

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 July 1993

concerning aid decided by the Italian Government in favour of the ceramics industry of Lazio

(Only the Italian text is authentic)

(93/508/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, in accordance with the abovementioned Article, given notice to the parties concerned to submit their comments to it,

Whereas :

I

By Regional Law No 90 of 14 December 1990⁽¹⁾ the region of Lazio instituted an aid scheme in favour of the ceramics industry. Article 1 provides, in order to support employment and to promote and develop local traditions in the area of Civita Castellana, Fabrica di Roma, Gallese, Corchiano, Castel Sant'Elia, Nepi, Faleria, Stimigliano, Cittaducale, Forano and Castel S. Angelo, for the financing of a publicity campaign for ceramic sanitary ware, crockery and tiles manufactured by companies established and having their production units in the aforementioned area. The characteristics of eligible products are fixed by the regional government.

Article 2 of Regional Law No 90 provides that the investments necessary to meet those characteristics may be aided by the regional government by means of grants covering up to 25 % of the eligible cost. Article 3 speci-

fies that a budget of Lit 1 000 million is available for the publicity campaign and Lit 5 000 million for the investments.

Decision No 1468 of the regional government of Lazio of 3 March 1992 lays down the characteristics of eligible products, as provided for in the second point of Article 1 of Regional Law No 90. Decision No 11944 of 17 December 1991 specified that eligible cost includes leasing costs and the depreciation on investment for a maximum of three years, as well as the cost of consultants, the introduction of quality systems, training costs and certain operating costs. In order to be eligible such costs must be linked to the objectives of introducing company quality systems, process innovation to increase quality and the acquisition of services to increase or verify the quality of input, production process and output. The aid is granted in the form of a maximum 25 % grant on eligible cost, with a maximum of Lit 300 million per company. Cumulation with other regional or national aid is admissible up to 70 % of eligible cost.

Neither Regional Law No 90 of 1990, nor Decisions No 11944 of 1991 and No 1468 of 1992 were notified in advance to the Commission as provided for in Article 93 (3) of the Treaty.

II

By letter of its Permanent Representation of 29 October 1992 the Italian Government notified the aid scheme in question to the Commission. In its notification the Italian Government emphasized that, although the law in question was in force, it would only become operative after approval by the Commission.

⁽¹⁾ Bollettino Ufficiale della Regione Lazio No 36 of 29 December 1990.

The Commission took the view that the notification was belated, because neither Regional Law No 90 of 1990, nor Decision No 1468 of 1992 contains a suspensive clause making its application subject to prior Commission approval. The Commission therefore treated the aid scheme as a non-notified aid.

The Commission also took the view that the aid scheme would be likely to distort competition and affect trade between Member States within the meaning of Article 92 (1) of the Treaty and that it did not seem to qualify for one of the derogations provided for in that Article. In particular, the Commission took the view that the derogations provided for in Article 92 (3) (a) and (c) in favour of certain areas could not apply, because companies in assisted as well as unassisted areas are eligible for the aid and because cumulation with other regional aid is possible. Moreover, aid for publicity and investment to improve product quality could not be said to facilitate the development of the ceramics sector without adversely affecting trading conditions to an extent contrary to the common interest within the meaning of Article 92 (3) (c). The Italian Government had also failed to show the need for the aid, which, furthermore, did not seem to fit the criteria the Commission has adopted for allowing aid to small and medium-sized enterprises. The Commission therefore decided to initiate the procedure laid down in Article 93 (2) of the Treaty.

The Italian Government was informed of this decision by letter dated 18 January 1993 and was invited to submit its comments within one month. The other Member States and interested third parties were also given notice to submit their comments⁽¹⁾.

