 October 1995 (hereinafter referred to as 'Decision No 47/17').

(2) By letter dated 1 March 1996, the Italian Permanent Representation to the European Union notified the measures in question.

(3) By letter dated 16 October 1996 the Commission informed Italy of its decision to initiate the procedure laid down in Article 93(2) of the EC Treaty in respect of this measure.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the measure.

(5) The Commission received comments from interested parties. It forwarded them to Italy, which was given the opportunity to react; its comments were received by letter dated 17 June 1997.

II

DESCRIPTION

(6) Article 16 of Sardinian Regional Law No 9 of 13 July 1962 (hereinafter referred to as 'Law 9/62') provides for the grant of aid in the form of reduced interest rates on short-term loans for the operation of cooperatives and producer groups processing sheep's and goat's milk into cheese. Article 16 provides for a maximum rate of interest of 2 % to be paid by recipients and a regional guarantee on loans of up to 80 % of the amount due. That Law has never been notified under Article 93(3) of the Treaty. The compatibility of the aid provided for therein with the common market has never therefore been examined.

(7) Decision No 47/17 lays down the rules for granting the aid provided for in the abovementioned Article 16 of Law 9/62 for the 1995/1996 agricultural year. No information has been supplied on the rules of application adopted for previous years.

(8) The types of loan concerned are:

(a) operating loans (for cooperatives only) amounting to ITL 250 per litre of milk with a ceiling fixed on the basis of production in the previous year;

(b) loans to cover advance payments to members (of cooperatives and producer groups).

These loans amount to ITL 1 150 per litre of sheep's milk and ITL 850 per litre of goat's milk.

(9) The duration of loans can be set by the financial institute at 18 or 36 months (based, among other things on the type of cheese produced).

[1] OJ C 87, 18.3.1997, p. 6.
[2] See footnote 1.

(10) The interest rate on the loans is 55 % of the reference rate fixed by the Government.

(11) The above aid may be received in combination, in the case of cooperatives, with aid in the form of a refund of 10 % of the rate of interest payable by them where cooperatives implement a joint marketing strategy (for example, by forming a marketing consortium or by means of worker participation agreements) for more than 30 000 quintals of product per year.

(12) In its decision to open the procedure, the Commission noted that Articles 92 and 93 of the Treaty apply to milk and milk products in accordance with Article 23 of Council Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products ([3]), as last amended by Regulation (EC) No 1587/96 ([4]).

(13) The Commission noted that the legal basis for the aid is Article 16 of Law No 9/62. Since that Law had never been notified to or examined by the Commission under Articles 92 and 93 of the Treaty, the aid cannot be considered existing aid within the meaning of Article 93(1).

(14) Accordingly, the Commission considered that the aid measures concerned must be examined in the light of the criteria laid down in the Commission communication on State aids: subsidised short-term loans in agriculture (*crédits de gestion*) ([5]). In principle, those criteria were to apply to all aid measures applicable on or after 1 January 1996 (Commission letter to the Member States dated 20 October 1995). After reviewing those criteria, the Commission doubted that the measure in fact met them.

(15) Furthermore, the Commission noted that the aid appeared to be granted on the quantity of milk sent for processing and therefore appeared to be in breach of Article 24 of Regulation (EEC) No 804/68 on the common organisation of the market in milk and milk products, which forbids any aid the amount of which is calculated on the basis of the price or quantity of products covered by that market organisation.

III

COMMENTS FROM INTERESTED PARTIES

(16) On 5 April 1997 the Commission received comments submitted jointly by the Federazione degli Industriali della Sardegna (the Sardinian Federation of Industry) and the Consorzio delle Industrie Casearie della Sardegna (the Sardinian Federation of Cheese Industries). These comments strongly support the arguments advanced by the Commission in its decision to open the procedure. They emphasise that the aid granted by the Italian authorities constitutes operating aid which has no long-term benefit for the sector concerned and should therefore be considered incompatible with the common market. They also emphasise that the aid distorts competition within the sector, since the aid is only granted to certain categories of producers, in particular cooperatives and producer groups. The two federations therefore ask the Commission to declare the aid to be incompatible with the common market and to order the recovery of any aid paid.

