

COMMISSION

COMMISSION DECISION

of 5 May 1982

concerning aid granted in Sicily in the wine and fruit and vegetables sectors

(Only the Italian text is authentic)

(82/401/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 337/79 of 5 February 1979 on the common organization of the market in wine ⁽¹⁾, as last amended by Regulation (EEC) No 443/80 ⁽²⁾, and in particular Article 59 thereof,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables ⁽³⁾, as last amended by Regulation (EEC) No 1116/81 ⁽⁴⁾, and in particular Article 31 thereof,

After giving notice to the parties concerned pursuant to the first subparagraph of Article 93 (2) of the Treaty to submit their comments, and in the light of those comments,

I

Whereas, by letter of 7 March 1981, pursuant to Article 93 (3) of the Treaty, the Italian Government has notified to the Commission the draft Sicilian Regional Law on 'Measures to be taken in the wine, citrus fruit, fruit and vegetables and olive sectors' put forward by members of the Sicilian Regional Council;

Whereas, on 8 April 1981, the Italian Government then communicated the final text of the draft Law approved by the Regional Assembly; whereas, on 29

May 1981, the Italian Government communicated to the Commission information which the latter had requested;

Whereas the said draft had by then already become Regional Law No 16/81 of 2 March 1981;

Whereas Article 1 of Law No 16/81 provides for the grant of a subsidy of Lit 1 000 per quintal of grapes delivered to cooperatives in the 1980 wine year;

Whereas Article 13 of Law No 16/81 provides for the allocation of Lit 3 000 million to the Regional Wine and Wine-growing Board to encourage the collection of grapes at wine cooperatives during the 1981 wine year;

Whereas Article 2 of Law No 16/81 provides, with a view to attaining the objectives referred to in Article 25 of Regional Law No 36/76, for an increase of Lit 5 000 million in the 1981 operating fund of the IRCAC (Regional Board for Credit to Cooperatives); whereas the measures provided for in the said Article 25 consist *inter alia* in the grant of medium-term loans at low rates of interest to second-tier and third-tier syndicates of cooperative wineries in respect of distillation of wine, processing of by-products of wine-making, vinification and bottling of table wines and quality wines psr and in the grant of operating loans;

Whereas Article 7 of Law No 16/81 provides, in particular under Article 19 of Regional Law No 14/69, for the grant of subsidies of up to 90 % of expenditure on preserving, processing, distributing and selling citrus fruit and fruit and vegetables in respect of the 1980/81 marketing year to groups of producers and cooperatives and associations thereof;

⁽¹⁾ OJ No L 54, 5. 3. 1979, p. 1.

⁽²⁾ OJ No L 57, 29. 2. 1980, p. 1.

⁽³⁾ OJ No L 118, 20. 5. 1972, p. 1.

⁽⁴⁾ OJ No L 118, 30. 4. 1981, p. 1.

Whereas, pursuant to Article 59 of Regulation (EEC) No 337/79 and Article 31 of Regulation (EEC) No 1035/72, such aid falls within the scope of Articles 92 to 94 of the Treaty;

Whereas, in the light of its assessment of Law No 16/81, the Commission has noted that the subsidy of Lit 1 000 per quintal referred to in Article 1 and the aid for grape collection provided for in Article 13 infringed the common organization of the market in wine; whereas, accordingly, they could not be justified under Article 92 (3) of the Treaty and therefore had to be regarded as incompatible;

Whereas the Commission has also noted that the measures under Article 2 of Law No 16/81 providing for further financing for Article 25 of Law No 36/76 through the grant of medium-term loans at low rates of interest to second-tier and third-tier syndicates of cooperative wineries in respect of wine distillation, processing of by-products of wine-making and the vinification and bottling of table wines and quality wines *psr* infringed the rules of the common organization of the market in wine; whereas the remaining aid for syndicates, with the exception of aid in the form of operating loans, amounted to operating subsidies which did not lead to lasting improvement and could not, therefore, meet the requirements for an exemption under Article 92 (3) of the Treaty;

Whereas the Commission has notified the Italian Government that, in its opinion, Article 7 of Law No 16/81, if applied in conjunction with Community aid, in particular aid to associations of fruit and vegetable producers, would infringe the provisions of Regulation (EEC) No 1035/72; whereas the said Article, if it did not infringe the provisions of the common organization of the market in fruit and vegetables, constituted an operating subsidy for cooperatives and syndicates thereof which did not contribute to structural improvement in the sector concerned; whereas the aid in question could not therefore qualify for the exemptions provided for in Article 92 (3) of the Treaty;

Whereas, accordingly, the Commission has initiated the procedure pursuant to Article 93 (2) of the Treaty in respect of the said measures with the exception of the operating loans and has given notice to the Italian Government to put forward its comments;