III

It was only by letter dated 8 April 1993 that the Italian Government submitted its observations under the procedure. The Italian Government repeated that no aid had yet been awarded under the scheme, pending the request for approval by the Commission. Regarding the publicity campaign, the Italian Government pointed out that this would only take place inside Italy and be carried out by the region of Lazio. Regarding the aid for eligible cost, the Italian Government stressed that this included 'soft' expenditure for training and for outside consultants as well as investment cost and that for determining aid for the latter category only the annual depreciation for up to three years would be taken into account, which would reduce the scale of the aid. The Italian Government also stated that the beneficiary companies are all small and medium-sized enterprises or associations of such enterprises and pointed to the regional problems in the Civita Castellana area, the favourable effect of the aid on

employment, and the particularities of ceramics produced in that area, which should reduce the effect of the aid on intra-Community competition. Finally, the Italian Government indicated that the Lazio region would abolish the possibility of cumulation with other aid and describe more precisely either the beneficiaries or admissible cost.

Within the framework of the procedure, observations were also submitted by the United Kingdom, the German Government, the liaison office of the European ceramics industry Ceram-Unie and the British Ceramic Manufacturers Federation.

These observations were submitted to the Italian Government for its comments by letter dated 6 April 1993. These comments were provided by letter dated 17 May 1993, which also indicated that a total of 30 companies qualify for the aid scheme.

IV

The financing, with Lit 1 000 million, of a publicity campaign in Italy by the region of Lazio to promote sales of ceramics produced in Civita Castellana constitutes aid to the manufacturers of these products in this area within the meaning of Article 92 (1) of the EEC Treaty. The fact that this sum is not provided to the companies directly, but is spent by the regional authorities does not alter this appraisal, as those companies will be the beneficiaries of the publicity they would normally have to finance themselves.

The grants of up to 25 % of eligible cost as set out in Regional Law No 90 of 1990 and Regional Decision No 11944 of 1991, totalling Lit 5 000 million, in favour of manufacturers of ceramics in the Civita Castellana area constitute aid to those manufacturers, who are able to take advantage of it to make investments and to improve the quality of their products by various means, without having to bear all the cost thereof.

The Commission therefore identifies aid to manufacturers of ceramics in the Civita Castellana area totalling Lit 6 000 million (ECU 3,3 million at the date of this Decision).

V

Article 93 (3) of the Treaty provides that the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid. This obligation must be interpreted in the sense that the notification must take place before the legislative process that institutes a right to the aid has been concluded. In the present case, Regional Law No 90 of 1990 and the Deci-

⁽¹⁾ OJ No C 46, 18. 2. 1993, p. 3.

sions of the regional government prescribed by that law were adopted without prior notification to the Commission and without a provision making the granting of aid dependent on approval by the Commission. The fact that no aid has yet been granted to individual companies does not change the Commission's view that the Italian Government failed to notify its plan to grant aid pursuant to Article 93 (3) of the Treaty.

VI

There is competition between manufacturers of ceramic tableware, crockery and sanitary ware and these products are traded between Member States. As was set out in the letter to the Italian Government dated 18 January 1993 inviting it to submit its observations, Italy is a net exporter of ceramic sanitary ware and crockery.

In 1990 Italy exported 21 533 tonnes of ceramic sanitary ware (CN code 6910) to other Member States and imported 2 304 tonnes. In the same year Italy exported 36 283 tonnes of ceramic crockery (CN code 6911 and 6912) to other Member States and imported 26 377 tonnes.

In 1991 Italy exported 20 569 tonnes of ceramic sanitary ware to other Member States and imported 2 288 tonnes. In the same year Italy exported 37 976 tonnes of ceramic crockery to other Member States and imported 29 286 tonnes.

In the first 11 months of 1992 Italy exported 17 346 tonnes of ceramic sanitary ware to other Member States and imported 2 988 tonnes. In that same period Italy exported 33 617 tonnes of ceramic crockery to other Member States and imported 24 554 tonnes.

Where financial aid strengthens the position of certain undertakings compared with others that are competing with them in the Community, such aid must be deemed to affect competition with such other undertakings.

In its observations submitted within the framework of the procedure, the Italian Government stated that sanitary ware is the main product of the ceramics industry in the area of Civita Castellana. Given that the characteristic of the products of that area is that they are made of earthenware, the main competitors are situated outside the Community. Of the 3 140 000 pieces manufactured in this area in 1992, only 20 % had been exported, 62,5 % of which to third countries.

