

COMMISSION

COMMISSION DECISION

of 16 March 2004

concerning the aid scheme that Italy plans to implement to compensate processing and marketing cooperatives for losses caused by an outbreak of blue tongue — Article 5 of Region of Sardinia Law No 22 of 17 November 2000

(notified under document number C(2004) 471)

(Only the Italian text is authentic)

(2005/906/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 called on interested parties to submit their comments pursuant to the above Article,

Whereas:

I. PROCEDURE

(1) By letter dated 24 November 2000, registered on 28 November 2000, the Permanent Representation of Italy to the European Union notified the Commission, under Article 88(3) of the Treaty, of Region of Sardinia Law No 22 concerning measures to enable livestock farmers to cope with the epizootic disease blue tongue⁽¹⁾, hereafter referred to as 'Law No 22/2000'. Article 10 of the Law makes the grant of some aid conditional on Commission approval under the procedure provided for in Articles 87 and 88 of the Treaty.

(2) By letter dated 15 December 2000, registered on 19 December 2000, the Permanent Representation of Italy to the European Union sent the Commission the additional information requested in a letter dated 13 December 2000.

⁽¹⁾ The Law was approved by the Regional Council of Sardinia on 25 October 2000 and published in the *Bollettino ufficiale della Regione Sardegna* (Official Bulletin of the Region of Sardinia) No 36 on 25 November 2000.

(3) By letter dated 2 February 2001, the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of this aid.

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽²⁾. The Commission called on the interested parties to make their comments on the measure in question.

(5) In that same Decision, the Commission approved the aid measures provided for in Articles 2, 3 and 4 of Law No 22/2000, taking the view that they complied with the conditions for being considered aid to facilitate the development of certain economic activities within the meaning of Article 87(3)(c) of the Treaty.

(6) The Italian authorities submitted no comments on the measures in question. The Commission received no comments from other interested parties.

II. DESCRIPTION

(7) The aid is based on Article 5 of Region of Sardinia Law No 22/2000 concerning measures to compensate processing and marketing cooperatives for losses caused by blue tongue.

⁽²⁾ OJ C 327, 22.11.2001, p. 5.

- (8) In August 2000, blue tongue broke out in Sardinia and, despite the measures taken by the authorities, spread throughout the island. The spread of the disease was facilitated by climatic conditions (hot, dry weather). In order to combat the disease, on 28 August 2000 the Italian health authorities prohibited the movement of domestic and wild ruminants originating in or coming from the Region of Sardinia (including sperm, ova and embryos) to the rest of national territory and to the other Member States of the EU. A ban was also placed on the movement of those animals from the Province of Cagliari to the rest of Sardinia and the veterinary services of other regions were ordered to carry out clinical checks on all holdings onto which sheep from Sardinia had been introduced within the past two months. The regional authorities then adopted Decree No 34 of 5 September 2000 on emergency measures for the control of blue tongue⁽¹⁾, which prohibited the movement from holdings anywhere in Sardinia of sheep, goats, cattle, buffaloes and reared animals of wild species. The Decree also made the control of insects carrying the disease compulsory. On 16 October 2000, the Sardinian health authorities adopted the plan to control and eradicate blue tongue in Sardinia and on 25 October 2000 the Regional Council of Sardinia adopted Law No 22/2000 concerning measures to enable livestock farmers to cope with the epizootic disease blue tongue, which was notified to the Commission for examination of compliance with Articles 87, 88 and 89 of the Treaty. The measures provided for in Articles 2, 3 and 4 of Law No 22/2000 were considered to be compatible with the common market⁽²⁾. The Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty with regard to the aid provided for in Article 5 of the Law.
- (9) Article 5 of Law No 22/2000 authorises the regional authorities to grant aid to undertakings and cooperatives having their registered office in Sardinia involved in the harvesting, processing, packaging and marketing of crop and animal products and which have suffered a reduction in supplies due under statutory or contractual obligations of more than 20 % (less-favoured agricultural areas) or 30 % (other areas) compared with the average of the last three years. This aid is intended to compensate for losses due to the lack of raw materials for processing and is limited to losses related to the reduction of the supplies from the cooperatives' members.
- (10) A total of LIT 5 billion (around EUR 2 582 280) was provided for aid for 2000.
- (11) The Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty because of doubts regarding the compatibility of the scheme with the common market. These doubts concerned, in particular, the fact that point 11.4 of the Guidelines does not provide for granting compensation to processing undertakings for losses caused by epizootic diseases. The Commission considered that, even though the Italian authorities had decided to restrict aid to cooperatives, no causal link had been established between the disease (blue tongue) and the reduction in supplies. In particular, the region had been hit by drought (see Aid N 745/2000), which could have contributed to the reduction in supplies. In addition, certain cooperatives could have suffered a reduction in raw materials received for reasons other than blue tongue (or the drought).
- (12) Under point 11.3.8 of the Guidelines, which lays down that aid may be paid only to farmers or to a producer organisation of which farmers are members for damage caused by adverse weather events, it is not possible to apply these rules by analogy to processing undertakings that have suffered losses from blue tongue. As a general rule, the Commission considers that agricultural processing undertakings have a degree of flexibility in the management of their sources of supply. This can, of course, involve additional costs for raw materials and a reduction in profitability, but this does not appear to justify a direct application of the rules applicable to agricultural production.
- (13) In the absence of any other legal basis for examining and possibly approving the aid measure provided for in Article 5 of Law No 22/2000, it seemed that the aid should be regarded as operating aid, i.e. aid intended to cover expenditure which processing undertakings would normally bear themselves in the day-to-day administration of their activities. Such aid must in principle be considered as incompatible with the common market.
- (14) Following the decision to open the procedure provided for in Article 88(2) of the Treaty, Italy sent the Commission no comments.
- (15) Under Article 87(1) of the Treaty, 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 is, insofar as it affects trade between Member States, incompatible with the common market.

