COMMISSION DECISION

of 3 May 2000

notified by Italy (Marche Region) concerning amendments to the single programming document for 1994 to 1999 for assistance from the Community Structural Funds for Objective 5(b) areas

(notified under document number C(2000) 1336)

(Only the Italian text is authentic)

(2000/621/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

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

Whereas:

I

PROCEDURE

(1) By letter of 14 May 1998, recorded as received on 18 May, the Italian Permanent Representation to the European Union notified an aid scheme for the Marche Region in accordance with Article 88(3) of the Treaty.

(2) By telex No 28448 of 15 July 1998, the Commission requested further information. By letter of 12 October 1998, recorded as received on 20 October, and by fax of 23 November 1998, recorded as received on the same day, the Italian authorities provided further information and made corrections.

(3) By letter of 21 December 1998 (SG(98) D/12141), the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of certain aspects of the way the aid measures were applied.

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

(5) By letter of 31 March 1999, the Italian authorities submitted their observations to the Commission. No comments have been received from interested parties.

II

DESCRIPTION

(6) The measures concern a large number of amendments and extensions to the single programming document (SPD) for assistance from the Community Structural Funds to the areas of the Marche Region eligible under Objective 5(b) in the programming period 1994 to 1999. They consist of grants in respect of investments for primary production, processing and marketing and the mounting of promotional campaigns, research, technical assistance, promotion and dissemination, vocational training, the preparation of production rules and quality manuals and checks, suitability tests and checks on the origin of products listed in Annex I to the Treaty [3].

(7) The objective of the measures is to promote the development of the areas of the Marche Region eligible under Objective 5(b) which were hit by a number of earthquakes in 1997, through joint action involving the EAGGF, national financial resources and those of the private sector under the SPD for the Objective 5(b) areas of the Region.

(8) The aid measures were applicable until December 1999. In the case in point, since they involve a package of measures most of which are to be Community part-financed and for reasons of consistency, the Commission has decided to apply Article 15(2) of Regulation (EEC) No 2082/93 concerning measures part-financed by the Structural Funds [4] to all the measures covered by the notification. Under that Article, expenditure may not be considered eligible for assistance from the Funds if it has been incurred before the date on which the corresponding application reaches the Commission. The Commission therefore regards the start date for the granting of the aids covered by this Decision to be the date when it received the first notification, i.e. 14 May 1998.

(9) However, in their letter of 12 October 1998, the Italian authorities stated that they intended to grant certain aids to cover expenditure incurred by the beneficiaries before that date.

In respect of aid measures for primary agricultural production, the Italian authorities declared that:

[1] OJ C 233, 14.8.1999, p. 2.
[2] See footnote 1.
[3] For a detailed description of the measures, see OJ C 233, 14.8.1999, p. 2.
[4] Council Regulation (EEC) No 2082/93 of 20 July 1993 amending Regulation (EEC) No 4253/88 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ L 193, 31.7.1993, p. 20).

(a) all expenditure incurred by recipients before 14 May 1998 and complying with Commission Decision C(97) 2491 of 18 September 1997 on the application to the Marche Region of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures ([5]) and on the horizontal provisions of Commission Decision C(95)736 of 3 April 1995 approving the Objective 5(b) SPD for Marche would be regarded as eligible and would qualify for part-financing by the Community;

(b) all expenditure incurred by recipients before 14 May 1998 and after 9 October 1997, the date on which the regional public invitations to submit applications for assistance were published, and complying with the decision adopted by the Commission on the aid measures would also be regarded as eligible and would qualify for part-financing by the Community, subject to approval.

In respect of aid measures concerning on-farm investment for processing and marketing, the Italian authorities declared that the expenditure incurred by each beneficiary operator before 14 May 1998 would also be considered eligible for a Community contribution, but only where this was in accordance with Commission Decision C(97)2137 of 2 October 1997 on the application in the Marche Region of Council Regulation (EC) No 951/97 of 20 May 1997 on improving the processing and marketing conditions for agricultural products ([6]) and the horizontal provisions of Commission Decision C(95)736 of 3 April 1995 approving the Objective 5(b) SPD for Marche.

