

COMMISSION DECISION

of 13 November 2002

concerning the aid granted to fishermen following the suspension of fishing in the Tyrrhenian Sea and the Ionian Sea in 2000

(notified under document number C(2002) 4362)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2003/87/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 93 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, registered as received on 28 September 2000, the Italian Permanent Representation to the European Union forwarded to the Commission a draft Decree-Law introducing a number of emergency measures in the transport and fisheries sectors, including in Article 5 an accompanying social measure in favour of fishermen in the maritime regions from Imperia to Reggio Calabria and from Crotone to Gallipoli, excluding those covered by the maritime districts of Castro, Tricase, Santa Maria di Leuca and Otranto, as a result of the 'technical suspension' of fishing in the Tyrrhenian Sea and the Ionian Sea in summer 2000. This was registered as notified aid under the number N 159D/2000.

(2) Subsequently, by letter dated 2 October 2000, the Italian authorities forwarded the text of the Decree-Law (No 265 of 26 September 2000), published in the Italian Official Gazette of 27 September 2000. The

Italian authorities were asked on four occasions, in letters dated 23 November 2000 and 20 February, 30 May and 5 July 2001, to provide supplementary information, to which they did 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 Decree-Law No 265 into law), Decrees of the Minister for Agriculture and Forestry of 30 June, 19 July and 3 August 2000 and containing various implementing provisions for the technical suspensions.

(3) The Decree of 3 August 2000, containing 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 non-notified aids, under the number NN 15/2001.

(4) By letter C(2001) 3463 final of 13 November 2001 the Commission informed the Italian Government of the decision to initiate the formal investigation procedure provided for in Article 88(3) of the EC Treaty in respect of the measure concerned. The Italian authorities presented their comments by letter of 20 December 2001.

(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 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. 9.

II

type adopted for subsequent years will be examined in the light of the Guidelines currently in force.

DESCRIPTION OF THE MEASURE

- (6) In accordance with Article 5 of Law No 343 of 23 November 2000 an accompanying social measure was introduced in favour of vessels affected by the suspension of fishing to cover the minimum legal wage for crew members and the social costs payable by shipowners in respect of crews. As specified in the above Law, the aim of the suspension was to encourage an increase in fish stock biomass.
- (7) The measure concerns vessels practising pelagic trawling (*la pesca pelagica a strascico* and/or *volante*). Fishing was suspended from 2 September to 1 October 2000 in the Tyrrhenian Sea (vessels belonging to maritime districts from Imperia to Reggio Calabria) and from 3 July to 1 August 2000 in the Ionian Sea (vessels belonging to maritime districts from Crotone to Gallipoli, not including those belonging to the maritime areas of Castro, Tricase, Santa Maria di Leuca and Otranto).
- (8) Suspension is mandatory in the maritime districts where the head of the district has taken a decision to that effect, after consulting the Advisory Committee for Sea Fisheries. In districts where suspension is not mandatory, shipowners who so wish may apply the suspension measure and qualify for the accompanying social measure.
- (9) The budget allocation for this measure was EUR 1,5 million.
- (10) The aid measure was examined in the light of the Guidelines for the examination of State aid to fisheries and aquaculture (hereafter called the Guidelines) adopted in 1997 ⁽³⁾ in force on the date on which the aid measure was introduced. This arises from point 3.4 of the currently applicable Guidelines ⁽⁴⁾ under which 'unlawful aid' within the meaning of Article 1(f) of Regulation (EC) No 659/1999, i.e. new aid implemented in breach of Article 8(3) of the EC Treaty, is appraised in accordance with the Guidelines prevailing at the time when the aid is granted. However, measures of the same
- (11) The Commission considered that the measure had the effect of reducing the production costs which the undertakings concerned would normally have to bear and had the character of an operating aid. According to the general principles set out in point 1.2 of the Guidelines, this type of aid, in the fisheries and aquaculture sector, is incompatible with the common market save in properly justified circumstances.
- (12) In accordance with the first paragraph of point 2.2.2 of the Guidelines, aid for the temporary laying-up of fishing vessels (cessation 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.
- (13) The suspensions in question do not appear to have been introduced as a result of unforeseen circumstances. The information provided by the Italian authorities did not show that there had been an occurrence such as, for example, a natural disaster or other exceptional event justifying the suspension of fishing. Furthermore, the information did not reveal a sudden and unforeseen collapse in fish stocks requiring the adoption of specific stock recovery measures such as the temporary suspension of fishing. In addition, Italy had implemented compensation measures in previous years under similar temporary suspension measures. The Commission did not raise any objections in 1999 to measures examined under the number N 419/99 covered by letter SG(99) D/7551 of 17 September 1999 to the Italian Government; in 1998 to measures under the number NN 101/98 covered by letter SG(99) D/1581 of 23 June 1999; and in 1997 to measures under the number NN 99/97 covered by letter SG(97) D/6770 of 6 August 1997. It can be deduced therefore that the compensation measure adopted for 2000 was not non-recurring. The measure could not therefore be deemed compatible with the common market in accordance with the first paragraph of point 2.2.2 of the Guidelines.
- (14) Furthermore, in accordance with 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

