

COMMISSION DECISION

of 11 February 1987

on a Regional Law providing for special measures for sea fishing in Sicily introduced by the Italian Government

(Only the Italian text is authentic)

(87/419/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 Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products⁽¹⁾, as amended by the Act of Accession of Spain and Portugal, and in particular Article 28 thereof,

Having regard to Council Directive 83/515/EEC of 4 October 1983 concerning certain measures to adjust capacity in the fisheries sector⁽²⁾, as amended by Directive 85/590/EEC⁽³⁾, and in particular Article 12 thereof,

Having given notice, in accordance with the provisions of the first subparagraph of Article 93 (2) of the EEC Treaty, to the parties concerned to submit their comments⁽⁴⁾, and having regard thereto,

Whereas :

I

Background and description*Procedure*

By letter from its Permanent Representation to the European Communities of 3 June 1983, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a draft Sicilian Regional Law providing for special measures for sea fishing.

That draft provided for a subsidy per grt to Sicilian fishermen for 1983.

By letters of 6 April, 13 July and 6 August 1984, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a draft Sicilian Regional Law on aid in the cooperation, trade, craft industry and fisheries sectors. Among the aid measures provided for by that draft Law is the extension of the special measures for sea fishing in the form of an aid per gross register tonne for 1984.

⁽¹⁾ OJ No L 379, 31. 12. 1981, p. 1.

⁽²⁾ OJ No L 290, 22. 10. 1983, p. 5.

⁽³⁾ OJ No L 372, 31. 12. 1985, p. 49.

⁽⁴⁾ OJ No C 241, 10. 9. 1983, p. 4; OJ No C 331, 11. 12. 1984, p. 2; OJ No C 315, 6. 12. 1985, p. 3.

By letters of 8 January, 30 April and 2 August 1985, the Italian Government notified the Commission, pursuant to Article 93 (3) of the EEC Treaty, of a further draft Law providing for special measures in the sea fisheries sector. This new draft Law amends the former Law by replacing the aid per grt by aid for the temporary laying-up of vessels, based on Directive 83/515/EEC.

Aid per gross register tonne to Sicilian fishermen

This is direct aid related to the total number of grt of the vessel. The subsidy is limited to Lit 400 000 per grt for vessels of no more than 70 grt, to Lit 380 000 per grt for vessels of between 71 and 150 grt, and to Lit 370 000 per grt for vessels of more than 150 grt. To obtain the whole subsidy, one must have at least 26 days or 156 hours of fishing during a two-month period. Below that figure, the subsidy is reduced proportionately. No condition has been laid down regarding the utilization of such aid. The sum set aside for the purpose in 1983 was Lit 25 000 million.

The Italian Government has justified the grant of this aid by the serious crisis in the sector in question. It states that despite the introduction of structural measures in Sicily⁽⁵⁾, special measures are necessary to safeguard employment in the fisheries sector. Furthermore, Commission Decision 83/246/EEC⁽⁶⁾, outlawing the aid for fuel, forced the Italian Government to contemplate another type of aid meeting directly the needs of fishermen in difficulty.

Provision was made for the refinancing of that aid for 1984 under the same conditions as before.

Aid for the temporary laying-up of vessels

This scheme, introduced for three years, provides for the grant of a laying-up premium in respect of the days when the vessel is laid up, calculated on the basis of 12 % of the market value of the vessel provided that the vessels are engaged in fishing for a period of at least 120 days per year, that the period during which they are laid up is at least equal to 45 days, which may be consecutive or not, combined with a technical laying-up period of 52 days in 1985, 82 days in 1986 and 115 days from 1987. The value of the vessels is calculated on the basis of an estimate of

⁽⁵⁾ Law No 5 of 13 March 1975, and Law No 1 of 4 January 1980.

⁽⁶⁾ OJ No L 137, 26. 5. 1983, p. 28.

the new cost of the vessel, by type of vessel, to which depreciation coefficients are applied. The sum set aside for that aid is Lit 25 000 million per year, including the payment to crew members of a daily allowance of Lit 25 000 in respect of the days when their vessel is laid up.

The Italian Government justified this new measure by the need to meet the Commission's objections as to incompatibility of the existing Law with the Treaty and to adjust the financial aids of the Sicilian Region to bring them into line with Community regulations. Furthermore, that change would enable the Italian authorities to adjust the fleet's capacities to the catch possibilities with an eye to the implementation of a 'biological recovery' policy.

The aids thus described fall within the scope of Articles 92, 93 and 94 of the Treaty pursuant to the provisions of Article 28 of Regulation (EEC) No 3796/81 and Article 12 of Directive 83/515/EEC.