The fact cannot, however, alter the conclusion that the aid to the ceramics industry in the Civita Castellana area threatens to distort competition and to affect trade between Member States within the meaning of Article 92 (1) of the Treaty. Sanitary ware made of earthenware is

also manufactured in certain other Member States, notably France and Spain, and quality sanitary ware in earthenware can, to a certain degree, compete with comparable products made of the more expensive china.

Article 92 (1) of the Treaty lays down the principle that aid having certain characteristics which it specifies is incompatible with the common market.

The derogations from the principle which are set out in Article 92 (2) of the Treaty are inapplicable in this instance, given the nature and objectives of the aid, and were not in any case invoked by the Italian Government.

VII

Article 92 (3) of the Treaty specifies the aid which may be considered to be compatible with the common market. Compatibility with the Treaty must be viewed in the context of the Community and not of a single Member State. So as to maintain the proper functioning of the common market and take account of the principles laid down in Article 3 (f) of the Treaty, the exceptions to the principle of Article 92 (1) which are set out in Article 92 (3) must be interpreted strictly in examining any aid scheme or individual aid measure.

In particular, the derogations may be applied only if the Commission finds that, if the aid were not granted, market forces alone would not be sufficient to induce the recipients to act in such a way as to achieve one of the objectives pursued.

Applying the derogations to cases which do not contribute to such an objective, or where the aid is not necessary for this purpose, would mean conferring undue advantages on the industries or undertakings of certain Member States, whose financial position would be strengthened, and affecting trading conditions between Member States and distorting competition, without any justification based on the common interest referred to in Article 92 (3).

With regard to the derogation provided for in Article 92 (3) (a) for aid to promote the economic development of certain regions, it should be noted that the standard of living in the Lazio region is not abnormally low, nor does it suffer from serious underemployment within the meaning of that derogation.

With regard to the derogations provided for in Article 92 (3) (b), it is to be noted that the aid is not intended to remedy a serious disturbance in the Italian economy or to promote the execution of an important project of common European interest; nor, indeed, has the Italian Government put forward any argument calling for the application of these derogations.

With regard to the derogation provided for in Article 92 (3) (c) for aid to facilitate the development of certain economic activities, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, the Commission notes that the Italian Government specified within the framework of the procedure that it would change the detailed rules of the aid scheme in order to exclude all cumulation with other aid and that the Government stated that only small and medium-sized enterprises with up to 250 workers and an annual turnover of less than ECU 20 million are eligible for the aid.

The Commission understands the specific problems of small and medium-sized companies and has therefore decided in its Communication 92/C 213/02 'Community guidelines on State aid for small and medium-sized enterprise (SMEs)' ⁽¹⁾ (hereinafter referred to as 'the Community guidelines') not to object to investment aid up to 7,5 % in gross terms to companies with no more than 250 employees and either an annual turnover of no more than ECU 20 million or a balance sheet total not exceeding ECU 10 million, which are not more than 25 % owned by one or more companies not falling within this definition. For small companies having less than 50 employees and either an annual turnover not exceeding ECU 5 million, or a balance sheet total not exceeding ECU 2 million, which are not more than 25 % owned by one or more companies not falling within this definition, the Commission stated in the Community guidelines that it would not object to investment aid up to 15 % gross. The Community guidelines also allow aid to small and medium-sized enterprises in respect of consultancy help, training and dissemination of knowledge up to 50 % gross.

The aid decided by the region of Lazio exceeds these limits, however.

The aid for financing a publicity campaign is neither 'soft', nor is it investment aid; rather it constitutes operating aid, because publicity is part of the marketing effort companies would normally be expected to finance themselves as a necessary condition for their operations. Because such aid is extremely close to the market, it will adversely affect trading conditions to an extent contrary to the common interest. The Italian Government's statement that the publicity is limited to Italy does not change this appraisal because such publicity will have a restrictive effect on imports and potential imports of ceramics from other Member States.

