

# COMMISSION

## COMMISSION DECISION

of 7 February 1996

on aid granted by the Region of Friuli-Venezia Giulia for the improvement of zootechnical practices, in the form of special financing for natural reproductive techniques

(Only the Italian text is authentic)

(96/474/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having regard to Council Regulation (EEC) No 805/68 of 27 June 1968 on the common organization of the market in beef and veal<sup>(1)</sup>, as last amended by Regulation (EC) No 424/95<sup>(2)</sup>, and in particular Article 24 thereof,

Having given notice to the parties concerned, pursuant to the first subparagraph of Article 93 (2), to submit their comments, and having regard to those comments,

Whereas:

### I

1. By letter of 1 September 1992, recorded as received on 7 September 1992, the Italian Permanent Representative to the European Communities notified the Commission, in accordance with Article 93 (3) of the EC Treaty, of draft Regional Law (Friuli-Venezia Giulia) No 364/1 on aid for natural livestock-breeding establishments (covering stations). The Italian authorities provided further information to the Commission by letters of 25 January, 3 June and 9 December 1993.

By letter of 22 February 1994, the Commission informed the Italian Government of its decision to initiate the procedure in Article 93 (2) of the Treaty with regard to the measures in Article 30 of draft Regional Law No 364/1 which appeared to constitute operating aid not qualifying for any of the derogations laid down in Article 92 of the Treaty and were conse-

quently to be regarded as incompatible with the common market.

The Commission gave notice to Italy to submit its comments under the above procedure.

The Commission, through a notice in the *Official Journal of the European Communities*, also invited the other Member States and interested parties to submit their comments<sup>(3)</sup>.

The draft law was adopted meanwhile (as Regional Law No 20/1992).

Comments were submitted by the Italian Government by letter of 30 September 1994, recorded as received on 5 October 1994.

2. The measures in question involve a single non-recoverable grant to the 'Associazione tenutari stazioni taurine' (hereinafter referred to as the 'Associazione'), an agency involved in natural cattle-breeding practices in Friuli-Venezia Giulia.

Article 30 of Regional Law No 20/1992 provides for the subsidy in question totalling Lit 200 million primarily for natural insemination activities in accordance with the Associazione's statutes.

Under the said statute such activities consist in particular in improving the operation of cattle insemination establishments, breeding promotion, the purchase, management and distribution of breeding cattle and aid towards their upkeep.

The law specifies that the purpose of the measures is to implement a plan for the improvement of zootechnical practices in the mountainous zones of the region. The plan, according to the details given on the form submitted by the Italian authorities, must show the expenditure incurred, which may relate to any equipment, staff and transport costs.

<sup>(1)</sup> OJ No L 148, 28. 6. 1968, p. 24.

<sup>(2)</sup> OJ No L 45, 1. 3. 1995, p. 2.

<sup>(3)</sup> OJ No C 159, 10. 6. 1994, p. 8.

According to the additional information supplied by the Italian authorities, the activities also consist in the granting of premiums to the 96 covering stations belonging to the association which are situated in mountainous areas for keeping pedigree breeding bulls.

The Italian authorities initially stated that the amount of the aid of Lit 200 million granted to the Associazione was to be distributed in equal shares to the 96 establishments. Each member establishment would thus obtain Lit 2,08 million, which represents an average (based on 1992 figures) of 42 % of their total annual operating costs. Later the Italian authorities stated that the costs of the member establishments consisted of costs for the purchase and upkeep of breeding animals.

Italy also specified that the total amount of the aid would be broken down into Lit 56 million for purchases of breeding animals and Lit 144 million for their upkeep (based on 1992 expenditure).

The regional authorities did not specify the maximum rate of aid; however, they did state that it would amount to at least 50 % of eligible expenditure.

Since the Article 93 (2) procedure was initiated, the Commission has received further information suggesting that the aid in question may have been granted before a final decision was reached under the said procedure.

## II

1. By letter of 22 February 1994 to the Italian Government, the Commission stated that it had decided to initiate the procedure under Article 93 (2) of the Treaty against the aid provided for in Article 30 of draft Regional Law No 364/1.