IV

COMMENTS FROM ITALY

(17) In their letter of 17 June 1997, the Italian authorities did not comment in detail on the issues raised by the Commission in its decision to open the procedure. They simply pointed out that the national rules concerned were adopted before the adoption of the communication on operating loans, that the aid was not granted as it was only payable after the event, that payment had been suspended until the Commission had reached a final decision, and that the entire matter could be resolved only when the Commission had adopted a definitive position on subsidised short-term operating loans.

(18) By telex of 9 December 1998, addressed to the Italian Permanent Representation, the Commission reminded the Italian authorities that its decision to open the procedure concerned any aid granted under Article 16 of Law No 9/62, and not only the aid envisaged for the 1995/1996 marketing year under Decision No 47/17. The Italian authorities were invited to clarify their response accordingly. However, no reply to this telex has been received.

V

ASSESSMENT OF THE MEASURE

(19) Article 92(1) of the EC Treaty provides 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. Articles 92 and 93 of the Treaty apply to milk and milk products, by virtue of Article 23 of Regulation (EEC) No 804/68.

(20) The present measure provides for aid in the form of subsidised loans to be granted to cooperatives and producer groups which are involved in the processing of sheep's milk and goat's milk. The national reference rate used for the calculation of the interest rate reduction is the arithmetical mean of the Rendibot rate (calculated by the Bank of Italy) and the Ribor rate, increased by bank

([3]) OJ L 148, 28.6.1968, p. 13.
([4]) OJ L 206, 16.8.1996, p. 21.
([5]) OJ C 44, 16.2.1996, p. 2.

commission costs. In November 1998 the national reference rate was 6,25 %, compared with the reference rates used by the Commission at that time of 6,18 % for loans of five years' duration and 5,9 % for loans of one year's duration. A 45 % reduction in the national reference rate of 6,25 % clearly results in a rate of interest on the subsidised loans which is below the reference rates used by the Commission to determine whether a subsidised loan contains an aid component as cited in the Commission notice on the method for setting the reference and discount rates ([6]). Such a measure clearly favours the beneficiaries as opposed to other undertakings which must either obtain finance from their own resources or pay for such finance through interest on loans at normal commercial rates. In so far as producers who do not have access to subsidised loans have to pass on their additional costs to their customers, the measure places the beneficiaries of the subsidised loans at a commercial advantage. The measure therefore distorts the conditions of competition. Furthermore, the measure affects trade between Member States. In this context, the Commission notes that the majority of sheep's and goat's milk produced in Sardinia is used for the production of *Pecorino Romano*, *Pecorino Sardo* and other cheeses. Furthermore, the modalities for the payment of the aid depend on the type of cheese produced. There is substantial intra-Community trade in cheese, amounting to 1 903 300 tonnes in 1996 on the basis of outgoing volumes. Italian cheese exports in the same year amounted to ITL 1 305 billion. In addition, while it is not possible to give precise figures, the Commission is aware that there is a substantial volume of intra-Community trade in *Pecorino Romano* and *Pecorino Sardo*, cheeses, which have received a protected designation of origin in accordance with Council Regulation (EEC) No 2081/92 of 14 July 1992 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs ([7]), as last amended by Commission Regulation (EC) No 1068/97 ([8]). Indeed in the context of another State aid file, the Sardinian authorities have indicated that *Pecorino Romano* is one of the few products where the island is a net exporter of foodstuffs.

(21) The Commission therefore concludes that the measure falls within the scope of the prohibition contained in Article 92(1) of the Treaty.

(22) The prohibition in Article 92(1) of the EC Treaty is followed by exemptions in Article 92(2) and (3).

([6]) OJ C 273, 9.9.1997, p. 3.
([7]) OJ L 208, 24.7.1992, p. 1.
([8]) OJ L 156, 13.6.1997, p. 10.

(23) The exemptions listed in Article 92(2) of the EC Treaty are manifestly inapplicable given the nature of the aid measure in question and its objectives. Italy has in fact not invoked Article 92(2).