Examination by the Commission

Aid per gross register tonne

Following an initial examination, the Commission took the view that the aid per grt to Sicilian fishermen in 1983 is operating aid without any real reciprocal contribution on the part of the recipients and without any structural effect on their economic situation. Such aid has a significant direct effect on competition and trade between the Member States. It is therefore deemed incompatible with the common market. The Commission consequently decided to initiate the examination procedure provided for in Article 93 (2) of the EEC Treaty in respect of that aid per grt, and by letter of 2 August 1983 it gave notice to the Italian government to submit its comments.

Since the Italian Government made provision for the refinancing of that aid for 1984 without any change in the rules governing its grant, the Commission decided to extend to the refinancing of such aid the Article 93 (2) procedure initiated in respect of that aid for 1983. By letter of 8 October 1984, it gave notice to the Italian Government to submit its comments.

Aid for the temporary laying-up of vessels

Following an initial examination, the Commission took the view that the aid for the temporary laying-up of vessels could not qualify for any of the exemptions provided for in Article 92 (3) of the Treaty. The conditions under which that aid is granted are in fact different and less restrictive than those provided for by the Community Directive. Thus the calculation of the supplementary laying-up period does not ensure an additional effort compared to the average number of periods laid up in previous years, since it is based on a number of days

fixed on a flat-rate basis per year. Moreover, the acceptance of the real value instead of the purchase value or the insured value of the vessel as the basis for calculating the laying-up premium appears to be allowed only on the basis of the special characteristics of the sea fisheries sector in Sicily as compared with the rest of the Community. The depreciation coefficients proposed by the Italian Government are not in line with the real situation recorded on the market for vessels in Sicily and their utilization entails an artificial increase in laying-up premiums. Thus the granting of such aid in Sicily would be to the detriment of other Community fishermen who comply, on the granting of such aid, with the provisions of Directive 83/515/EEC. Accordingly, the Commission has decided to initiate the procedure laid down in Article 93 (2) of the EEC Treaty in respect of that aid, and by letter of 20 September 1985 it gave notice to the Italian Government to submit its comments.

Comments of the parties concerned

Several Member States forwarded their comments to the Commission. These Member States share the Commission's opinion.

II

Comments from the Italian Government

Aid per gross register tonne

The Italian Government did not provide comments regarding the grounds for this aid. By letter of 25 January 1985, in reply to a letter of notice from the Commission of 8 October 1984, the Italian Government stated that the problem of the aid per grt would be settled under a new draft Law on aid for the temporary laying-up of vessels, notified to the Commission in early January 1985.

Aid for the temporary laying-up of vessels

In its replies of 20 January and 3 April 1986, the Italian Government firstly indicated the trend in financial measures in fisheries in Sicily. From 1975 to 1980 the objective was to improve the fishing fleet and installations in order to enable stocks to be exploited rationally. Those objectives should be achieved by the measures provided for in Regional Laws Nos 5 of 13 March 1975 and 1 of 4 January 1980. From 1980 to 1984 the difficulties affecting the Sicilian fleet compelled the Government, pending a rationalization of fisheries due to the results of the measures provided for by the abovementioned Laws, to introduce special measures such as the aid for fuel (second half of 1980 to 1982) and the aid per grt (1983/1984). Lastly, from 1985 the regional authorities in Sicily have intended to resolve the problems stemming from the outlawing by the Commission of those special measures,

by implementing an aid scheme on Directive 83/515/EEC, but which also takes account of the specific socio-structural problems in fisheries in Sicily. Such a measure reverses the old logic which involved encouraging fishing by applying a policy of aid measures, and endeavours to reduce the fishing effort by encouraging biological recovery and consequently restocking.

As regards the aid scheme itself, the Italian Government pointed out that:

- the calculation of the period laid up on the basis of the number of days laid up in addition to a technical period fixed on a flat-rate basis was chosen to deal with major management and monitoring difficulties, in particular the impossibility of recording actual time laid up in previous years; consequently, technical periods are fixed on a flat-rate basis at 115 days from 1987, in accordance with the Directive, but with lower figures for 1985 and 1986, in view of the difference in the socio-structural problems affecting Sicilian fisheries,
- the market value of the vessels was defined on a flat-rate basis, as the purchase cost or insured value (which the Directive lays down as the sole basis for calculation) would not encourage the fishermen to lay up their vessels, in view of the age of most of the vessels, the high rate of inflation, and the lack of insurance or their under-estimation. The depreciation coefficients proposed by the Sicilian authorities cannot be reduced without affecting the incentive for the parties concerned to accept laying-up, the objective sought by the Community; however, the Sicilian authorities were willing to alter those coefficients from 1987 for vessels less than 18 metres long in order to arrive at a residual value of 45 % instead of 60 % for the oldest vessels.

