COMMISSION DECISION

of 13 November 2002

concerning the aid granted to fishermen and shellfish producers as a result of the pollution caused by mucilage and the suspension of fishing for technical reasons in the Adriatic Sea in 2000

(notified under document number C(2002) 4365)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/88/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 regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty, and in particular Article 14 thereof [1],

Having called on interested parties to submit their comments pursuant to the first subparagraph of Article 88(2) and having regard to their comments,

Whereas:

I

PROCEDURE

(1) By letter dated 26 September 2000, received on 28 September 2000, the Italian Permanent Representation to the European Union forwarded to the Commission the text of a draft Order introducing a number of emergency measures in the transport and fisheries sectors to provide support for these sectors, including in Article 4, paragraphs 1 to 4 and 6 to 10, compensation measures for fishermen and shellfish producers in the Adriatic. The measures were recorded as notified aid under the number N 159C/2000.

(2) Subsequently, by letter dated 2 October 2000, the Italian authorities forwarded the text of the Order (No 265 of 26 September 2000), published in the Italian Official Gazette of 27 September 2000. The Italian authorities were asked on four occasions to provide supplementary information in letters dated 23 November 2000, 20 February, 30 May and 5 July 2001, to which they replied by letters dated 5 February, 2 May, 31 May and 24 July 2001. The information presented included, in the letter of 5 February 2001, Law No 343 of 23 November 2000 (converting Order No 265 into law), published in the Official Gazette of 25 November 2000, together with three Orders of the Minister for Agriculture and Forestry of 19 July, 3 August and 22 December 2000 respectively containing the implementing provisions.

(3) The Orders of 3 August and 22 December 2000, which contain the practical arrangements for the compensation, took immediate effect. Furthermore, since there was no provision requiring prior approval by the Commission for the Law and the implementing provisions to enter into force, the measures could be implemented directly. For that reason, the matter was transferred on 9 February 2001 to the register of unnotified aids under the number NN 12/2001.

(4) By letter C(2001) 3465 final of 13 November 2001 the Commission informed Italy that while it regarded the compensation for fishermen for the suspension of fishing activities between 19 June and 19 July 2000 to be compatible with the common market, a decision had been taken to initiate the formal investigation procedure provided for in Article 88(2) of the EC Treaty in respect of the compensation for fishermen for the suspension of fishing activities after 19 July 2000 together with that for shellfish producers. Italy presented its comments by letter of 20 December 2001, and in a further letter of 20 February 2002.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* on 29 January 2002 [2]. The Commission called on interested parties to submit their comments on the measures concerned and received a joint letter from the three organisations Federcoopesca, Lega Pesca and AGCI Pesca on 27 February 2002. This letter was forwarded to the Italian authorities in accordance with Article 6(2) of Regulation (EC) No 659/1999.

[1] OJ L 83, 27.3.1999, p. 1.

[2] OJ C 25, 29.1.2002, p. 12.

II

DESCRIPTION OF THE MEASURES

(6) The measures apply in the Adriatic Sea, in the maritime region from Trieste to Brindisi, including in the maritime districts of Castro, Tricase, Santa Maria di Leuca and Otranto located on the Adriatic side of the maritime region of Gallipoli.

2.1. **Measures in favour of fishermen**

(7) Two types of measures covering two periods were considered: the period from 19 June to 19 July 2000 and a 44-day period starting on 20 July 2000.

2.1.1. *Period from 19 June to 19 July 2000*

(8) Owners of fishing vessels, other than those capable of deep-sea fishing, which had to suspend fishing activities as a result of the presence of mucilage qualified for the measure. The compensation was equivalent to their loss of income during the period they were laid up based on their income during the same period the previous year, and ranged from a maximum of ITL 7,5 million (EUR 3 873) for vessels of under 10 grt to ITL 20 million (EUR 10 329) for those over 10 grt. The Commission considered this measure compatible with the common market.

2.1.2. *Period after 19 July 2000*

(9) The basic provisions on compensation for this period, in respect of which the formal investigation procedure was initiated, are contained in Article 4(1) of Law No 343 of 23 November 2000. Their aim was to compensate various categories of fishermen following the temporary suspension of fishing starting on 20 July 2000 as a result of the presence of mucilage. According to the Italian authorities, the suspension was intended also to encourage the increase in fish stock biomass in the Adriatic Sea.