Whereas the Commission has given notice to the other Member States and those concerned, other than the Member States, to put forward their comments;

II

Whereas the Italian Government has stated in its replies to the notice given by the Commission:

- that the subsidy of Lit 1 000 per quintal referred to in Law No 16/81 was applicable in 1980 only and that in future the Region would move towards structural measures intended to prevent surplus production,
- that the aid laid down in Article 13 was intended for the operation of the Regional Board for Credit to Cooperatives and was not used for encouraging collection of grapes at wine-making cooperatives,
- that the measures laid down in Article 2 stemmed from the need to launch cooperatives and that such measures did not directly concern wine-distillation operations, which remain subject to Community rules,
- that the measure referred to in Article 7 is intended to wipe out debts arising from investment by newly-created associations of producers with a view to achieving structural improvements in production;

Whereas the representatives of France's wine-growers and producers have put forward their comments; whereas they have unanimously stated that they are in agreement with the Commission's position;

III

Whereas the subsidy of Lit 1 000 per quintal of grapes delivered to cooperatives under Article 1 of Law No 16/81, the subsidy for collection of grapes at cooperatives under Article 13 of the said Law and the medium-term loans at low rates of interest for distillation of wines, processing of wine by-products and vinification and bottling of table wines and quality wines *psr* under Article 2 of the said Law have a direct impact on the price of wine and by-products of wine-making since they reduce the cost of the basic products and the cost of processing and packing;

Whereas such measures are in addition to the system of subsidies under the common organization of the market in wine and therefore infringe the rules concerned;

Whereas, under Article 24 (1) of Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products, 'aids, the amount of which is fixed on the basis of the price or quantity of products listed in that Regulation, shall be prohibited'; whereas the Commission feels that the said Article 24 (1) merely confirms one of the restrictions on the power of Member States to intervene directly in the functioning of a common market organization involving a common price system, which

henceforth falls exclusively within the Community's competence; whereas that principle follows from consistent decisions of the Court of Justice, in particular the judgment on 23 January 1975 in Case 51/74⁽¹⁾; whereas that judgment underlines the general principle that, once the Community has legislated for establishment of a common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it, and must comply not only with the express provisions of the legislation but also with its aims and objects⁽²⁾;

Whereas the subsidy paid to the members of the cooperative wineries referred to in Article 1 of Law No 16/81 was applied in respect of a major share of Sicily's production of grapes: 10 million out of a total of 14 million quintals in 1980; whereas the said aid is equivalent to about 5 to 8 % of the value of grapes delivered to cooperatives and about 4 to 7 % of the cost of wine produced by the latter;

Whereas that measure and the aid for grape collection under Article 13 of Law No 16/81 constituted artificial incentive to increasing, or at any rate maintaining at their present level, the production of grapes intended for wine-making and, as a result thereof, the quantity of wine produced in Sicily; whereas, moreover, such aid may well have induced members of cooperatives to deliver their products at prices below those which would have been applied in the absence of such intervention by the public authorities enabling the cooperatives to supply wine on more competitive terms than those which would have been necessary without such intervention; whereas, if that was indeed the case, the measure in question is likely to affect trade within the Community and distort competition since it gives Sicilian wine cooperatives an advantage over producers in other Member States who wish to export to Italy but who do not receive similar aid;

Whereas the medium-term loans under Article 2 of Law No 16/81 also constitute an artificial incentive to increasing, or at any rate maintaining at their present level, the quantities of table wines and quality wines *psr* and distilled wines and by-products of wine-making produced in Sicily; whereas, accordingly, persons receiving such aids will be in a position to offer their products on more favourable terms than those which would have been applied had there been no intervention by the Region;

Whereas the latter measure, which is in addition to all the other measures under Law No 16/81 and other regional laws in the wine sector, is likely to affect trade within the Community and distort competition in that it gives Sicilian wine-growers an advantage over wine-growers in other Member States who wish to export to Italy but do not receive any aid;

Whereas the above also applies as regards the aid granted under Article 7 to associations of producers, cooperatives and syndicates thereof engaged in the marketing of fruit and vegetables;

Whereas the grounds put forward by the Italian Government were not regarded as acceptable by the Commission, since the aid referred to in Article 1 of Law No 16/81 is incompatible with the common rules for the organization of the market in wine even though it was granted for one year only, in 1980; whereas, with regard to Article 13, there are no grounds for believing that the amounts earmarked as subsidies to cooperative wineries under the said Law were used for purposes other than those originally intended; whereas there are no grounds for believing that the aid under Article 2 will not be used, in accordance with the Law, for distillation of wine, processing of by-products of wine-making and for operation of second-tier and third-tier associations; whereas, in regard to Article 7, no regional provision has been put forward to suggest that the amount earmarked under that Article may have been used or indeed has been used to facilitate investment by newly-formed cooperatives;

Whereas, in the light of the above, the said measures do not meet the requirements laid down in Article 92 (1) of the Treaty;

Whereas Article 92 (1) of the Treaty lays down that aid meeting the requirements set out therein is, as a matter of principle, incompatible with the common market; whereas the provisions contained in paragraph 3 of that Article must be interpreted strictly when considering any national or regional measure; whereas, for an exemption to be granted, it is necessary that the Commission be in a position to establish that the aid is required for the purposes of achieving one of the objectives laid down in the said provisions.