III

Legal appraisal

Aid per gross register tonne

The aid in the form of direct subsidies per grt of the vessels is a direct aid to the liquid assets of the recipients; it therefore has an immediate effect on the latter's production costs and gives them a clear advantage over other Community fishermen. The aid is not subject to any condition on the part of the recipients, and it is not linked to any restructuring plan which would enable the difficulties at the root of their problems to be overcome.

The reference to the new draft Law providing for the introduction of an aid scheme for the temporary laying-up of vessels and thereby amending the aid in question does not affect the fact that the latter aid is direct aid to liquid assets nor its impact on competition and trade between Member States.

Aid for the temporary laying-up of vessels

Articles 3 and 4 of Directive 83/515/EEC provide, under certain conditions, for a daily laying-up premium for fishing vessels. The premium is granted for periods laid up of at least 45 days in addition to the average recorded or assessed on a flat-rate basis by type of vessel, of the days laid up in the last three calendar years prior to the first application for the premium. It is calculated on the basis of no more than 12 % of the purchase value or the insured value for an average annual period of fishing of 250 days. The vessels concerned must have a length between perpendiculars of at least 18 metres and must have been commissioned after 1 January 1958. The application of the Directive is optional and the Member States that adopt it under the conditions laid down may apply for reimbursement by the Community of 50 % of eligible expenditure.

The guidelines for the examination of State aid in the fisheries sector⁽¹⁾ state that national aid for the temporary laying-up of fishing vessels not referred to in the measures provided for in Directive 83/515/EEC, which limits intervention to vessels of a length between perpendiculars of 18 metres or more, is compatible with the common market provided that the conditions for the granting of such aid are similar to, or at least as stringent as, those provided for in the said Directive and that the rate of the laying-up premium is calculated in accordance with the criteria provided for in the said Directive.

The aid from the Sicilian Region for the temporary laying-up of vessels, which is based on the provisions of Directive 83/515/EEC, cannot be considered as an application of that Directive in view of the provisions governing its grant.

The conditions for granting the Sicilian aid are similar to those in the Community Directive but less stringent. While the minimum normal number of days laid up fixed in advance increases each year, that number reaches the minimum flat-rate of 115 days fixed by the Directive only in the third year of application.

In view of the special situation of the Sicilian fleet and the impossibility of checking the period laid up actually observed in previous years or of assessing a period laid up on a flat rate by type of vessel and in view of the increasing effort which Sicilian fishermen must make over the years to obtain the aid in question, the conditions relating to the number of days laid up could possibly be accepted if the other conditions for the granting of the premium were also justified.

The real value of the vessels could be used instead of the purchase value or the insured value for calculating the amount of the laying-up premium if using the latter two values gave insignificant premiums, and consequently the objections sought by the aid measure in question were not achieved, and if the value used reflected the real situation on the market for vessels in the country concerned.

⁽¹⁾ OJ No C 268, 19. 10. 1985, p. 3.

The substantial rate of inflation in Italy and the age of the Sicilian fleet mean that the purchase value is unsuitable for calculating the laying-up premium. Practice in insuring small and medium-sized vessels in Italy does not allow that value to be used for calculating the premium either.

The value proposed by the regional authorities in Sicily is based on an estimate of the construction cost per grt by category of vessel (five groups between less than 15 grt and more than 150 grt), to which depreciation coefficients (three groups) apply, with a residual value of the vessels of 60 % of the new value, after 10 years.

According to information available to the Commission, costs per grt when new, as applied by the Sicilian authorities, do reflect the real situation recorded on the market in Italy and more particularly in Sicily. However, the depreciation coefficients have no real relationship with reality on the Italian market. The use of depreciation coefficients in the Sicilian scheme would lead to an increase in daily laying-up premiums over and above the level which is justified by economic realities of fisheries in Sicily as compared with the rest of the Community. A sample calculation shows that, for the vessels more than 10 years old, and using the coefficients proposed by Sicily, the premiums would be between 14 % and 166 % higher than acceptable premiums according to type and age.

Although the aid in question is based on Directive 83/515/EEC, it does not meet the requirements laid down in the latter nor the conditions laid down on the subject in the rules governing national aid in fisheries. Accordingly, the aid in question constitutes support for the liquidity position of the recipients, which has an immediate impact on competition, particularly because fishermen in the other Member States who are encouraged to discontinue fishing on a temporary basis under Directive 83/515/EEC or under a supplementary national aid scheme do not have access to the same advantages as Sicilian fishermen.