(10) The Orders of the Minister for Agriculture and Forestry of 19 July and 3 August 2000 contained additional provisions. That of 19 July 2000 provided that the measure applied to vessels practising pelagic trawling (pesca allo strascico e/o volante), which were required to suspend fishing, and as appropriate on a voluntary basis to vessels using static gears and/or seiners (sistemi da posta e/o circuizione). This measure did not apply to vessels practising deep-sea fishing. Its cost, covering both shipowners and crews, was EUR 28,4 million.

(11) Shipowners received compensation calculated on the basis of the tonnage of their vessel and of the social contributions payable by them.

(12) The compensation, for each day's suspension, in relation to the tonnage of the vessel was as follows:

Class of vessel (in grt)	Compensation amount (in EUR)
0 < 25	4,52 × grt + 20
25 < 50	4,30 × grt + 25
50 < 70	3,50 × grt + 65
70 < 100	3,12 × grt + 88
100 < 200	2,74 × grt + 120
200 and over	2,36 × grt + 177

Class of vessel (in grt)	Compensation amount (in EUR)
0 < 10	5,2 × grt + 20
10 < 25	4,3 × grt + 30
25 < 50	3,2 × grt + 55
50 < 100	2,5 × grt + 90
100 < 250	2,0 × grt + 140
250 and over	1,5 × grt + 265

(13) Payments were made for a maximum of 30 days.

(14) However, social contributions could be covered for up to 44 days.

(15) The crew of the laid-up vessels qualified for compensation equivalent to the minimum legal wage for a maximum of 44 days.

2.2. **Measures in favour of shellfish producers**

(16) The basic provisions on compensation for shellfish producers are set out in Article 4(6) of Law No 343 of 23 November 2000 and were intended to compensate producers (rearing or harvesting shellfish) for income losses sustained as a result of the presence of mucilage in the Adriatic. The implementing provisions are contained in Article 1 of the Order of the Minister for Agriculture and Fisheries of 22 December 2000.

(17) The compensation is equivalent to not more than 30 % of the loss sustained in relation to turnover for the preceding year. The budget allocation for the measure is ITL 1 500 million (EUR 774 685) and the total number of beneficiary undertakings is 34.

(18) Shellfish producers who have already received compensation from other sources are ineligible for the measure. The Commission points out in this connection that it considered compatible with the common market compensation measures implemented in favour of shellfish producers in the Region of Friuli-Venezia Giulia following a similar occurrence of mucilage in 2000 (decision notified to the Italian Government by letter SG(2001) D/289 817 of 17 July 2001).

2.3. **Grounds for initiating the procedure**

2.3.1. *Measures in favour of fishermen*

(19) In view of the reasons put forward by the Italian authorities for adopting the measures under consideration, they have been examined in the light of Article 87(2)(b) of the EC Treaty and of the Guidelines for the examination of State aid to fisheries and aquaculture (hereafter called the Guidelines) adopted in 1973 ([3]) in force on the date on which the aid measures were introduced.

(20) As in the case of the period before 19 July 2000, the Italian authorities relied on the presence of mucilage to justify adoption of the measure. However, the information furnished did not show that the suspension of fishing during the subsequent period was due to the presence of mucilage. The Commission, therefore, considered that the compensation could not be permitted under Article 87(2)(b) of the EC Treaty, which states that aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market.

(21) A further reason put forward by Italy to justify the suspension of fishing during the period concerned was to encourage an increase in fish stock biomass.

(22) According to the first paragraph of point 2.2.2 of the Guidelines, aid for the temporary suspension of fishing may be deemed compatible with the common market if it is intended to offset part of the loss of income associated with a temporary cessation measure introduced as a result of unforeseen and non-recurring circumstances attributable to biological causes.

