

JUDGMENT OF THE COURT

6 November 1990 *

In Case C-86/89,

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adélaïde,

applicant,

v

Commission of the European Communities, represented by Thomas F. Cusack, Legal Adviser, and Sergio Fabro, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, also a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the Commission decision of 30 November 1988 on Decree-Law No 370/87 of 7 September 1987 of the Italian Government subsequently converted into Law No 460 of 4 November 1987 on production and marketing, including new standards for the production and marketing of wine sector products (Official Journal 1989 L 94, p. 38),

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, J. C. Moitinho de Almeida and M. Díez de Velasco (Presidents of Chambers), F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: C. O. Lenz

Registrar: D. Louterman, Principal Administrator,

* Language of the case: Italian.

having regard to the Report for the Hearing,

after hearing oral argument from the parties' representatives at the hearing on 5 July 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 12 July 1990,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 16 March 1989 the Italian Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Commission Decision 89/228/EEC of 30 November 1988 on Decree-Law No 370/87 of 7 September 1987 of the Italian Government subsequently converted into Law No 460 of 4 November 1987 on production and marketing, including new standards for the production and marketing of wine sector products. That decision, which was notified to the Italian Government by letter of 6 January 1989, was published in the Official Journal on 7 April 1989 (Official Journal 1989 L 94, p. 38).
- 2 Article 45 of Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organization of the market in wine (Official Journal 1987 L 84, p. 1) set up an aid scheme in respect of concentrated grape musts and rectified concentrated grape musts produced in the Community and used in accordance with Article 18 of the regulation to increase the natural alcoholic strength by volume of fresh grapes, grape must and certain types of wine. Article 18 of the regulation specifies the conditions and procedures for such increase. Article 45(3) provides that the amount of aid is to be fixed having regard to the difference in the cost of increasing alcoholic strength by adding sucrose, on the one hand, and concentrated grape must or rectified concentrated grape must, on the other.

- 3 By Regulation (EEC) No 2287/87 of 30 July 1987 (Official Journal 1987 L 209, p. 26) the Commission fixed the amount of aid for the use in wine-making of concentrated grape must and rectified concentrated grape must in respect of the 1987/88 wine year.
- 4 Taking the view that the Community aid was inadequate, the Italian Government introduced a national scheme of supplementary aid, following an unsuccessful attempt to obtain additional aid from the Commission.
- 5 To that end, Italian Decree-Law No 370/87 of 7 September 1987 (*Gazzetta ufficiale della Repubblica italiana* ('GURI') No 211 of 10.9.1987), which was converted into Law No 460 on 4 November 1987 (GURI No 262 of 9.11.1987), provides that, during wine years in which permission is granted under Article 18 of the aforementioned Regulation No 822/87 to increase alcoholic strength, producers of rectified concentrated must may qualify for aid fixed by decree of the Minister for Agriculture and Forestry. For the 1987/88 wine year, however, the Decree-Law provides that the aid is to be granted directly to wine producers on presentation of proof that rectified concentrated must has been used to increase the alcoholic strength. The amount of aid for that year was fixed by decree of the Minister for Agriculture of 21 November 1987.
- 6 By letter of 14 September 1987, the Italian Government notified the Commission of Decree-Law No 370/87. The Commission informed the Italian Government by letter dated 11 December 1987 that it had decided to initiate the procedure provided for in Article 93(2) of the EEC Treaty. This resulted in the decision which forms the subject of the present application.
- 7 According to the preamble to that decision the supplementary Italian aid gives a special advantage to must producers by facilitating, artificially, the utilization of must for the manufacture of rectified concentrated must and to wine producers who use must as a means of increasing alcoholic strength. As a result, the aid favours, directly and indirectly, Italian must and wine production and distorts competition between Italian and other Community producers of those products. As the figures for Italian exports and imports of grape must and wine show, the aid also affects Community trade in those products.