Neither does the 25 % grant on eligible cost conform with the Community guidelines. The eligible cost includes investment in fixed assets, notably new plant and

machinery. In its observations submitted within the framework of the procedure, the Italian Government correctly pointed out that investment aid will be lower than 25 % because only the depreciation for a maximum of three years will benefit from aid; consequently, with a write-off period of five years, the investment aid will not exceed 15 % of investment cost in gross terms. This is, however, still well above the ceiling of 7,5 % for medium-sized enterprises mentioned in the Community guidelines.

Eligible cost also includes the cost of acquiring or realizing company quality systems, for which 25 % aid can be granted. Such aid cannot be regarded as 'soft' but rather constitutes investment aid which exceeds by far the ceilings mentioned in the Community guidelines.

Eligible cost furthermore includes the cost of raw materials and consumer goods which are considered strictly necessary for the realization of quality improvement programmes and orders for which are subject to specific bookkeeping. Aid allowing companies to acquire raw materials and consumer goods is neither 'soft' nor is it investment aid; rather it constitutes operating aid to which the derogation provided for in Article 92 (3) (c) cannot apply.

Finally, eligible cost also includes the cost of training and of obtaining the advice of consultants. The Community guidelines indicate that a favourable view will be taken of such 'soft' aid up to a level of 50 %. The 25 % aid for this purpose in favour of the ceramics industry in Civita Castellana remains well within this limit.

The Commission has found no justification for the aid exceeding the limits laid down in the guidelines for aid to small and medium-sized enterprises. It is perfectly natural for companies to try to improve the quality of their products, in order to remain competitive. To allow investment aid to certain manufacturers for this purpose will distort competition and will affect trading conditions. Furthermore, the fact that the aid in question is not made available to small and medium-sized enterprises in Lazio in general, but only to those in one specific sector, also needs to be taken into consideration. The sectoral concentration of the aid in favour of a horizontal objective, such as the promotion of small and medium-sized enterprises, will clearly distort competition between competitors in that sector, and this effect will be perceived as such by those competitors; this distortion will be more pronounced if most or all companies in that sector are small and medium-sized, as is apparently the case in the ceramics industry of Civita Castellana.

⁽¹⁾ OJ No C 213, 19. 8. 1992, p. 2.

In view of the stiff competition in the ceramics sector, notably for sanitary ware, which is the main product of the ceramics industry of Civita Castellana, the investment aid provided for in Regional Law No 90 of 1990 in order to stimulate quality improvement will adversely affect trading conditions to an extent contrary to the common interest, in so far as it exceeds the limits indicated in the Community guidelines. Equally, the operating aid for publicity and for raw materials and consumer goods will adversely affect trading conditions to an extent contrary to the common interest.

Parts of the region of Lazio qualify for regional aid within the meaning of the derogation provided for in Article 92 (3) (c). Of the municipalities in the Civita Castellana area, only Stimigliano is located in an assisted area pursuant to Article 92 (3) (c). The municipalities of Castel Sant'Elia, Civita Castellana, Corchiano, Fabrica di Roma, Faleria, Gallese and Nepi are eligible for Community structural funds pursuant to Objective 5b under Council Regulation (EEC) No 2052/88⁽¹⁾; this is not the case, however, for the municipalities of Cittaducale, Forano and Castel S. Angelo. Consequently, the aid scheme in favour of the ceramics industry in the Civita Castellana area is not restricted to companies in assisted areas within the meaning of Article 92 (3) (c). The Commission also notes that neither the aid for publicity nor the aid for eligible cost is dependent on initial or expansion investment or job creation within the meaning of its coordination principles on the application of Article 92 (3) (c) to regional aid. For all these reasons the aid scheme in question does not meet the criteria to be considered as facilitating the promotion of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest within the meaning of Article 92 (3) (c).