(10) In accordance with its standard practice, the Commission takes the view that, if it is to contribute to the development of certain economic activities or of certain economic areas in accordance with Article 87(3)(c) of the Treaty, aid must have an incentive effect. If the investment has already been made, that incentive effect is lacking and the aid in question is regarded simply as operating aid, which is incompatible with the common market and therefore prohibited by the Treaty.

(11) In this particular case, in their informal contacts with the Commission the Italian authorities pointed out that some of the measures were included in the programme implementing Regulation (EC) No 950/97 in the Marche Region but that following the earthquake suffered by the Region in 1997, the funds available were used for other purposes and that the Region had therefore requested amendments to the programme of assistance from the Community Structural Funds for Objective 5(b) areas for 1994 to 1999. The Italian authorities did not, however, refer to this in their written replies to the Commission's questions during the scrutiny phase.

(12) In view of its doubts about the incentive effect of the measures, the Commission therefore decided to initiate the procedure with regard to the aid granted for investments in primary production and in on-farm processing and marketing of agricultural products in respect of expenses incurred before 14 May 1998, the date on which the Commission was notified of the measures. However, it did not raise objections to the aid paid in respect of expenditure incurred after 14 May 1998, on the grounds that in such cases the measures qualified under the derogation provided for in Article 87(3)(c) of the Treaty and could therefore be considered compatible with the common market, and the Commission did not raise objections to the other measures covered by the notification.

III

COMMENTS FROM ITALY

(13) The Italian authorities emphasise that no aid has yet been paid, so there is no question of an infringement of Article 88(3) of the Treaty.

(14) The Italian authorities emphasise that the Regulations governing the Structural Funds are based on partnership and technical assistance with the Member State. They refer to Council Regulation (EEC) No 729/70 of 21 April 1970 on the financing of the common agricultural policy ([7]), Article 8 of which requires the Member States to take the measures necessary to prevent and deal with irregularities in the management of the Funds. It is therefore clear that 'expenditure [...] not considered eligible for assistance' referred to in Article 15(2) of Regulation (EEC) No 2082/93, means expenditure committed and implemented by the national authority through finance from the rotating fund and certainly not that incurred by an economic operator who is a beneficiary of part-funded assistance but lays himself open to the risk of not being reimbursed.

(15) In any case, however, the Italian authorities contest the claim that the measure produces retrospective effect. They emphasise that the measure contains a suspensory clause that makes payment of the aid subject to approval by the Commission. Furthermore, they consider that the measure meets the conditions laid down in Article 15(2) of Regulation (EEC) No 2082/93 in so far as the notification to the Commission came later than the request submitted in July 1997 for an amendment to measures in the Objective 5(b) single programming document.

([5]) OJ L 142, 2.6.1997, p. 1.
([6]) OJ L 142, 2.6.1997, p. 22.
([7]) OJ L 94, 28.4.1970, p. 13.

(16) The Italian authorities explain that the delay in preparing the notification of the aid measures pursuant to Article 88(3) of the Treaty was due mainly to the unforeseeable circumstances arising from the earthquake that affected the region in 1997, which required staff to be redeployed to other more urgent tasks. Various discussions and meetings also took place with the Commission departments and no mention was made at any of these of the problem of the formal date of submission of the application for approval of the aid scheme. Had this been the case, an invitation, albeit incomplete, would have been submitted immediately.

(17) The Italian authorities also consider that the aids have the necessary incentive effect and cannot therefore be regarded as operating aid. In the case of the Marche Region, invitations had to be issued subject to approval because of the Region's need to maintain its intended programming beyond the formal cut-off date for accepting the proposed amendments. Assistance may legitimately be granted to a final beneficiary (i.e. a beneficiary operator) where he submits an application in response to a public invitation. The fact of submitting an application for assistance implies a legal obligation on the administration entitling the applicant to Community finance, even if the invitation itself is 'conditional'. The suspensory condition relates to recognition of the compatibility of the aids, not the legitimacy of the request for funding.