Whereas allowing exemptions in the case of aid which does not meet those conditions would be tantamount to allowing an adverse effect on trade between Member States, a distortion of competition which would not be justified from the Community's point of view and, by the same token, an unjustified advantage for certain Member States;

⁽¹⁾ Case 51/74: (1975) ECR, p. 79.

⁽²⁾ Case 10/79: Opinion of the Advocate-General, (1979) ECR, p. 3320.

Whereas there is no evidence of a counter-concession in the case in question with regard to the aid under Article 1, as regards the subsidy of Lit 1 000 per quintal, Article 13, Article 2 and Article 7 of Law No 16/81;

Whereas the Italian Government has been unable to provide, or the Commission find, any reasons for finding that the aid in question does meet the conditions for an exemption under Article 92 (2) and (3) of the Treaty;

Whereas the measures in question are not intended to promote the economic development of areas within the meaning of Article 92 (3) (a) and (c) of the Treaty, since they do not in any way constitute measures for encouraging the development of the island or the products concerned but amount to operating aid with no structural impact; whereas there will be no lasting change in the situation of Sicily and of the products concerned after the aid has ceased;

Whereas such aid does not constitute an important project of common European interest or a measure to remedy a serious disturbance in Italy's economy and, accordingly, Article 92 (3) (b) of the Treaty is not applicable;

Whereas, moreover, such aid constitutes operating aid for the farmers concerned; whereas the Commission has always opposed such aid since it does not meet the requirements for an exemption under Article 92 (3) (c) of the Treaty in that, because of its very poor effectiveness, it is unlikely to facilitate development as laid down in the said provision;

Whereas, in the light of the situation on the markets in wine, and in fruit and vegetables, even a small amount of aid will result in a change in the conditions of trade and will run counter to the common interest;

Whereas, accordingly, the Commission has no grounds for regarding the aids in question as other than incompatible and for allowing the exemption under Article 92 (3) (c) of the Treaty to apply to them;

Whereas, in the light of the above, the aid under Article 1 of Law No 16/81, with regard to the subsidy of Lit 1 000 per quintal of grapes delivered, Article 2, Article 7 and Article 13 (with the exception of the

operating loan) does not meet the requirements for exemption under Article 92 (3) of the Treaty;

Whereas, moreover, even if it had been possible to consider an exemption under Article 92 (3), such an exemption would not have been possible in the light of the infringement of the common organization of the markets in wine, and in fruit and vegetables, constituted by Article 1 of Law No 16/81, with regard to the subsidy of Lit 1 000 per quintal, Article 13, Article 2, with regard to the aid for distillation of wine, processing of by-products of wine-making and bottling of table wines and quality wines psr, and Article 7 in the event of such a measure being cumulated with Community aid,

HAS ADOPTED THIS DECISION:

Article 1

The subsidy to members of wine cooperatives, of Lit 1 000 per quintal of grapes delivered to the cooperatives under Article 1 of Sicilian Regional Law No 16/81 of 2 March 1981 is incompatible with the rules on the common organization of the market in wine and with the provisions of Article 92 of the Treaty and must therefore no longer be granted; Article 1 of Law No 16/81 must be amended so that the subsidy is abolished.

The aid to second-tier and third-tier associations under Article 2 of Sicilian Regional Law No 16/81 and Article 25 of Sicilian Regional Law No 36/76 with the exception of operating loans, and the aid for collection of grapes under Article 13 of Law No 16/81 are also incompatible with the rules on the common organization of the market in wine and with the provisions of Article 92 of the Treaty and must therefore no longer be granted (with the exception of operating loans to second-tier and third-tier associations); Article 2 and Article 13 of Law No 16/81 must be amended so that the aid is abolished.

The aid to associations of producers and cooperatives under Article 7 of Sicilian Regional Law No 16/81 is incompatible with the rules on the common organization of the market in fruit and vegetables and with the provisions of Article 92 of the Treaty and must therefore no longer be granted; Article 7 of Law No 16/81 must be amended so that the aid is abolished.

Article 2

Done at Brussels, 5 May 1982.

The Italian Republic shall adopt the necessary measures to comply with this Decision within a period of one month from notification of this Decision and shall inform the Commission thereof without delay.

Article 3

This Decision is addressed to the Italian Republic.

For the Commission

Poul DALSGER

Member of the Commission