The Commission took the view that the aid in question constituted operating aid contrary to established Commission practice on the application of Articles 92, 93 and 94 of the Treaty.

The measures were liable to distort competition and affect trade between Member States and where thus covered by Article 92 (1) of the Treaty without qualifying for any of the derogations set out in paragraphs 2 and 3 of that Article.

2. The Italian authorities did not accept the Commission's conclusions as set out in the communication to the Italian Government, contending that the measures in question did not distort competition or affect the operation of the common agricultural policy.

The Commission has received no comments from other Member States or other interested parties.

## III

1. Article 24 of Council Regulation (EEC) No 805/68 applies Articles 92, 93 and 94 of the Treaty to the production and marketing of the products referred to in Article 1, unless the Regulation provides otherwise.
2. Article 92 (1) of the Treaty states that 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, in so far as it affects trade between Member States, be incompatible with the common market.

The measures in question constitute aid within the meaning of Article 92 (1) of the Treaty since they improve the economic standing of the beneficiary undertakings vis-à-vis their competitors who do not receive this assistance. As a result, they distort or threaten to distort competition as described above.

Given the value of trade in beef and veal (in 1992: Italian trade-dispatches to the EC were worth ECU 163,84 million; trade-arrivals from the EC in Italy were ECU 2 470,92 million<sup>(1)</sup>), it appears that the aid is likely to affect trade between the Member States by favouring national production to the detriment of imports from the other Member States.

In this regard, it should be emphasized that even if the amount of aid or the size of a beneficiary undertaking is relatively small, this does not automatically rule out the possibility that trade between the Member States may be affected.

In the light of the foregoing, the measures in question are State aid within the meaning of Article 92 (1) of the Treaty.

3. The principle of incompatibility laid down in Article 92 (1) does, however, allow for exceptions.

## IV

1. The derogations from the incompatibility rule laid down in Article 92 (2) of the Treaty obviously do not apply here, nor have they been invoked by Italy.
2. The derogations provided for in Article 92 (3) of the Treaty must be interpreted strictly when any regional or sectoral aid programmes are being scrutinized or in any case where a general aid scheme is applied.

<sup>(1)</sup> Comext, 20 November 1995.

Specifically, the derogations may be granted only where the Commission is satisfied that the aid is needed to achieve one of the objectives in question. To grant a derogation in the case of an aid not offering such a guarantee would allow trade to be affected between the Member States and would unjustifiably distort competition to the detriment of the Community interest while at the same time unduly favouring the operators of certain Member States.

3. The aid in question offers no such guarantee. The Italian Government has supplied no evidence that the aid in question fulfils the conditions required for the application of any of the derogations provided for in Article 92 (3) of the Treaty, nor has the Commission found any such evidence.

4. The measures do not promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b).

Neither are they measures to remedy a serious disturbance in the economy of a Member State within the meaning of the same provision.

5. The Commission's remarks and conclusions on the comments submitted by Italy are as follows:

According to the criteria laid down in its proposal for appropriate measures relating to aid granted by Member States in the livestock and livestock products sector (doc. 75/29416 of 19 September 1975), the Commission regards as compatible with the common market:

- aid for keeping such animals, up to a maximum of 30 % of eligible expenditure, provided that particular reasons such as the nature of the region justify such an exception,
- aid for the purchase of such animals, up to a maximum of 40 % of eligible expenditure.

The Commission notes first and foremost that the maximum levels of aid specified in the abovementioned proposal on appropriate measures have not been complied with for either the purchase or the keeping of animals. The Italian Government did indeed admit that the abovementioned permitted levels would be far exceeded by the proposed measures.

Even on the most favourable hypothesis, namely allowing the aid rate of 42 % referred to by the Italian authorities, the ceilings are exceeded.

Furthermore, the Commission has been unable to establish that the aid was not granted for any expenditure other than purchase and upkeep.

Article 30 of the draft Law provides that the aid is to be used primarily — not exclusively — for the natural reproductive activities envisaged in the statutes.

Under the statutes such activities consist in particular in the improvement of the operation of cattle insemination establishments, the promotion of breeding, the purchase, management and distribution of male breeding stock and aid for keeping such animals.

It follows that the wording of the said Article 30 does not establish a strict link between the award of aid, on the one hand, and the costs of purchase or upkeep, on the other.

