COMMISSION DECISION

of 7 May 2002

on the aid Italy is planning to grant under Article 21 of Region of Sardinia Law No 21/2000 to agricultural holdings using fuel other than methane

(notified under document number C(2002) 1785)

(Only the Italian text is authentic)

(2002/785/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 pursuant to the above Article,

Whereas:

I. PROCEDURE

(1) By letter dated 11 January 2001, received on 16 January 2001, Italy notified the Commission, in accordance with Article 88(3) of the Treaty, of the aid measures provided for in Region of Sardinia Law No 21 of 14 November 2000.

(2) By letters dated 7 May 2001 and 22 June 2001, received respectively on 10 May 2001 and 25 June 2001, Italy provided the Commission with further information.

(3) By letter dated 25 July 2001, the Commission informed Italy of its decision not to raise any objection in respect of the measures provided for in Articles 1 to 12 and 14 to 20 of Law 21/2000 and to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid provided for in Article 21 of that law.

(4) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments on the aid.

(5) The Commission received no comments from interested parties.

(6) The Italian authorities sent comments on the initiation of the procedure by letter dated 11 February 2002.

II. DESCRIPTION OF THE AID

(7) Regional Law 21/2000 governs the grant of a wide range of aid to the agricultural and forestry sectors in the Region of Sardinia. The Law, comprising 28 Articles, replaces a number of regional laws applicable in the agricultural sector to bring regional legislation into line with the Community Guidelines for State aid in the agriculture sector [2]

(8) Article 21 of Law 21/2000 provides for aid for the reduction of production costs linked to the use of fuels other than methane. The regional authorities are authorised to grant aid to agricultural holdings to cover the difference in cost between methane and the fuel used, provided that this does not benefit from any other concession. In their letter dated 11 February 2002 in reply to the initiation of the procedure the Italian authorities said that the aid was paid only to greenhouse growers. The wording of the Article is, however, general and does not exclude any type of undertaking. The aid is to be withdrawn on completion of the 'Programme for the construction of a methane supply network in Sardinia' referred to in Article 6 of Law No 73 of 31 March 1998.

(9) According to the information provided by the Italian authorities, this measure is justified by the fact that diesel is much more expensive than methane, which is not available on the island because there is no distribution network there. According to the calculations made by the Italian authorities, 10 calories of energy from diesel on the island cost 1,125 lire compared with 0,63 lire from methane.

[1] OJ C 20, 23.1.2002, p. 7.

[2] OJ C 28, 1.2.2000, p. 2.

(10) According to the Italian authorities, the lack of a methane network is a major drawback and a structural handicap for the island seriously affecting agricultural production costs there, creating imbalance and placing producers at a disadvantage compared with producers in other regions who are able to use a source of energy (methane) that is much cheaper than diesel. Against this background, the aid is designed simply to provide the island's producers with the same competitive conditions as producers in regions with access to methane until a methane network is set up there.

(11) The Italian authorities have not paid the aid.

III. COMMENTS FROM ITALY

(12) By letter dated 11 February 2002, received on 13 February 2002, the Italian Permanent Representation to the European Union forwarded the comments of the Italian authorities on the observations set out in the Commission decision to initiate the procedure.

(13) The letter states that the aid is intended exclusively for greenhouse growers, with a total production of 75 700 tonnes, almost entirely for domestic consumption, against national production of 1 300 000 tonnes.

(14) The letter also states that the aid is to be granted for a limited period, since the Italian Government, with the support of the European Community, has approved a programme for the construction of a methane supply network in Sardinia.

(15) The Italian authorities agree with the Commission that the aid has no structural effect on the sector as a whole and cannot therefore be approved on the basis of Article 87(3)(c) of the Treaty. However, since the cost of heating greenhouses in Sardinia is much greater than in other regions of Italy and other Member States where methane is available, they claim that the aid, rather than relieving greenhouse growers on the island of costs that all other holdings have to bear, does no more than place the former on an equal footing with the latter. The Italian authorities stress that because of the high cost of diesel, greenhouses are underutilised, leading to an increase in fixed costs, a reduction in the potential of the holdings concerned and the loss of potential markets for products with unique characteristics much appreciated by consumers.