The Italian Government argued in the course of the procedure that the aid scheme in question is similar to the scheme the Commission approved within the framework of the operative programme under Objective 5b, subprogramme 2, points 2 and 4 for the region of Lazio. The Commission does not agree that the two schemes are similar. First, subprogramme 2 for the period 1991 to 1993 provides that State aid is allowed for certain investments made by small and medium-sized industrial enterprises with a maximum intensity of 15 % for companies with less than 50 workers and 7,5 % for companies with

50 to 150 workers; these maxima are in accordance with the Community guidelines. The aid scheme instituted by Regional Law No 90 of 1990, however, provides that manufacturers of ceramics can receive up to 15 or even 25 % investment aid. Furthermore, whereas only companies belonging to any industrial sector in Objective 5b areas are eligible for the aid under subprogramme 2 after 1992, the aid scheme instituted by Regional Law No 90 of 1990 applies to manufacturers of ceramics inside and outside these areas as well. In addition, subprogramme 2 does not contain the possibility of providing aid to finance a publicity campaign for ceramics produced by eligible companies, such as the aid scheme instituted by Regional Law No 90 of 1990. For all these reasons, the aid to the ceramics sector goes well beyond the aid the Commission approved under Objective 5b.

This notwithstanding, the Commission has also taken into consideration that point 4.1 of the Community guidelines provides for the situation where areas are designated as eligible for aid from the structural funds under Objective 2 or 5b but are not nationally assisted areas; in such areas up to the end of 1993 small and medium-sized enterprises may receive aid for investment up to a certain level to be decided in relation to each scheme. In the case of the aid scheme in favour of the ceramics sector in the Civita Castellana area the Commission takes the view that the investment aid ceilings of 7,5 % for medium-sized companies and 15 % for small companies can be raised to 10 and 20 % respectively for companies located in Objective 2 and 5b areas until the end of 1993. This view is in line with the position adopted by the Commission in its decision dated 2 June 1993 regarding the general aid scheme for SMEs in Italy instituted by Law No 317 of 1991. For the period after 1993, the aid ceilings that will apply to companies in Objective 2 and 5b areas will depend on whether these areas remain eligible under those objectives.

Point 4.1 of the Community guidelines also provides for the possibility that SMEs in Article 92 (3) (c) areas can receive an extra 10 percentage points gross of investment aid on top of the prevailing rate of regional aid authorized by the Commission, with an overall ceiling of 30 % net. The Commission notes that Stimigliano is located in such an area. Within the framework of the procedure the Italian Government informed the Commission that it would exclude all cumulation of aid under Regional Law No 90 of 1990 with other aid, so that the possibility of cumulation with regional aid within the meaning of the Community guidelines cannot occur.

⁽¹⁾ OJ No L 185, 15. 7. 1988, p. 9.

The Italian Government stated in the course of the procedure that the region of Lazio would lay down more precisely either the description of the beneficiaries, or the type of admissible cost. As has been set out above, the amendments proposed by the Italian Government concerning the detailed rules of the aid scheme in question, such as the limitation of the beneficiaries to small and medium-sized enterprises are insufficient to enable any of the derogations provided for in Article 92 (3) of the Treaty to be applied to the aid in question, considered as a whole. This decision serves the purpose of distinguishing those parts of the aid scheme which satisfy the requirements in order to be considered compatible with the common market from those parts which do not,

HAS ADOPTED THIS DECISION :

Article 1

1. The aid amounting to Lit 1 000 million provided for in Article 1 (1) of Regional Law No 90 of 14 December 1990 of the region of Lazio in favour of a publicity campaign on behalf of the ceramics industry in the Civita Castellana area is incompatible with the common market within the meaning of Article 92 (1) of the EEC Treaty and may not be granted.

2. The investment aid amounting to Lit 5 000 million provided for in Article 2 of Regional Law No 90 in favour of small and medium-sized enterprises as defined in the Community guidelines on State aid for small and medi-

um-sized enterprises (SMEs) is compatible with the common market :

- in so far as it does not exceed one of the following ceilings :
 - 20 % gross for small enterprises situated in areas eligible under Objectives 2 and 5b of the Structural Funds at the time the aid is awarded,
 - 15 % gross for other small enterprises,
 - 10 % gross for medium-sized enterprises situated in areas eligible under Objectives 2 and 5b of the Structural Funds at the time the aid is awarded,
 - 7,5 % gross for other medium-sized enterprises, and
- in so far as the acquisition of raw materials and consumer goods is excluded from eligible cost.

Article 2

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

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 7 July 1993.

For the Commission

Karel VAN MIERT

Vice-President