It is not clear from the information supplied on the form by the Italian authorities, nor has the Commission been able to ascertain, that the proposed aid is confined to the cost incurred by beneficiaries in purchasing or keeping breeding livestock.

Furthermore, the fact that the amount and level of aid relate to expenditure already incurred (the overall costs of covering stations in 1992) indicates that the aid under Article 30 lacks the principal feature which disposes the Commission favourably to investment aid, namely an incentive function.

The regional authorities denied that the aid was related to expenditure already incurred and therefore had no incentive function. The regional authorities contended that the aid in question had been planned in 1992 to cover expenditure in that year.

The Commission notes in this connection that the period for which the beneficiaries may claim eligible expenditure (from 1 January to 31 December 1992) is not confined to a period following the adoption of the Law in question. In other words, the Law providing for the measures in question was not likely to give a beneficiary an incentive to invest.

In the light of the foregoing, the Commission takes the view that the measures in question constitute operating aid contrary to the Commission's established practice.

The Commission is therefore obliged to conclude that the proposed aid does not meet the criteria for being regarded as facilitating the development of the sectors concerned; it is therefore to be regarded as operating aid not bringing about any lasting improvement in the circumstances and structural position in which the beneficiaries find themselves.

Consequently, the Commission notes that these measures, by virtue of their operational nature, do not qualify for the derogations provided for in Article 92 (3) (a) and (c) of the Treaty, regarding aid to promote the economic development of areas or certain economic activities.

In the light of the foregoing, the Commission cannot accept the justifications put forward by the Italian Government.

The aid in question cannot therefore qualify as an exception under Article 92 of the Treaty and must therefore be regarded as incompatible with the common market.

#### V

Since the procedure laid down in Article 93 (2) was initiated, the Commission has received information which indicates that the aid in question may have been granted before a final decision has been reached under the said procedure. If such is the case and the aid has been granted without awaiting the final decision, the aid has been granted illegally.

Where aid is incompatible with the common market, the Commission must avail itself of the option laid down by the judgment of the Court of Justice of 12 July 1973 in Case 70/72<sup>(1)</sup>, confirmed by the judgments of 24 February 1987 in Case 310/85<sup>(2)</sup> and 20 September 1990 in Case C-5/89<sup>(3)</sup> and oblige the Member State to recover from the beneficiaries all aid granted illegally.

Such reimbursement is necessary to restore the *status quo ante* by eliminating all the financial advantages from which the beneficiaries of the aid granted illegally have benefited unduly since the date on which the aid was granted.

The reimbursement should therefore be made in accordance with Italian legal procedures and provisions, interest becoming payable from the date on which the aid in question was granted. Such interest would have to be calculated at the commercial rate, by reference to the rate used for calculating the subsidy equivalent in connection with regional aid<sup>(4)</sup>.

This Decision shall not prejudice such conclusions as the Commission may draw regarding the financing of the

common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

#### Article 1

The aid provided for in Article 30 of Regional Law No 20/1992 of Friuli-Venezia Giulia is illegal within the meaning of Article 93 (3) of the Treaty if it has been applied; it is incompatible with the common market pursuant to Article 92 of the Treaty and may not be granted.

#### Article 2

Italy shall abolish the scheme referred to in Article 1 within two months of the date of notification of this Decision.

#### Article 3

Italy shall arrange to recover the aid referred to in Article 1, within two months of the date of notification of this Decision, namely by calling for reimbursement, with interest, of any sum already paid over.

Such recovery shall be undertaken in accordance with the procedures and provisions of national legislation. The sums to be recovered shall be subject to interest from the date of grant of the aid. Interest shall be calculated at the commercial rate, by reference to the rate used to calculate the subsidy equivalent for the purposes of regional aid.

#### Article 4

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

#### Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 February 1996.

For the Commission

Franz FISCHLER

Member of the Commission

<sup>(1)</sup> [1973] ECR 813.

<sup>(2)</sup> [1987] ECR 901.

<sup>(3)</sup> [1990] ECR I-3437.

<sup>(4)</sup> Commission notice to Member States (OJ No C 156, 22. 6. 1995, p. 5).