(16) In addition, given that Sardinia is eligible under Objective 1, the aid could be eligible for the derogation provided for in Article 87(3)(a) of the Treaty as aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.

IV. ASSESSMENT OF THE AID

(17) Under Article 87(1) of the Treaty establishing the European Community, 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, insofar as it affects trade between Member States, be incompatible with the common market.

The existence of aid

(18) Article 21 of Law No 21 provides for the possibility of granting aid to agricultural holdings to cover the difference between the cost of two types of fuel, methane and diesel. Under the measure, which is financed from public funds, the beneficiaries, which are exclusively agricultural holdings in Sardinia, receive funding for expenditure that they would normally have to bear themselves to the detriment of other holdings not in receipt of similar aid. According to decisions of the Court of Justice, financial assistance granted by the State that strengthens the position of an undertaking in relation to its competitors distorts competition with undertakings not in receipt of the aid [3].

(19) In the letter notifying Italy that it was initiating the procedure, the Commission stated that, since the undertakings receiving the aid are operating in a highly competitive international market, the measure in question affects trade between Member States [4] and is therefore covered by Article 87(1) of the Treaty.

(20) In their reply, as stated in recital 13, the Italian authorities stressed the limited nature of the aid and that it would be paid exclusively for the greenhouse production of 75 700 tonnes, almost entirely for domestic consumption, compared with national production of 1 300 000 tonnes.

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[3] See judgment of the Court of 17 September 1980 in Case 730/79, Philip Morris Netherlands v Commission of the European Communities, [1980] ECR 2671.

[4] In 1999, agricultural exports from Italy to other Member States of the European Union were worth EUR 10 258 million, while Italy imported agricultural goods worth EUR 15 271 million from other EU countries (source: Eurostat).

(21) It should be pointed out that, contrary to what the Italian authorities claim, the wording of Article 21 of Law 21/2000, which provides for the aid concerned, does not restrict the aid to greenhouse growers but makes it available to all agricultural holdings fulfilling the conditions it lays down. It cannot therefore be ruled out that the aid could also be paid to undertakings that might export to other Member States. As regards the limited nature of the aid, it should be stressed that the fact that an aid is relatively small and that the beneficiary undertaking is of relatively modest dimensions does not, a priori, rule out the possibility that trade between Member States could be affected ([5]). As regards the agricultural sector, this is confirmed by Commission Regulation (EC) No 69/2001 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid, which explicitly excludes agricultural activities from its field of application ([6]).

(22) With regard to the fact that the beneficiary undertakings operate mainly on the island's domestic market, it must be pointed out that, according to decisions of the Court of Justice, aid in favour of an undertaking may affect trade between Member States and distort competition even when the undertaking does not export to other Member States but is in competition on the domestic market with producers from other Member States. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition ([7]).

(23) In view of the fact that there is considerable intra-Community trade in agricultural products, the Commission concludes that the measure under examination falls within the scope of the prohibition laid down in Article 87(1) of the EC Treaty.

(24) Derogations from the prohibition laid down in Article 87(1) of the Treaty are set out in paragraphs 2 and 3 of that Article.

(25) Given the nature and objectives of the aid, the derogations provided for in Article 87(2) of the Treaty are clearly inapplicable. Furthermore, Italy has not asked for this provision to be applied.

(26) Article 87(3) sets out the circumstances under which State aid may be considered compatible with the common market. Compatibility must be assessed from the point of view of the Community and not that of an individual Member State. In the interests of the operation of the common market, the derogations from the prohibition on the payment of State aid must be interpreted restrictively.

(27) With regard to Article 87(3)(b), it should be borne in mind 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 of Italy's economy.

(28) Moreover, the aid is neither intended to achieve nor suitable for achieving the objectives set out in Article 87(3)(d) of the Treaty.

(29) Under Article 87(3)(a), aid to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment may be considered to be compatible with the common market.

