►B

COMMISSION DECISION

of 23 July 1984

concerning aids provided for under Law No 86 of the Region of Sicily of 5 August 1982 on emergency measures in agriculture

(Only the Italian text is authentic)

(85/11/EEC)

(OJ L 7, 9.1.1985, p. 24)

Amended by:

	Official Journal No	page	date
►M1 Commission Decision 87/302/EEC of 9 April 1986	L 152	25	12.6.1987

▼B

COMMISSION DECISION

of 23 July 1984

concerning aids provided for under Law No 86 of the Region of Sicily of 5 August 1982 on emergency measures in agriculture

(Only the Italian text is authentic)

(85/11/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Council Regulations on the common organization of the markets in the agricultural products concerned, and in particular Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables [1], as last amended by Regulation (EEC) No 1332/84 [2], and in particular Article 31 thereof,

Having given formal notice to the parties concerned to submit their comments, in accordance with the first subparagraph of Article 93 (2) of the EEC Treaty [3],

I

Whereas, by letter dated 7 September 1982, the Italian Government notified the Commission of Law No 86 of the Region of Sicily of 5 August 1982 on emergency measures in agriculture;

Whereas further information was supplied at a bilateral meeting held on 25 and 26 September 1982, by telex of 22 October 1982, by letter of 17 June 1983 and by telex of 19 July 1983;

Whereas Article 12 of Law No 86 authorizes expenditure of Lit 500 million in 1983 for financing the activities of groups of table-grape producers, in particular the installation of telex facilities, the monitoring of the end use of products which are not marketed in the fresh condition, and the execution of other work entrusted to the groups by Community regulations and by National Law No 622 of 27 July 1967 and Regional Law No 81 of 6 May 1981;

Whereas Article 18 authorizes expenditure of Lit 6 000 million for 1983 with a view to granting agricultural cooperatives and consortia thereof subsidies of up to 70 % of investment expenditure and 20-year loans at a reduced interest rate of 7,25 % pursuant to Article 2 of Law No 23 of 28 July 1978 in respect of expenditure not covered by the 70 % subsidy, to establish processing, packaging and sales facilities for table grapes, to build annexes for the processing and preservation of grapes for distillation and for the production of juice and to purchase equipment for packaging the product;

Whereas Article 24 authorizes expenditure of Lit 17 000 million for 1982 and Lit 10 000 million for 1983 with a view to granting recognized cooperatives and producer associations subsidies of up to 70 % of expenditure, and to granting associations of cooperatives subsidies of up to 60 % of expenditure, for the purchase and modernization of facilities for the preservation, processing and marketing of agricultural products; whereas that Article also provides for Lit 3 500 million from the 1983 marketing year onwards for granting reduced-interest loans in respect of the 30 % of funding to be provided by the recipient;

Whereas Article 25 authorizes expenditure of Lit 8 000 million for 1982 and 1983 with a view to granting an additional subsidy of 20 %

(1) OJ No L 118, 20. 5. 1972, p. 1.
(2) OJ No L 130, 16. 5. 1984, p. 1.
(3) OJ No C 201, 28. 7. 1983, p. 7.

▼B

of investment expenditure to cooperatives and consortia which made investments after 1970 and received a subsidy of 50 %;

Whereas Articles 33 to 39 authorize expenditure of Lit 41 000 million in 1982 and Lit 44 000 million in 1983 in favour of cooperatives and consortia of cooperatives, cooperative wineries and consortia of cooperative wineries which harvest, package, process and market almonds and hazelnuts, citrus fruit and vegetables and vine products and which present a balance sheet in deficit on 30 September 1981 in respect of the 1980/81 marketing year; whereas the aid is intended to cover these liabilities by means of capital grants of 50 % of the liabilities and 15-year loans at a reduced-interest rate of 10 % in respect of the remaining 50 %;

Whereas these aids fall within the scope of Articles 92 and 94 of the EEC Treaty by virtue of the special provisions contained in the Council Regulations on the common organization of markets;