(24) Article 92(3) specifies the circumstances under which State aids may be considered to be compatible with the common market. Their compatibility with the common market must be assessed from the point of view of the Community and not that of an individual Member State. In the interest of the functioning of the common market and having regard to Article 3(g) of the Treaty, the exemptions from Article 92(1) must be interpreted restrictively.

(25) With regard to Article 92(3)(b), it is considered that the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.

(26) The aid is, moreover, neither intended to achieve nor suitable for achieving the objectives contained in Article 92(3)(d).

(27) With regard to Article 92(3)(a) and (c) it has first to be noted that the aid is not granted in connection with investments. In fact, the aid is granted in the form of an interest rate subsidy on short-term operating loans which may be granted to cooperatives and producer groups operating in the sheep's and goat's milk processing sector. As such, the aid measure must be considered an operating aid.

(28) It is long-standing Commission policy to prohibit the payment of operating aids in the agricultural sector. Aids which simply relieve economic operators of their normal operating costs confer only a short-term economic advantage for the beneficiary which ceases as soon as the payment of aid stops and are particularly liable to distort competition. Such aids therefore cannot be considered either to promote the economic development of areas where the standard of living is abnormally low (Article 92(3)(a)) or to facilitate the development of certain economic activities or of certain economic areas (Article 92(3)(c)). Furthermore, the payment of such aids is likely to interfere with the operation of the mechanisms established by the common organisations of the market, in the framework of the common agricultural policy, and to disadvantage producers who are not in receipt of such aids, contrary to the principle of equality of treatment laid down by the Treaty. In accordance

with the jurisprudence of the Court of Justice, and in particular the judgment of 26 June 1979, 'one the Community has, pursuant to Article 40 of the Treaty, legislated for the establishment of the common organisation of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it. ([9])'

(29) Nevertheless, in recognition of the structural difficulties which, in a number of Member States, inhibit the access of the agricultural sector to capital, or which increase the cost of capital for the agricultural sector, the Commission has developed a policy of allowing short-term subsidised loans to agricultural producers to cover operating costs provided that certain conditions are fulfilled. This policy was consolidated in a Commission communication concerning State aids in the form of short-term subsidised loans in agriculture ([10]). Originally transmitted to the Member States by letter of 20 October 1995, it was intended that the new rules should enter into force on 1 January 1996. By decision of 27 June 1997, the Commission extended the deadline for Member States to amend existing aids to comply with the new rules to 31 December 1996. Subsequently, by letter of 4 July 1997, the Commission informed the Member States that it had decided to suspend the application of the guidelines. By letter of 19 December 1997, the Commission informed the Member States that the guidelines would enter into force on 30 June 1998.

(30) Under the new rules, the aid measures in question must fulfil, *inter alia*, the following conditions:

(i) they must not be used selectively to assist sectors or individual agricultural operators for reasons which are not exclusively connected with the agricultural sector as a whole and related activities (in particular, the seasonal nature of agricultural production and holding structures); the Commission does not authorise aid which is not granted to all operators in the sector in the administrative unit concerned on a non-discriminatory basis irrespective of the agricultural activity (or activities) for which the operator needs short-term loans;

(ii) the aid must not exceed the difference between the interest rate paid by a typical operator in the agricultural sector and the interest paid in the rest of the economy of the Member State for short-term loans of a similar amount per operator, not linked with investments;

(iii) the amounts of subsidised loans must not exceed cash-flow requirements arising from the fact that production costs are incurred before income from output sales is received; in no case may aid be linked to particular marketing or production operations;

(iv) subsidised short-term loans may be granted for a maximum of one year.

In its letter of 19 December 1997, the Commission emphasised the need for strict and literal compliance with point (ii) above, namely that the aid must be limited to the interest rate differential between short-term loans in the agricultural sector and short-term loans in other economic sectors.

(31) Before the adoption of the abovementioned communication, the Commission, on the basis of its policy in force, would consider the aid measure compatible with the common market if it fulfilled two negative criteria (the subsidised loans should not be for more than one year and should not be granted for a single product or a single operation).