(23) However, the temporary suspension extended by the Italian authorities to include the period after 19 July 2000 did not appear to constitute an occurrence of this kind. It did not take place as a result of an unexpected event comparable with a natural disaster and it was not motivated by the scientific reports provided or other scientific reports indicating that there had been an unforeseen and unforeseeable reduction in fish stocks requiring the adoption of specific stock recovery measures, including, for example, temporary suspension of fishing. The Commission notes that in previous years Italy granted compensation under similar temporary suspension measures. The Commission did not raise any objections: in 1999 to measures with the number N 419/99 covered by letter SG(99) D/7551 of 17 September 1999 to the Italian Government; in 1998 to measures with the number NN 101/98 covered by letter SG(99) D/1581 of 23 June 1999; and in 1997 to measures with the number NN 99/97 covered by letter SG(97) D/6770 of 6 August 1997. From what is known, these measures applied also to fishing in the Adriatic. The compensation measure adopted for 2000 does not appear to have been introduced as a result of non-recurring circumstances and consequently could not be deemed compatible in the light of the first paragraph of point 2.2.2 of the Guidelines.

(24) Furthermore, under the second paragraph of point 2.2.2 of the Guidelines, the Commission can regard an aid scheme for the temporary cessation of fishing to be compatible with the common market after conducting a specific examination of the measure (on a 'case-by-case basis'). The Commission would therefore have been able to consider the conditions of compatibility to have been met if the temporary suspension had taken place in circumstances similar to those described in Article 16(1) of Council Regulation (EC) No 2792/1999 of 17 December 1999 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ([4]), i.e. in the event of unforeseen circumstances, particularly those attributable to biological factors (subparagraph (a)) or where a plan is introduced for the recovery of a resource threatened with exhaustion (subparagraph (c)) or, as regards in particular measures to assist fishermen, in Article 12(6) of that Regulation, under which accompanying social measures can be introduced in the framework of plans for the protection of fish stocks. The temporary suspension under consideration did not correspond to any of these cases.

(25) In view of all these factors and the preliminary assessment provided for in Article 6 of Regulation (EC) No 659/1999, the Commission considered that there

([3]) OJ C 100, 27.3.1997, p. 12.

([4]) OJ L 337, 30.12.1999, p. 10.

are serious doubts about the compatibility of the measures with the Guidelines for the examination of State aid to fisheries and aquaculture.

2.3.2. *Measures in favour of shellfish producers*

(26) The aim of the measures was to compensate producers (rearing or harvesting shellfish) for the loss of income sustained as a result of the presence of mucilage.

(27) The Commission recognised that the purpose of the compensation was to make good the losses sustained as a result of a natural disaster, the presence of mucilage, and consequently that it could be deemed compatible with the common market. It could not be concluded with certainty from the information provided by the Italian authorities that excessive compensation had been awarded. Evidence was not provided that 30 % of the turnover for the preceding year did not exceed the amount of damage sustained by producers as a result of the mucilage. Doubt remained therefore regarding the compatibility of the measure with Article 87(2)(b) of the EC Treaty.

III

COMMENTS FROM ITALY

(28) The Italian authorities set out in their comments the various stages of the case and refer to Article 16(1) of Regulation (EC) No 2792/1999 on the temporary cessation of fishing in the event of unforeseen circumstances, particularly where they are attributable to biological causes. Italy takes the view that the presence of mucilage constitutes an exceptional and unforeseen occurrence.

(29) Italy challenges the position of the Commission dividing the suspension period in two, i.e. the periods before and after 19 July 2000, and considers this to be an arbitrary choice. As far as Italy is concerned the date of 19 July does not refer to the presence of the mucilage but is simply that of the meeting at which the decision was taken to switch from the voluntary to the mandatory cessation of fishing. According to the preliminary information provided by fishermen the Italian administration called on scientific institutions to monitor the development of the mucilage and, for procedural reasons, the reports of the institutes could not be taken into consideration by the Central Advisory Committee for Sea Fisheries, leading to a decision on suspension before 19 July.

(30) Secondly, while the subsequent scientific reports indicated that the mucilage problem was declining on 19 July, it is nevertheless true that on that date it was causing immediate damage to fishermen and its later disappearance could not be predicted. In the light of the scientific reports furnished subsequently it would have been possible to shorten the suspension period but in practice account had to be taken of the uncertainty of the situation.

(31) By letter of 20 February 2002 the Italian authorities forwarded a summary scientific report from the Fano marine biology and fisheries laboratory. According to this report, the mucilage problem had reached a climax in July and would taper off in August, disappearing altogether in September. In August the mucilage accumulations dispersed first towards the central area and later towards the south of the Adriatic Sea, enabling fishing to return to normal in September. The situation varied, however, across the area and over time.