The consolidation of the competitive situation resulting from the aid provided for in the Regional Law introducing special measures for sea fishing in Sicily has negative effects on that of producers in the other Member States.

Intra-Community trade in fishery products intended for human consumption is considerable and represents approximately 30 % of the total quantities landed for human consumption in the Community as a whole. Furthermore, approximately 50 % of the Italian market for fishery products comes from its own landings, approximately 15 % from imports from the other Member States, and approximately 35 % from imports from third countries.

Lastly, Italy exports approximately 14 % of its production, of which approximately 50 % to other Member States (1984 figures). Moreover, the Sicilian Region is not

isolated as regards fisheries and has commercial links for fishery products with the rest of Italy and with foreign countries.

IV

As support measures financed from State funds consolidating the competitive position of Sicilian producers as compared with those of other Member States, the aid per gross register tonne and the aid for the temporary laying up of fishing vessels are subject to the provisions of Article 92 (1) of the EEC Treaty, which lays down the principle of the incompatibility with the common market of aid meeting the criteria laid down.

The exemptions provided for in Article 92 (3) of the Treaty, which are the only ones concerned in this case, relate to objectives pursued in the interest of the Community and not only in that of individual sectors of a national economy. Those exemptions must be interpreted strictly when any regional or sectoral aid programme or any individual case of application of general aid schemes is being examined. They may be granted only where the Commission can establish that the aid is necessary to achieve one of the objectives laid down in those provisions.

Granting such exemptions for aid not entailing a reciprocal contribution would be tantamount to allowing trade between Member States to be affected and permitting distortions of competition which the Community interest does not warrant.

The existence of such a reciprocal contribution could not be detected in this case and the Italian Government could not give, nor the Commission find, any justification to the effect that the aid in question meets the conditions required for the application of one of the exemptions provided for in Article 92 (3) of the Treaty.

It is not aid to promote or facilitate the development of certain regions, and consequently Article 92 (3) (a) and (c) of the Treaty does not apply as regards the regional aspect.

Nor does the aid constitute important projects of common European interest or measures to remedy a serious disturbance in the Italian economy, and consequently Article 92 (3) (b) of the Treaty does not apply.

As regards the exemption in favour of aid to facilitate the development of certain activities, the aid in question, which is intended to reduce certain operating costs, cannot have an economic development effect within the meaning of Article 92 (3) (c). Furthermore, the scale of intra-Community trade in fishery products does not enable the conditions of such trade to be considered as not being adversely affected to an extent contrary to the common interest.

Aid for owners of fishing vessels on the sole basis of the total number of grt of the vessels constitutes, in so far as it is aid to reduce the cost of certain capital goods, operating aid without any lasting effect on the economic situation of the recipients. Aid in the form of payment of a daily laying-up premium for vessels, in accordance with the rules laid down by the Sicilian regional authorities, must also be deemed aid to reduce the cost of certain capital goods and consequently constitutes operating aid without any lasting effect on the economic situation of the recipients.

In its Communication to the Council of 25 May 1978 on its policy on sectoral aid schemes, the Commission stated that temporary aids designed to remedy the social consequences of a crisis situation had to be linked to restructuring objectives in the sector concerned and made subject to action by the recipients to facilitate their adaptation. Similarly, in its Guidelines for the examination of State aid in the fisheries sector, it reiterated that operating aid to undertakings is in principle incompatible with the common market unless it is directly linked to a restructuring plan deemed compatible with the common market. That is not the case for the aids in question.

It follows from the above that the aid does not comply with the conditions laid down for the application of one of the exemptions provided for in Article 92 (2) or (3) of the EEC Treaty.

Although such illegal aid has probably been granted, this Decision is without prejudice to the conclusions which the Commission may draw, if necessary, regarding the recovery of the sums involved, in accordance with its letter to the Member States of 3 November 1983 on the

recovery of aid illegally granted, and in particular in respect of aid which may have been granted after the entry into force of this Decision (1).

HAS ADOPTED THIS DECISION:

Article 1

The aid per gross register tonne and the aid for the temporary laying-up of fishing vessels provided for in Sicilian Regional Laws Nos 40, of 30 May 1983, 95, of 16 November 1984, and 9, of 3 January 1985, providing for special measures for sea fishing introduced by the Italian Government in 1983, 1984 and 1985, are incompatible with the common market within the meaning of Article 92 of the EEC Treaty. The aid must consequently be abolished and may no longer be granted.

Article 2

Italy shall inform the Commission within one month from the date of notification of this Decision of the steps which it has taken to comply herewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 11 February 1987.

For the Commission

António CARDOSO E CUNHA

Member of the Commission

(1) OJ No C 318, 24. 11. 1983, p. 3.