Whereas the Commission, having conducted a preliminary examination of Law No 86 of the Region of Sicily of 5 August 1982, found that the aid provided for in Article 12 (d), (g) and (h) for the installation of telex facilities, the financing of the monitoring of the end use of products which are not marketed in the fresh condition and the financing of other tasks entrusted to the groups by Community regulations and by National Law No 622 of 27 July 1967 and Regional Law No 81 of 6 May 1981 contravened Regulation (EEC) No 1035/72;

Whereas the aids provided for in Articles 18, 24 and 25 and in Articles 33 to 39 to encourage the installation or modernization of packaging, processing and marketing facilities for agricultural products are not limited in accordance with the pre-established Community criteria;

Whereas, in order to ensure compliance with the limitations and conditions referred to above, the Commission initiated the procedure laid down in Article 93 (2) of the Treaty in respect of the above measures and gave notice to the Italian Government to submit its comments;

Whereas the Commission gave notice to the other Member States and parties concerned other than the Member States to submit their comments;

II

Whereas the Italian authorities, in their replies to the Commission's letter of notification, have not provided information capable of exonerating the measures complained of contained in Article 12; whereas, as regards the investment aids provided for in Articles 18, 24, 25 and 33 to 39 intended partly to offset the liabilities arising from reduced-interest loans for earlier investments, the Italian authorities have not provided formal assurances that the conditions laid down by the Commission will be observed;

Whereas, by letter dated 22 August 1983, the Irish authorities approved of the Commission's position;

III

Whereas the aids for table grapes provided for in Article 12 (d), (g) and (h) as defined above contravene the provisions of Regulation (EEC) No 1035/72; whereas Article 13 onwards of that Regulation provides for the grant of Community aid to groups of fruit and vegetable producers, firstly to encourage their establishment and operation and, secondly, to finance withdrawal of products from the market; whereas Article 12 provides for subsidies for activities which should form part of the normal activities of groups which have received Community financing and which should not qualify for additional national or regional aids;

Whereas, by introducing aids in breach of the common organization of markets, the Italian authorities have disregarded the principle according to which Member States are no longer empowered to lay down rules unilaterally on matters governed by Community provisions; whereas a Member State may not unilaterally rectify Community measures

▼B

without undermining options decided on at Community level and without the risk of creating imbalances which might affect trade between Member States;

Whereas, furthermore, the measures artificially favour Sicilian producers at the expense of producers in other Member States; whereas they are therefore laible to affect trade between Member States;

Whereas the aids for investment provided for in Articles 18, 24 and 25 and the aids provided for in Articles 33 to 39, in so far as they are intended to cover financing costs arising from earlier investments, fail to observe the limits laid down in the Community criteria regarding such aids; whereas the Commission, when adopting positions in the past, has distinguished clearly between, firstly, schemes forming part of national or regional programmes approved by the Commission pursuant to Council Regulation (EEC) No 355/77 [1], as last amended by Regulation (EEC) No 3164/82 [2], and located in less-favoured areas within the meaning of Council Directive 75/268/EEC [3], as last amended by Directive 82/786/EEC [4], in respect of which aids of up to 75 % of the cost of the investment may be granted and, secondly, schemes located outside such areas or not forming part of such programmes, which should receive subsidies of up to 50 % only; whereas these very substantial aids should nevertheless make provision for an adequate contribution to be made towards the financing of the scheme by the recipient of the aid; whereas a financial contribution of 25 % or 50 % represents a minimum below which there would be a risk of encouraging the establishment of undertakings which would not be viable without further aid and consequently of promoting the production of products which might alter the conditions of trade to an extent contrary to the common interest, the danger being that such products could be disposed of only with EAGGF assistance;

Whereas, in order to calculate the level of investment aid received by a particular undertaking, account must be taken not only of aid granted to carry out the scheme but also of aid granted to offset the liabilities arising from loans contracted in respect of the investments; whereas the aids provided for in Articles 33 to 39 and intended to offset liabilities arising from loans for investments may therefore be authorized only provided that when aggregated with the aids granted they do not exceed the aid levels referred to above;