IV

ASSESSMENT

(18) The measures in respect of which the Commission initiated the procedure provided for in Article 88(2) of the Treaty consist of a series of aids for investments in the primary production of agricultural products and for on-farm investment in the processing and marketing of agricultural products. The aid is granted selectively to individual beneficiaries. The aid for primary production is granted in the livestock (meat and dairy), fruit and vegetables, olive oil and wine sectors. The aids for on-farm processing and marketing are granted in the seeds, oilseeds, meat, cheese and organic products sectors. Between them these sectors account for a substantial proportion of agricultural production, and it is clear that intra-Community trade involves large quantities of the products concerned, without it being necessary to give detailed figures for each sector. It is accepted that in the agricultural sector, because of the existence of the common agricultural policy, even relatively small amounts of aid may distort the conditions of competition and affect trade between Member States. The Commission therefore concludes that the measures concerned constitute State aid within the meaning of Article 87(1) of the Treaty.

(19) The prohibition on State aid contained in Article 87(1) is subject to exceptions. After a preliminary examination, the Commission concluded that the various measures facilitated the development of certain economic activities without adversely affecting trading conditions to an extent contrary to the common interest and that they could therefore qualify under the derogation provided for in Article 87(3)(c) of the Treaty in so far as they related to expenses incurred after the notification of the aid measures to the Commission on 14 May 1998.

(20) However, the Commission expressed doubts as to whether aid in respect of expenditure incurred before that date could be regarded as facilitating the development of certain economic activities within the meaning of Article 87(3)(c) of the Treaty. In accordance with long-standing Commission practice, which has been upheld by the Court of Justice [8] aid can only be regarded as facilitating the development of certain economic activities or areas if the Commission is able to establish that market forces alone would not have induced the potential recipients to act in a way that helps achieve the desired objective. Since the information then available to the Commission showed that the producers in the Marche Region had voluntarily entered into the expenditure concerned, without the inducement of aid this element was lacking. Aid awarded after the event to cover the expenditure incurred would simply be operating aid not qualifying for exemption on any of the grounds referred to in Article 87(2)(b).

(21) The Commission considers that the answers provided by the Italian authorities under the procedure dispel the abovementioned doubts. In particular, the Commission has taken into consideration the explanations provided of the programming procedure in the Marche Region as described by the competent authorities and outlined in paragraph 17.

(22) It emerges from the information provided by the Italian authorities that a response to a regional invitation can be considered as equivalent to an aid application. The conditions laid down by the Italian authorities correspond to those set out in the Commission's Guidelines on national regional aid [9] and the Commission's Guidelines for State aid in the agriculture sector [10], whereby aid schemes must stipulate that no aid may be granted until an application has been submitted to the competent authorities and that no aid may be granted in respect of work already begun or activities undertaken before an aid application has been properly submitted to the competent authorities. Although the latter Guidelines were adopted after the facts of the present case

[8] See in particular the judgment in Case C-730/79 *Philip Morris* v *Commission* [1980] ECR 2671.
[9] OJ C 74, 10.3.1998, p. 9 (in particular point 4.2).
[10] OJ C 28, 1.2.2000, p. 2 (in particular point 3.6).

took place, they are intended to apply the general principles previously followed by the Commission and set out in paragraph 20. The Commission therefore considers it appropriate to apply the same principle by analogy to the case in question. The Commission therefore considers the aid to be compatible with the common market in accordance with Article 87(3)(c) of the Treaty, provided that the beneficiary has submitted an application for assistance to the competent authorities before the expenditure is actually incurred.

(23) In order to avoid misunderstandings in future, the Commission strongly urges the Italian authorities to ensure that aid schemes are notified to the Commission before invitations are published, even if those invitations do contain a suspensory clause making payment of the aid conditional on Commission approval. Nevertheless, in the present case the Commission recognises that the administrative resources of the Region were under some strain as a result of the earthquakes which affected the region in 1997.

(24) This Decision is without prejudice to any future decisions on Community contributions towards the financing of the measures concerned,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement by amendments to the single programming document for the Marche Region (Objective 5(b)) is compatible with the common market, subject to the conditions set out in Article 2.

Article 2

No aid may be granted in respect of expenditure incurred before 14 May 1998, unless the beneficiary has submitted an application for assistance to the competent authorities prior to that date in respect of the relevant expenditure under the scheme notified.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 3 May 2000.

For the Commission

Franz FISCHLER

Member of the Commission