⁽³⁾ OJ C 100, 27.3.1997, p. 12.

⁽⁴⁾ OJ C 19, 20.1.2001, p. 7.

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 laying down the detailed rules and arrangements regarding Community structural assistance in the fisheries sector ⁽⁵⁾, 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 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 measure under consideration does not appear to correspond to any of these cases, given that the ground of an unforeseen event has now been excluded and, secondly, that the Italian authorities have not provided any information from which it can be deduced that the temporary suspension formed part of a stock recovery or protection plan giving details, for example, of the species concerned, the expected impact on the biomass and the expected benefits for fishing. The Italian authorities simply provided four bibliographical references without giving details of the arguments contained in them, which could have provided a justification for the suspension in question when this had been expressly requested by the Commission (letter of 5 July 2001).

III

COMMENTS FROM ITALY

(15) The Commission observed also that the documents sent by the Italian authorities included a note from the Institute for economic research on fisheries and aquaculture in Salerno (Istituto ricerche economiche per la pesca e l'acquacoltura di Salerno (IREPA) in which it states that the aim of the mandatory suspension of fishing [...] was to reduce the effort of a fleet which is oversized in relation to the available fish stocks. According to the third paragraph of point 2.2.2. of the Guidelines, aid to restrict fishing activities which is introduced for the purpose of helping to achieve the target reductions in fishing effort under the multiannual guidance programmes for Community fishing fleets is incompatible with the common market. In addition, Article 16(4) of Regulation (EC) No 2792/1999 provides that the Member States may not grant compensation to fishermen or shipowners for the temporary cessation of fishing if the grounds are a seasonal suspension of activity as part of the ongoing management of fisheries.

(16) In the light of these factors the Commission considered that at the preliminary assessment stage provided for in Article 6 of Regulation (EC) No 659/1999 there were serious doubts about the compatibility of the aid with the Guidelines for the examination of State aid to fisheries and aquaculture, and consequently with the EC Treaty.

(17) The Italian authorities set out in their comments the various stages of the case and refer to Regulation (EC) No 2792/1999 on the temporary cessation of fishing which considers temporary cessation in: Article 7 on the adjustment of fishing effort; Article 12(6), under which Member States may introduce social accompanying measures to facilitate temporary cessation of fishing activities in the framework of plans for the protection of aquatic resources; and in Article 16(1), which provides that Member States may grant compensation to fishermen and owners of vessels for the temporary cessation of fishing. The Italian authorities maintain, on the basis of these Articles, that in the case under consideration, where provision is made for compensation for fishermen and not for shipowners, reference should be made to Article 12(6).