(30) In their comments in reply to the initiation of the procedure, the Italian authorities claimed that this derogation was applicable. In support of their argument, they stressed that Sardinia is an Objective 1 region with an employment rate in 1999 equivalent to 36,9 % ([8]), implying that on average every person in work was supporting two others.

(31) The argument put forward by the Italian authorities cannot be accepted. It must first of all be pointed out that classification as an 'Objective 1' region is for the purposes of the Structural Funds ([9]) and confers no right

([5]) See judgment of the Court of 21 March 1990 in Case C-142/87, Kingdom of Belgium v Commission of the European Communities, [1990] ECR I-959 and judgment of 14 September 1994 in joined Cases C-278/92, C-279/92 and C-280/92, Kingdom of Spain v Commission of the European Communities, [1994] ECR I-4103.

([6]) OJ L 10, 13.1.2001, p. 31.

([7]) See judgment of the Court of 13 July 1988 in Case 102/87, French Republic v Commission of the European Communities, [1988] ECR 4067.

([8]) Source: Istat.

([9]) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ L 161, 26.6.1999, p. 1).

to the aid referred to in Article 87(3)(a) of the Treaty, even though in most cases the areas defined for the Structural Funds and those defined for State aid are the same. With regard to State aid in the agricultural sector, regions eligible under Objective 1 are allowed a higher rate of aid than other regions, but only for the processing and marketing of agricultural products and then only on the conditions laid down in the Community Guidelines for State aid in the agriculture sector [10]. The Commission authorises such aid however under Article 87(3)(c) of the Treaty as aid to facilitate the development of certain economic activities and not under Article 87(3)(a) to which the Italian authorities refer.

(32) Only certain aid granted in particular regions of the Community fulfilling specific and extremely strict criteria and conditions laid down in the Guidelines on national regional aid [11] may benefit from the derogation provided for in Article 87(3)(a) of the Treaty. Those Guidelines do not apply to the agricultural sector [12] and therefore the argument put forward by the Italian authorities cannot be accepted. In addition, under points 4.15 and 4.17 of those Guidelines, operating aid may be granted only in exceptional cases and must be progressively reduced, which is not the case with the aid under examination.

(33) It would appear from the above that the aid under examination might be eligible only for the derogation provided for in Article 87(3)(c) of the Treaty, under which aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered compatible with the common market. To that end, it must be determined whether the aid complies with the provisions of the Community Guidelines for State aid in the agriculture sector, which apply to all State aid granted for the production, processing and marketing of the agricultural products listed in Annex I to the Treaty [13].

(34) As stated above, the measure in question provides for the possibility of granting aid to cover the difference between the cost of the fuel used by agricultural holdings on the island, i.e. diesel, and that of methane. According to the information supplied by the Italian authorities, the measure is justified by the fact that diesel costs much more than methane [14], which is not available on the island since there is no supply network. According to the Italian authorities, the lack of a methane network is a major drawback and a structural handicap for the island seriously affecting agricultural production costs there, creating imbalance and placing producers at a disadvantage compared with producers in other regions who are able to use a source of energy (methane) that is much cheaper than diesel. Against this background, the aid is designed simply to provide the island's producers with the same competitive conditions as producers in regions with access to methane until a methane network is set up there.

(35) In initiating the procedure, the Commission, raising doubts about the compatibility of the aid with the common market, pointed out that the sole purpose of a subsidy to cover the difference in the cost of a more expensive fuel such as diesel and a less expensive one such as methane is to help Sardinian farmers to contain their overall production costs by artificially reducing (by means of State funding) one of the factors making up those costs. By artificially reducing the overall production costs of the beneficiary undertakings, the aid concerned 'artificially' improves the competitive position of the beneficiary undertakings at the expense of other Community undertakings, who must bear the full cost of the factors of production or seek more innovative production methods in order to try and reduce those costs. Aid of this type is, by definition, operating aid [15] with no structural effect on the sector and therefore incompatible with the common market.