(32) As regards the compensation for shellfish producers, Italy states that 30 % of the losses sustained corresponded to the loss calculated in relation to turnover for the preceding year. Applications for compensation were received from 34 undertakings.

IV

COMMENTS FROM INTERESTED PARTIES

(33) Federcoopesca, Lega Pesca and AGCI Pesca are three organisations representing Italian fishermen. In their letter they claim that they fail to understand the bases on which the Commission's comments are founded: the text of the Law introducing the measure explains clearly that it is based on the need to tackle the impossibility of fishing on account of the exceptional presence of mucilage.

(34) Without the aid measure crews would have received no income. Shipowners would have been lawfully entitled to pay fishermen off without notice, as provided for under Italian law, if the payment of costs had not been assured by the State. In addition, shipowners were not obliged to re-employ the same members of crews.

(35) The organisations say that the mucilage began to appear in March 2000 and worsened in May. Because of the difficulty of carrying on their activities, the fishermen turned to the Italian authorities for action to be taken.

(36) The organisations say that the measures adopted by the authorities were fully in line with Article 16(1) of Regulation (EC) No 2792/1999.

(37) Regarding the compensation for shellfish producers, the 30 % threshold for damage was reached because Law No 72/92, which authorises this type of compensation, applies only where the loss sustained reaches not less than 35 % of turnover. There was no over-compensation therefore.

(38) These comments were forwarded to the Italian authorities, which agreed with them.

V

ASSESSMENT OF THE MEASURES

A. **Existence of State aid**

(39) In accordance with Article 87(1) of the EC Treaty, 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.

(40) With regard to fishing, the aim of the measures was to offset the losses sustained by shipowners as a result of the temporary suspension of activities and to ensure that crews received the minimum contract wage and that the social contributions payable by shipowners in respect of crews were covered. The compensation received by shipowners was a financial benefit and consequently an aid. As wages are a burden on undertakings, the effect of meeting them together with the relevant social contributions is to reduce the costs that have to be met by the fisheries undertakings in question. Meeting the wages and social costs could be considered at first sight not to constitute an aid to the undertakings since the aim is to cover the wages and social payments for crews during the temporary suspension period with the undertakings concerned deriving no clear benefit. That having been said, this measure, which was designed to maintain in force the employment contract between shipowners and crew members, benefited the former who were a party to the contract relieving them of their contractual obligations for the duration of the temporary suspension. The measure is therefore an aid to the fisheries undertakings concerned.

(41) With regard to shellfish farming, the aim of the measure was to compensate for the damage sustained by producers as a result of the appearance of the mucilage. The payments received by the undertakings constituted a financial benefit and, for that reason, an aid.

(42) In addition, these measures were funded from national resources and the products of the undertakings are sold on the Community market. The undertakings were strengthened therefore by the measures, both on the Italian market in relation to undertakings of other Member States intending to present their own products on that market (fishery products or other competing foodstuffs), and on the markets of other Member States in relation to undertakings operating on those markets (again for fishery products and other competing foodstuffs). In view of this, the measure, by conferring a benefit on Italian undertakings, distorted or threatened to distort competition and could affect trade between Member States.

(43) For the above reasons the measures constitute State aid within the meaning of Article 87(1) of the EC Treaty and are in principle prohibited under that Article 87(1). They may be considered compatible with the common market only if they fall within the scope of one of the derogations provided for in the EC Treaty.

B. **Evaluation of the compatibility of the measures in the light of Article 87(2)(b) of the EC Treaty**

Measures in favour of fishing

(44) In its letter notifying Italy of the initiation of the formal investigation procedure in respect of the measures concerned, the Commission said it considered the compensation awarded for the temporary suspension of fishing between 19 June and 19 July 2000 compatible with the common market since it had been awarded as a result of the presence of mucilage, which was recognised to be a natural disaster within the meaning of Article 87(2)(b) of the Treaty. The formal investigation procedure was initiated in respect of the aid awarded for the period after 19 July 2000 because it was not clear from the information provided by the Italian authorities that the decision to suspend fishing in that period was indeed due to the presence of the mucilage.