(18) Temporary suspension in this case was not mandatory. It became mandatory in a certain maritime district only following the implementation of a mechanism for participation involving the local advisory committee. The measure was adopted in 15 districts: 594 vessels out of a total of 1 485 took part, with an average crew of two to three seamen. Total expenditure amounted to ITL 2 937 781 500 (EUR 1,5 million).

(19) According to the Italian authorities, Regulation (EC) No 2792/1999 makes no provision, for the purpose of applying Article 12(6), for a prior technical examination by the Commission or the Scientific, Technical and Economic Committee for Fisheries ⁽⁶⁾. Furthermore, under the Guidelines then applicable (those adopted in 1997) this examination must be carried out only for the purpose of implementing Articles 7 and 16. Point 2.2.8 of the Guidelines provide also that aid may be granted by the Member States to encourage or facilitate the implementation of technical measures to conserve resources subject to a case-by-case examination. Point 2.10.3 of the Guidelines provides in addition that the Member States may grant direct aid to workers in the sector.

(20) The Italian authorities state that the measure did not confer any benefits on the undertakings. Its sole aim

⁽⁵⁾ OJ L 337, 30.12.1999, p. 10.

⁽⁶⁾ This Committee, to be consulted for the purpose of implementing the compensation provided for in Article 16(1) as part of a stock recovery plan, was set up by Article 16 of Council Regulation (EEC) No 3760/92 establishing a Community system for fisheries and aquaculture (OJ L 389, 31.12.1992, p. 1).

was to assure seamen of the minimum legal wage and to cover the relevant social costs and in this way avoid dismissals. Proof that no benefits were conferred on the undertakings is deemed to have been provided by the fact that the majority of potential recipients failed to participate in the measure, which instead of reducing production costs increased them since during the suspension period the undertakings had to bear the fixed costs without receiving any income.

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.

- (21) The Italian authorities consider that in this instance the measure could have been assessed in the light of points 2.2.8 and 2.10.3 of the Guidelines, as was done in preceding years for measures of this type. They agree that it is not possible for Article 16 to be applied but consider the measure compatible with Article 12.

- (27) The purpose of this measure is to ensure the minimum legal wage for seamen and to meet the social costs payable by shipowners in respect of their crews. As wages are a burden on undertakings, the effect of meeting them together with the relevant social contributions for a given period is to reduce the costs that have to be met by the fisheries undertakings in question.

IV

COMMENTS FROM INTERESTED PARTIES

- (22) Federcoopescas, 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 since it is clearly explained in the Law introducing the measure that it is based on the need to promote fishing without conferring advantages on the undertakings and without prejudicing crews.
- (23) In the absence of this aid measure crews would have received no income. Shipowners would have been lawfully entitled to dismiss fishermen without notice, as provided for under Italian law, if the payment of costs had not been assured by the State. In addition, shipowners are not obliged to re-employ those dismissed when fishing is resumed.
- (24) The organisations say that this measure is therefore a purely social one and fully in line with Article 12(6) of Regulation (EC) No 2792/1999. They add that this Article does not state that an aid measure adopted under it may not be a recurring one. The kind of temporary suspension implemented is the same as in previous years.
- (25) These comments were forwarded to the Italian authorities, which stated that they were in agreement with them.

- (28) Meeting the wages and social costs could be considered at first sight not to constitute an aid to the undertakings since the object is to cover the wages and social payments for crews during the temporary suspension period, with the undertakings concerned deriving no clear benefit. In actual fact, the measure, whose aim is 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 during the temporary suspension period. The fact that the majority of shipowners did not suspend fishing in order to benefit from the arrangements does not in any way show that the measure did not confer benefits on those undertakings. Indeed the contrary is true, since a considerable number of them (594 out of 1 485) benefited and the decision was taken by the shipowners themselves to suspend fishing temporarily, either through local advisory committees in circumstances where suspension had become mandatory for all fishermen in a specific maritime district, or optionally in districts where it was not mandatory. Undertakings which took part in the temporary suspension most certainly benefited. The measure therefore constitutes an aid to the fishery undertakings concerned.