- 8 According to the Commission decision, the exceptions to the prohibition contained in Article 92(1) of the Treaty which are set out in Article 92(2) and (3) are inapplicable. In particular, as an operating aid, the aid in question does not qualify for any of the exceptions provided for in Article 92(3), under which the grant of aid is subjected to specific conditions.
- 9 Lastly, it appears from the preamble to the contested decision that the Italian aid scheme was implemented before the procedure provided for in Article 93(2) of the Treaty was concluded.
- 10 On the basis of these considerations, the Commission finds that the Italian aid infringes Article 93(3) of the Treaty, is incompatible with the common market and must be abolished.
- 11 Reference is made to the Report for the Hearing for a fuller account of the facts, the background to the case and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 12 The Italian Government relies on two submissions in which it questions the grounds on which the contested decision was based. It argues that the Commission erroneously applied Article 92 and that the alleged infringement of Article 93(3) has not been made out and is not adequately substantiated.
- 13 In support of its first submission, the Italian Government starts by arguing that the Commission wrongly took the view that Article 92(1) was applicable. It maintains that the aid in question does not favour Italian producers or affect trade between Member States. The aid was designed to offset distortions in competition, arising from the inadequate level of Community aid, between those regions in which alcoholic strength is increased by means of the addition of sucrose and those in which the increase is effected through the use of rectified concentrated musts. Furthermore, the amount of this supplementary aid is negligible and did not give rise to any substantial change in wine prices on the Italian market.

- 14 In this regard it must first be observed that, according to the appraisal set out in the contested decision, the aid in question gives a special advantage in particular to Italian producers of grape must. In so far as it is granted directly to users of rectified concentrated must, the aid provides a direct financial advantage to wine producers. In addition, it artificially encourages the production of grape must in Italy. Such a measure may therefore distort competition between Italian producers and producers in other Member States, in particular France and Greece, where some wine growers also use concentrated grape must in order to increase the alcoholic strength of the products in question.
- 15 Secondly, according to the figures given in the contested decision for wine production in Italy, for exports of Italian wine to other Member States, for imports into Italy of wine from other Member States, for exports of grape musts from Italy and for imports into Italy of grape musts from other Member States, the disputed aid is capable of affecting intra-Community trade in grape must and wine. It should be observed that the Italian Government has not contested any of the information thus provided by the Commission.
- 16 Consequently, the Commission rightly took the view that the supplementary Italian aid is aid within the meaning of Article 92(1) of the Treaty.
- 17 The Italian Government further argues that Article 92(3)(c) could have been applied, because the aid in question must be regarded as a measure facilitating the development of certain economic activities or of certain economic areas, in particular the economic development of the wine sector in areas in which there is a large surplus of wine.
- 18 That argument must be rejected. It must be observed that the Commission has shown that the aid in question, which was granted without any specific conditions and solely according to the quantities used, should be regarded as an operating aid to the undertakings concerned and that, as such, it affected trading conditions to

an extent contrary to the common interest. The Italian Government has failed to provide any relevant evidence to the contrary.

- 19 It should also be pointed out that, as the Court has consistently held (see, in particular, the judgment in Case 90/86 *Criminal Proceedings against Zoni* [1988] ECR 4285), once the Community has established a common market organization in a particular sector, it is for the Community to seek solutions to problems, such as those posed by wine surpluses, arising in the context of the common agricultural policy. Member States must therefore refrain from taking any unilateral measure even if that measure is likely to support the common policy of the Community.
- 20 It follows from the foregoing that the ground of the contested decision to the effect that the aid is incompatible with Article 92 of the Treaty is well founded. That essential ground is, in itself, sufficient to justify in law the Commission's decision. In those circumstances, any flaws which might vitiate the other ground of the decision — namely the Italian Government's alleged failure to comply with the provisions of Article 93(3) — have, in any event, no bearing on the lawfulness of the decision. The submission on the basis of which the Italian Government contests that ground is therefore of no avail and must accordingly be rejected.
- 21 It follows that the application must be dismissed in its entirety.

Costs

- 22 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the application;
- (2) Orders the Italian Republic to pay the costs.

Due

Mancini

O'Higgins

Moitinho de Almeida

Díez de Velasco

Schockweiler

Grévisse

Zuleeg

Kapteyn

Delivered in open court in Luxembourg on 6 November 1990.

J.-G. Giraud

Registrar

O. Due

President