Whereas the measures complained of therefore meet the conditions set out in Article 92 (1) of the EEC Treaty;

Whereas the prohibition contained in Article 92 (1) cannot be waived under Article 92 (2) since the exceptions provided for in that provision do not apply to the aids in question;

Whereas, for the purposes of examining any national or regional measure, the exceptions provided for in Article 92 (3) are to be interpreted strictly; whereas, in particular, they may be permitted only if the Commission can establish that the aid is necessary for attaining one of the objectives referred to therein;

Whereas to permit such exceptions in respect of aids which did not possess such a redeeming feature would be equivalent to allowing trade between Member States to be affected and to be distorted without any justification from the point of view of the Community interest and would therefore confer unfair advantages on certain Member States;

Whereas, in the cases under consideration, the aids provided for in Article 12, and those provided for in Articles 18, 24, 25 and 33 to 39 in so far as they exceed the levels fixed by the Commission, show no evidence of such a redeeming feature;

Whereas the Italian Government has been unable to provide, or the Commission to detect, any grounds to establish that the aids in question

(1) OJ No L 51, 23. 2. 1977, p. 1.
(2) OJ No L 332, 27. 11. 1982, p. 1.
(3) OJ No L 128, 19. 5. 1975, p. 1.
(4) OJ No L 327, 24. 11. 1982, p. 19.

▼B

meet the conditions for qualifying for one of the exceptions provided for in Article 92 (3) of the EEC Treaty;

Whereas the content and scope of the measure are not such as to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment or to promote the execution of a project of common European interest or to remedy a serious disturbance in the economy of the Member State concerned and, consequently, Article 92 (3) (a) and (b) of the Treaty does not apply;

Whereas the establishment of undertakings by means of excessive aids entails a risk that such units will not be viable and will be unable to continue to exist without further aid while producing products which are already in surplus and the disposal of which could add to EAGGF costs; whereas such aids do not therefore qualify for exemption under Article 92 (3) (c) of the EEC Treaty;

Whereas the aid provided for in Article 12 is in breach of the common organization of the market in fruit and vegetables and as such cannot qualify for exemption under Article 92 (3) of the EEC Treaty;

Whereas, in view of the similar economic situation currently affecting undertakings in all Member States, with incomes stagnating or falling on account of steeply rising production costs, and in view also of the sometimes keen intra-Community competition in the majority of agricultural products, this aid is liable to alter the conditions of trade to an extent contrary to the common interest;

Whereas, in view of the foregoing, the aid measures adopted by the Italian authorities do not satisfy the conditions for qualifying for one of the exceptions provided for in Article 92 (3) of the EEC Treaty;

Whereas this Decision is without prejudice to any conclusions the Commission may reach regarding the financing of the common agricultural policy by the EAGGF, as a result of the payment of the abovementioned aid,

HAS ADOPTED THIS DECISION:

Article 1

1. The aids provided for in Article 12 (d), (g) and (h) of Law No 86 of the Region of Sicily of 5 August 1982 on emergency measures in agriculture are incompatible with the provisions of Article 92 of the EEC Treaty and with the common organization of the market in fruit and vegetables and therefore may not be granted.

▼M1

2. The part of the aid arising from the application of Articles 33 to 39 of the Law referred to in paragraph 1, in so far as they are intended to cover the cost of earlier investments, and from the application of Articles 18, 24 and 25 of the same Law, which exceeds:

(a) 75 % of eligible expenditure for projects forming part of national or regional programmes approved by the Commission pursuant to Regulation (EEC) No 355/77, or

(b) 50 % of eligible expenditure for projects not forming part of such programmes,

is incompatible with Article 92 of the EEC Treaty and therefore may not be granted.

▼B

Article 2

Italy shall inform the Commission, within two months from notification of this Decision, of the measures taken to comply with the provisions of Article 1.

Article 3

This Decision is addressed to the Italian Republic.