V

ASSESSMENT OF THE MEASURE

A. Existence of State aid

- (26) In accordance with Article 87(1) of the EC Treaty, any aid granted by a Member State or through State

- (29) Financing for the measure came from State resources. Furthermore, since the products of the beneficiary undertakings were sold on the Community market, the measures introduced by Italy strengthened their position both on the Italian market in relation to undertakings from other Member States intending to place their products (fishery products and other competing foodstuffs) on that market, and on the markets of other Member States in relation to undertakings operating on those markets (also for fishery products and other competing foodstuffs). The measure in question favours

those undertakings and distorts or threatens to distort competition and may affect trade between Member States.

- (30) For these reasons it constitutes State aid within the meaning of Article 87(1) of the EC Treaty which in principle is prohibited under that Article. It may be considered compatible with the common market only if it falls within the scope of one of the derogations provided for in the EC Treaty. As it is a measure favouring the fishery undertakings, it must be assessed in the light of the Guidelines for the examination of State aid to fisheries and aquaculture.

B. Compatibility of the measure with the second paragraph of point 2.2.2 of the Guidelines and with Article 12(6) of Regulation (EC) No 2792/1999

- (31) In its decision initiating the procedure, the Commission said it was unable to accept these provisions as a basis since the Italian authorities had failed to provide information showing that the temporary suspension was part of a plan to protect resources. The Italian authorities challenge this position and claim that the measure is compatible with the common market since it is an accompanying social measure of the kind provided for in Article 12(6) of Regulation (EC) No 2792/1999. According to the Italian authorities, the Commission cannot reject this argument on the grounds that the Scientific, Technical and Economic Committee for Fisheries was not consulted since consultation is not mandatory.
- (32) It is true that consulting the Scientific, Technical and Economic Committee for Fisheries is not mandatory. However, the Commission had not intended to seek the Committee's opinion. On the other hand, since Article 12(6) of the above Regulation provides that Member States may introduce social measures to accompany the implementation of plans to protect resources, the Commission considers that it must conduct a minimum check to determine whether an effective plan to protect resources exists and on the relevance of the plan to the goals sought. A plan of this kind would have referred, for example, to the species covered, the impact on biomass, the benefits for fishing, etc.
- (33) In the case under consideration the Commission finds that no such plan exists. The Italian authorities simply provided four bibliographical references without giving details of the arguments contained in them which could justify the technical suspension in question, although they were expressly called upon to do so by the Commission (in its letter of 5 July 2001). This matter was also referred to in the letter informing the Italian authorities of the initiation of the formal investigation procedure and in their reply those authorities failed to provide particulars which would indicate that there was indeed a plan to protect resources. The Commission considers therefore that the measure examined here cannot be justified under the second paragraph of point 2.2.2. of the Guidelines and of Article 12(6) of Regulation (EC) No 2792/1999.