III. LEGAL ASSESSMENT

⁽¹⁾ Published in the *Bollettino ufficiale della Regione Sardegna* No 29 of 19.9.2000, p. 1958.

⁽²⁾ Decision SG(01) D/285817 of 2 February 2001.

- (16) Article 40 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ⁽¹⁾ lays down that, save as otherwise provided in the Regulation, Articles 87, 88 and 89 of the Treaty apply to the production of and trade in the products covered by that Regulation. Similarly, Article 23 of Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat ⁽²⁾ lays down that, save as otherwise provided in the Regulation, Articles 87, 88 and 89 of the Treaty apply to the production of and trade in the products referred to in Article 1 of that Regulation.
- (17) Article 5 of Law No 22/2000 provides for aid to compensate agricultural undertakings and cooperatives for losses due to a lack of raw material for processing caused by a reduction in deliveries from members following the outbreak of blue tongue. The undertakings and cooperatives in question thus enjoy economic benefits they would not otherwise have received in their normal course of business and which improve their competitive position when compared to other farmers in the Community who do not receive the same type of aid.
- (18) The aid concerned affects competition and trade between Member States. The beneficiaries carry out an economic activity in sectors (the beef and veal and sheepmeat sectors) that are the subject of trade between Member States. In 2001, the cattle population in Italy totalled 6 932 700 head, including 273 900 head in Sardinia. In that same year, the sheep population was 8 311 400 head, including 3 602 200 in Sardinia, and the goat population was 1 024 800 head, including 240 200 head in Sardinia.
- (19) The measure under examination is therefore state aid as defined in Article 87(1).
- (20) The prohibition on state aid is not absolute. However, in this case, the derogations provided for in Article 87(2) are clearly not applicable and, moreover, were not requested by the Italian authorities.
- (21) Neither does Article 87(3)(a) apply, because the aid is not intended to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment.
- (22) By the same token, the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b).
- (23) Neither is the aid intended to fulfil the objectives laid down in Article 87(3)(d).
- (24) Given the nature of the aid scheme notified, the only derogation that could be applied is that laid down in Article 87(3)(c). It must therefore be checked whether implementation of the planned measures is eligible for this derogation.
- (25) Since Law No 22/2000 was correctly notified by the Italian authorities in accordance with Article 88(3) of the Treaty, it must be assessed in accordance with the Community Guidelines for state aid in the agriculture sector ⁽³⁾ (hereafter referred to as the Guidelines). Under point 23.3 of the Guidelines, these apply from 1 January 2000 to new state aid, including aid already notified by the Member States on which the Commission has not yet adopted a Decision.
- (26) Under point 11.1.1 of the Guidelines, state aids for agriculture include a group of measures intended to safeguard farmers against damage to agricultural production or the means of production, including buildings and plantations, caused by unforeseen occurrences such as natural disasters, adverse weather conditions or outbreaks of animal or plant disease.
- (27) It is therefore clear that, in the case of losses caused by an epizootic disease, compensation may be provided only for losses borne by the productive sector and not those borne by undertakings processing or marketing agricultural products. Aid to compensate for such losses must also be compatible with point 11.4 of the Guidelines, which concerns, in particular, aid for combating animal and plant diseases.
- (28) The Italian authorities submitted no comments. The Commission did therefore not receive additional information that could dispel the doubts stated when it initiated the procedure provided for in Article 88(2) of the Treaty with regard to the aid in question.
- (29) Furthermore, the Italian authorities have not established in a clear and indisputable manner a direct link between the reduction in deliveries from members of the undertakings or cooperatives due to blue tongue and the losses of income incurred during the same period. In the absence of a direct link, the losses in question could have been caused by other factors, such as the drought, the crisis on the markets, the financial management of the undertakings concerned, etc. Any aid intended to compensate for this type of loss would constitute operating aid, incompatible with the common market under point 3.5 of the Guidelines ⁽⁴⁾.

⁽¹⁾ OJ L 160, 26.6.1999, p. 21. Regulation as last amended by Regulation No 1782/2003 (OJ L 270, 21.10.2003, p. 1).

⁽²⁾ OJ L 341, 22.12.2001, p. 3.

⁽³⁾ OJ C 28, 1.2.2000, p. 2.

⁽⁴⁾ Judgment of the Court of First Instance of 8 June 1995 in Case T-459/93 *Siemens SA v Commission of the European Communities* [1995] ECR II-1675.

IV. CONCLUSIONS

- (30) In the light of the above, the Commission concludes that the aid provided for in Article 5 of Regional Law No 22/2000 constitutes state aid within the meaning of Article 87(1) of the Treaty and that it is ineligible for any of the derogations provided for in Article 87(3).
- (31) Since Article 10 of Law No 22/2000, notified in accordance with Article 88(3) of the Treaty, lays down that the aid provided for in Articles 3, 4 and 5 is to be implemented by the regional authorities only after approval by the European Commission, it is not necessary to provide for the recovery of the aid referred to in Article 5 of the Law,

HAS ADOPTED THIS DECISION:

Article 1

The aid planned by Italy under Article 5 of Region of Sardinia Law No 22 of 17 November 2000 to compensate agricultural

undertakings and cooperatives for losses caused by a lack of raw material for processing caused by a reduction in deliveries from members is incompatible with the common market. The above aid may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 March 2004.

For the Commission

Franz FISCHLER

Member of the Commission