(36) That principle is set out clearly in point 3.5 of the Community Guidelines for State aid in the agriculture sector, which lays down that 'Unless exceptions are expressly provided for in Community legislation or in these guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector ... are considered to constitute operating aids which are incompatible with the common market'.

[10] See points 4.1 and 4.2 of the Community Guidelines for State aid in the agriculture sector.
[11] OJ C 74, 10.3.1998, p. 9.
[12] Ibid, point 2.
[13] See point 2.1 of the Community Guidelines for State aid in the agriculture sector.
[14] According to the calculations made by the Italian authorities, 10 calories of energy from diesel cost 1,125 lire compared with 0,63 from methane.
[15] See judgment of the Court of First Instance of 8 June 1995 in Case T-459/93, Siemens SA v Commission of the European Communities, [1995] ECR 1675.

(37) Community legislation does not provide for the granting of operating aid such as that under examination. The Commission considers operating aid to be compatible with the common market only in special cases and on very strict conditions, in accordance with the Guidelines on national regional aid and the Community guidelines on State aid for environmental protection ([16]). It is stated in paragraph 32 that the former do not apply to the agricultural sector. Since the aid under examination is not for environmental purposes, neither are the latter applicable.

(38) As regards the Community Guidelines for State aid in the agriculture sector, point 5.5 authorises derogations from the general prohibition on operating aid only in the special case of environmental aid, such as aid to offset the costs of new mandatory national environmental requirements which go beyond existing Community rules, aid for the development of biofuels and tax reductions as referred to in point 5.5.4 of those Guidelines. The measure provided for in Article 21 of Law 21/2000 clearly does not qualify for any of those derogations.

(39) In the light of the above, it can be concluded that the aid provided for in Article 21 of Law 21/2000 does not qualify for any of the derogations for operating aid provided for in Community legislation and the Community Guidelines for State aid in the agriculture sector and is therefore incompatible with the common market.

(40) The comments made by the Italian authorities following the initiation of the procedure are not such as to change the Commission's position.

(41) It must above all be stressed that the Italian authorities agree with the Commission that the aid has no structural effect on the overall development of the sector and cannot therefore be considered compatible within the meaning of Article 87(3)(c) of the Treaty.

(42) As stated above, the Italian authorities stress only the limited nature of the aid ([17]) and assert that, in view of the higher heating costs incurred by greenhouse growers in Sardinia compared with growers in other Member States and other regions of Italy who can use methane, the aid does not in fact relieve greenhouse growers on the island from costs that other greenhouse growers operating in the same conditions have to bear but rather places the former on an equal footing with the latter.

(43) In the absence of further information that might cause it to change its original position, the Commission confirms that differences in the cost of the factors of production in different geographical regions or different economic sectors cannot justify aid whose only purpose is to artificially eliminate such differences. Such aid is simply operating aid for the undertakings concerned designed to provide the beneficiaries with a temporary economic advantage. The objective of the aid in fact is solely to reduce the production costs borne by the beneficiaries during the period the aid is granted, relieving the undertakings concerned of operating expenses that they would normally have to bear. This has no structural effect on the development of the sector and cannot be considered to facilitate the development of certain economic activities or of certain economic areas. The aid is therefore covered by the prohibition on operating aid laid down in point 3.5 of the Community Guidelines for State aid in the agriculture sector, without being eligible for any of the derogations provided for in Community legislation, and is therefore incompatible with the common market.

V. **CONCLUSION**

(44) In the light of the above, the aid provided for in Article 21 of Regional Law No 21 is incompatible with the common market and is not eligible for any of the derogations provided for in Article 87(1) of the Treaty.

It is not necessary to recover the aid since it has not been paid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid provided for in Article 21 of Region of Sardinia Law No 21 for agricultural holdings using fuel other than methane is incompatible with the common market.

([16]) OJ C 37, 3.2.2001, p. 3.
([17]) See recital 15 of this Decision.

The aid scheme shall accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 May 2002.

For the Commission

Franz FISCHLER

Member of the Commission