C. Compatibility of the measure with point 2.2.8 of the Guidelines

- (34) In accordance with point 2.2.8 of the Guidelines, national aid may be considered compatible with the common market, subject to a case-by-case examination, if it is intended to encourage or facilitate the implementation of measures to improve the conservation and management of stocks, by limiting catches through technical measures which are more stringent than the minimum requirements contained in Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources ⁽⁷⁾ (Regulation replaced by Regulation (EC) No 894/97 ⁽⁸⁾ and later by Regulation (EC) No 850/98 ⁽⁹⁾). The Italian authorities consider that the measure implemented can be considered compatible under point 2.2.8.
- (35) These Regulations laid down a number of technical measures for the conservation and management of resources, i.e. establishing, in relation to fishing areas, requirements concerning fishing gear (types of gear, sizes, mesh types, prohibition periods) and the species taken (minimum sizes, prohibition periods).
- (36) Let us assume then, in the first analysis, although on a different scale, that a general measure prohibiting fishing in a given period and a given area can be considered to constitute a technical measure of this kind since it is intended to limit catches through measures which are more stringent than the minimum requirements under those rules. In that case the accompanying social measure implemented by the Italian authorities could be considered compatible on the basis of point 2.2.8 of the Guidelines.
- (37) However, point 2.2.8 provides that the Commission must examine the proposed measure on a case-by-case basis as the measure must not go beyond what is strictly necessary in order to attain the conservation goal pursued. The compatibility of the measure with the common market is not automatic therefore. The measure must be justified in its goals and as regards its impact on the fishing carried out by the fishermen concerned.

⁽⁷⁾ OJ L 288, 11.10.1986, p. 1.

⁽⁸⁾ OJ L 132, 23.5.1997, p. 1.

⁽⁹⁾ OJ L 125, 27.4.1998, p. 1.

(38) In the case under consideration, as Italy states in its comments, a similar aid scheme was approved by the Commission for 1998 and 1999 on the basis of point 2.2.8. However, apart from the general ground of increasing stock biomass, the Italian Government has not provided a specific justification in support of the measure. Consequently, while accepting that the measure imposing a general prohibition on fishing constitutes a technical measure within the meaning of Regulation (EEC) No 3094/86 or Regulation (EC) No 850/98, the Commission considers that information is not available to it that would allow it to consider it, for a further year, to be compatible with the common market.

D. Compatibility of the measure with point 2.10.3 of the Guidelines

- (39) In accordance with the first paragraph of point 2.10.3 of the Guidelines, direct aid to workers in the fisheries and aquaculture sector may be considered compatible with the common market if it is granted as part of socioeconomic back-up measures designed to resolve difficulties linked to the adjustment or reduction of capacity (e.g. aid for training, or in connection with retraining, etc.).
- (40) The measure in question was not adopted to resolve difficulties linked to the adjustment or reduction of capacity. Consequently the first paragraph of the above point does not apply.
- (41) The second paragraph, concerning aid for early retirement, is also excluded.
- (42) That leaves the third paragraph under which the Commission examines the other socioeconomic measures on a case-by-case basis.
- (43) On the basis of the comments of the Italian fishermen's organisations, which are shared by the Italian authorities, the Commission notes that the measure concerned determines whether the existing labour contracts will be maintained. The arrangements prevent the seamen from being dismissed: even though it is likely that the same seamen will be re-employed at the end of the temporary suspension period, there is no guarantee that this will be so. The aid can be compared with temporary unemployment benefit enabling the seamen to retain their jobs and entitlement to social cover. Since it is equivalent to the minimum legal wage, there is no danger of over-compensation in relation to

the wages that would have been paid if fishing had continued during the same period.

- (44) Regarding subsequent years, in order to be considered compatible with the common market the aid must be adopted as part of a plan to protect resources in accordance with point 2.2.2 of the Guidelines now in force. A plan of this kind has not been drawn up for 2000. As an exception, however, on the basis of the third paragraph of point 2.10.3 of the 1997 Guidelines, the Commission considers that the measure may be considered compatible with the common market.

VI

CONCLUSIONS

- (45) The State aid introduced by Italy in Article 5 of Order No 265 of 26 September 2000, converted into Law No 343 of 23 November 2000, is compatible with the common market.
- (46) The Commission finds that Italy has implemented the aid measure concerned in breach of Article 88(3) of the Treaty. However, this aid is compatible with the common market under the third paragraph of point 2.10.3 of the 1997 Guidelines,

HAS ADOPTED THIS DECISION:

Article 1

The aid measures implemented by Italy in favour of fishermen, introduced by Article 5 of Decree-Law No 265 of 26 September 2000, converted into Law No 343 of 23 November 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