(45) The information provided by the Italian authorities in response to the initiation of the formal investigation procedure provided additional particulars which showed that the temporary suspension, adopted by Order of 19 July 2000 and applicable from 20 July to 1 September, was due to the presence of mucilage. As the authorities affirm, it is true that the duration of the suspension could theoretically have been shortened since the situation gradually returned to normal during August

but in practice this could not have been known in advance, given the unforeseeable development of the situation over time. In the light of these considerations the Commission is able to deem the suspension after 19 July, like that between 19 June and 19 July, to be due to the presence of mucilage, recognised as a natural disaster in accordance with Article 87(2)(b) of the Treaty.

(46) The compensation awarded as a result of the suspension will therefore be considered compatible with the common market in accordance with Article 87(2)(b) of the EC Treaty if it corresponds to the damage actually sustained by the beneficiaries, i.e. it does not constitute over-compensation.

(47) The Commission notes that the crews received payment equivalent to the minimum legal wage; there has not therefore been over-compensation.

(48) The compensation introduced for shipowners is equivalent to the maximum contribution provided for in Article 14 and in Annex III to Council Regulation (EC) No 2468/98 of 3 November 1998 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector ([5]). This Regulation cannot directly constitute a reference for the setting of the amount of the compensation provided for under the aid measure concerned as it was repealed and replaced by Regulation (EC) No 2792/1999. Since the latter Regulation, like Regulation (EC) No 2468/98, provides for the financing of temporary suspensions under the financial instrument for fisheries guidance (FIFG) but fails to specify the amount of the contribution (which is at the discretion of the Member State subject to the rules governing State aid; only the breakdown of the financing between the Member State and the FIFG is fixed), the Commission may consider the reference to the maximum amounts set out in Regulation (EC) No 2468/98 to be admissible. In the light of these considerations the Commission considers that the compensation awarded to shipowners on the basis of those amounts is compatible with the common market.

Measures in favour of shellfish producers

(49) The formal investigation procedure was initiated because the Commission was unable, on the basis of the information furnished, to verify whether the compensation paid was within the limits of the damage sustained, i.e. that there was no over-compensation.

([5]) OJ L 312, 20.11.1998, p. 19.

(50) In their comments on the initiation of the procedure the Italian authorities stated that the payments had been calculated on the basis of the turnover for the preceding year (1999). They also explained that they had not been able to refer to the year before that (1998) because in that year fishing in the Adriatic had been suspended from May to August on account of the events in Kosovo. This suspension was accompanied by compensation measures held to be compatible by the Commission in letter SG(2000) D/104 064 of 8 June 2000 to the Italian authorities. The latter had indicated, however, that production and turnover for 1999 were the same as for 1997. In these circumstances the Commission considers that the compensation for damage sustained during 2000, although calculated on the basis of one year only while three years are as a rule required in order to exclude the effects of peaks in production, has been fixed on an admissible basis in this particular case.

(51) The Commission considers also that in accordance with the Law of 5 February 1992 permitting loans to be made available for payments of this kind, these are granted only if the damage suffered is equivalent to at least 35 % of turnover. On the basis of the above and in accordance with Commission practice, which provides that aid to compensate for damage caused by a natural disaster may be considered compatible with the common market only if it represents not less than 30 % of normal production, the payments made in the case under consideration may be considered compatible with the common market. Furthermore, since the compensation for each undertaking will be not more than 30 % of turnover for the preceding year, there is no threat of over-compensation.

(52) The compensation, having been paid as a result of the presence of mucilage, is thus compatible with the common market in accordance with Article 87(2)(b) of the Treaty.

VI

CONCLUSIONS

(53) The Commission finds that Italy has unlawfully implemented aid introduced for fishermen for the period after 19 July 2000 and for shellfish producers by Order No 265 of 26 September 2000, converted into law No 343 of 23 November 2000, contrary to Article 88(3) of the Treaty.

(54) However, the State aid measures under consideration are compatible with the common market within the meaning of Article 87(2)(b) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Th aid measures introduced by Article 4, paragraphs 1 to 4 and 6 to 10, of Order No 265 of 26 September 2000, converted into Law No 343 of 23 November 2000, which Italy implemented in favour of fishermen in the Adriatic in the period after 19 July 2000 and in favour of shellfish producers in the Adriatic also in 2000, are compatible with the common market.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 November 2002.

For the Commission

Franz FISCHLER

Member of the Commission