(32) It is therefore necessary to examine the aid measures in the light of the criteria set out above for short-term operating loans for the agricultural sector. In their written observations, the Italian authorities have also suggested that this is the appropriate basis for the assessment of the aid. In this context, it is appropriate to distinguish between aid for the 1995/1996 marketing year, and other aid which may have been granted on the basis of Article 16 of Law No 9/62.

(33) The detailed conditions for the payment of aid for the marketing year 1995/1996, were fixed by Decision No 47/17 (see points 8, 9 and 10 of this Decision).

(34) It is clear from the detailed conditions laid down for the payment of the aid that the loans do not meet the conditions set out at points 30(i) and (iv) above. In particular, aid is granted on a selective basis, in respect of a particular type of product only (products produced from sheep's and goat's milk) and only to certain types of producers, namely cooperatives and producer groups. Thus not only producers of other types of product, but certain categories of producers of the same product are excluded from the benefit of the aid. They therefore receive no State support to offset seasonal and other disadvantages. Furthermore, the duration of the loans exceeds one year. The aid measure must be considered incompatible with the communication. In so far as the duration of the loans exceeds one year, the aid is also incompatible with the policy previously applied by the Commission in this field.

(35) Furthermore, having regard to the detailed conditions laid down for payment of the aid, which appears to be granted on the quantity of milk sent for processing, and in the absence of any comments from the Italian authorities on this question, the Commission maintains the view that the aid is in breach of Article 24 of Regulation (EEC) No 804/68.

([9]) Case C-177/78, Pigs and Bacon Commission v Mc Carren, [1979] ECR 2161, point 14 of the decision.
([10]) See footnote 3.

(36) As regards aids which may have been paid under Article 16 of Law No 9/62 for marketing years prior to the 1995/1996 marketing year, it must be noted that the Italian authorities have not responded to the Commission's decision to open the procedure under Article 93(2), neither have they responded to a reminder sent by the Commission. As a consequence the Commission lacks the information necessary to take a final decision.

(37) Accordingly, acting in accordance with the judgment of the Court of Justice of 14 February 1990 [11], the Commission has decided to order Italy to provide full details of all aids which may have been granted under Article 16 of Law No 9/62 covering a period prior to the 1995/1996 marketing year. The information to be provided shall include copies of all Regional implementing decisions defining the rules for payment of such aid, together with details of the budgetary provisions allowed in each year.

VI

CONCLUSIONS

(38) In so far as Law No 9/62 and Decision No 47/17 were adopted and brought into effect without prior notification to the Commission, the Commission finds that Italy has unlawfully implemented the aid in question contrary to Article 93(3) of the Treaty.

(39) Furthermore the Commission finds that the aids in favour of cooperatives and producer groups in the sheep's and goat's milk sector granted by the Sardinia Region for the 1995/1996 marketing year on the basis of Article 16 of Law No 9/62, as implemented by Decision No 47/17, fall within the scope of the prohibition under Article 92(1) of the Treaty and do not qualify for exemption under Article 92(2) or (3). The aid in question is therefore incompatible with the common market.

(40) However, because the Italian authorities indicate in their reply to the opening of the procedure that the aid for the 1995/1996 marketing year was not granted since it was to have been paid retrospectively but payment was suspended after the opening of the procedure, there is no need to order the repayment of the aid in question,

HAS ADOPTED THIS DECISION:

Article 1

The State aids in favour of cooperatives and producer groups in the sheep's and goat's milk sector granted by the Sardinia Region for the 1995/1996 marketing year on the basis of Article 16 of Law No 9/62, as implemented by Decision No 47/17 of 24 October 1997 are incompatible with the common market.

Article 2

Italy shall withdraw the aid referred to in Article 1.

Article 3

Italy shall provide the Commission, within two months following notification of this Decision, with full details of all other aids which have been granted on the basis of Article 16 of Law No 9/62 for periods before the 1995/1996 marketing year.

Article 4

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

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 30 March 1999.

For the Commission

Franz FISCHLER

Member of the Commission

[11] Case C-301/87, French Republic v Commission, [1990] ECR 1-307.