

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 22 September 1993

concerning Italian Law No 102 of 2 May 1990 providing for the reconstruction and regeneration of the Valtellina

(Only the Italian text is authentic)

(94/172/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 letter dated 14 October 1992⁽¹⁾, the Commission informed the Italian authorities that it had decided to initiate Article 93 (2) proceedings in respect of the aid provided by Law No 102 of 2 May 1990 on the reconstruction and regeneration of the Valtellina, and it gave the Italian authorities and the other Member States and interested parties notice to submit their comments.

The Italian authorities submitted comments by letters dated 22 January, 9 and 24 February and 8 and 16 June 1993. A meeting was held between Italian and Commission representatives on 29 January 1993.

No other Member States or interested parties submitted comments.

On 4 December 1992 the Italian Prime Minister issued a decree approving the plan for the reconstruction and

development of the Valtellina put forward by the Lombard Regional Council. The plan specifies the principles and conditions governing the various aid measures. The decree stipulates that the tax reliefs and contributions to the guarantee funds are subject to verification that they are compatible with the Community rules. General provisions on the implementation of the plan have not yet been adopted.

II

The aid in respect of which the Article 93 (2) proceedings were initiated as regards the sectors other than agriculture is the following :

- the grants, interest repayments and low-interest loans provided for in Articles 5 (1) (c) and 12 of Law No 102/1990 (points 5.2.1 and 5.2.2 of the plan),
- the support for productive activity generically defined in Article 5 (1) (c) of Law 102/1990 (point 5.2.3 of the plan),
- the contributions to the Guarantee Fund for Industry, Commerce and Craft Enterprises provided for in Article 5 (1) (c) of Law No 102/1990 (point 5.2.2 of the plan states that these contributions may be granted only to the 'Consorzi garanzia fidi' (agencies set up to provide collateral security, thereby assisting SMEs' access to credit) in the Province of Sondrio and that the guarantees may be accompanied by interest subsidies),
- the tax exemptions and reductions, including those relating to the energy tax, provided for in Article 11 of Law No 102/1990 (point 5.2.1 of the plan).

⁽¹⁾ OJ No C 324, 10. 12. 1992, p. 3.

III

In their comments, the Italian authorities undertook to ensure that the aid in question would be granted under the following conditions:

- (a) the aid will be restricted to SMEs as defined in the Community guidelines on State aid for small and medium-sized enterprises (SMEs)⁽¹⁾. Enterprises not meeting these conditions will qualify only for a total sum not exceeding ECU 50 000 for each three-year period and for each general category of expenditure;
- (b) aid for productive investment, which will be granted solely in the form of interest subsidies (including the subsidies granted by the 'ConSORZI garanzia fidi' in the Province of Sondrio), will be limited to an intensity ceiling of:

- 15 % gross for small enterprises, and
- 7,5 % gross for medium-sized enterprises.

In the case of areas qualifying for assistance from the Structural Funds under Objective 2 or 5 (b) pursuant to Regulation (EEC) No 2052/88⁽²⁾, as last amended by Regulation (EEC) No 2081/93⁽³⁾, those percentages will be 20 and 10 % respectively;

- (c) the tax reliefs for productive investment alone or combined with other aid, will not exceed the above-mentioned intensities. Any tax reliefs which are not for productive investment will not exceed the ceiling of ECU 50 000 per enterprise for each three-year period and may be combined only with aid for productive investment;
- (d) the guarantees provided by the 'ConSORZI garanzia fidi' in the Province of Sondrio will be made available to SMEs at the market rate and subject to the contractual conditions stipulated in the Commission's letter of 5 April 1989 to the Member States. The interest subsidies granted by these bodies which are not for productive investment will not exceed the current equivalent of ECU 50 000 over each three-year period and for each enterprise and may be combined only with aid for productive investment;
- (e) 'soft' aid will be granted only to SMEs and at least 50 % of the cost will be borne by the enterprise in question. Rehabilitated land and business premises will be transferred at the market price only; this condition will also apply to the provision of industrial parks.

The Italian authorities will notify the Commission if they wish to grant other aid to enterprises bigger than SMEs.

The Italian authorities have not proposed any change in the aid for the recovery and treatment of industrial waste referred to in point 5.2.3 (1/4) of the plan for the reconstruction and development of the Valtellina, and mentioned in point 13 of the notice initiating the procedure pursuant to Article 93 (2) of the Treaty. Moreover, no comments were submitted on this issue.

Finally, the Italian authorities have stated that the financing of a chair-lift in Formazza does not constitute aid for a commercial investment in tourism, since the owner of the chair-lift can only be the municipality of Formazza. The steps for verifying this have been taken.

IV

The adjusted measures described in point III (a), (b), (c), (d) and (e) are compatible with the common market for the following reasons:

- (a) the aid for productive investment for SMEs (point III (b)), the tax reliefs for productive investment (point III (c)) and the soft aid for SMEs (point III (e)) meet the conditions as to compatibility set out in the Community guidelines on State aid for small and medium-sized enterprises. They are therefore compatible with the common market pursuant to Article 92 (3) (c) of the Treaty for the reasons specified in the guidelines and incorporated in full into this Decision. The intensities to be applied in the areas qualifying for assistance under Objectives 2 and 5 (b) pursuant to Regulation (EEC) No 2052/88 are in accordance with the principles established by the Commission in this area and decisions adopted in similar cases;
- (b) the tax reliefs which are not conditional on investment being productive (point III (c)) and interest subsidies from the 'ConSORZI garanzia fidi' which are not conditional on investment being productive (point III (d)) are limited to a ceiling of ECU 50 000 for each enterprise for each three-year period and may only be combined pursuant to the Law, with aid for productive investment. They therefore meet the *de minimis* criteria set out by the Commission in point 3.2 of the Community guidelines on State aid for SMEs and in its letter of 23 March 1993 to the Member States. This aid is therefore compatible with the common market because it does not have any appreciable effect on trade and competition between Member States. The Commission refers in this connection to the reasons which are set out in point 3.2 of guidelines and which are incorporated in full into this Decision;

⁽¹⁾ OJ No C 213, 19. 8. 1992, p. 2.

⁽²⁾ OJ No L 185, 15. 7. 1988, p. 9.

⁽³⁾ OJ No L 193, 31. 7. 1993, p. 5.

- (c) the aid to enterprises bigger than small and medium-sized enterprises (point III (a)) also meets the *de minimis* criteria and is therefore compatible with the common market. Nevertheless, the conditions on which it is granted must be clarified along the lines of the Commission's letter of 23 March 1993;
- (d) the transfer at market prices of rehabilitated commercial land and premises and the offer at market prices of industrial parks (point III (e)) do not constitute aid because these measures do not have the effect of reducing for such enterprises the prices they would have had to pay to other proprietors for similar property;
- (e) the foregoing also applies to the guarantees provided for SMEs by the 'Consorti garanzia fidi' in the Province of Sondrio (point III (d)), on condition that such guarantees are not provided to enterprises which are known, or should have been known, to be insolvent at the time when the guarantee was provided. Since the charge for the guarantee is wholly met by the enterprise concerned and the mobilization conditions for calling of guarantees set out in the Commission's letter of 5 April 1989 have been met, these guarantees, subject to the conditions set out above, do not constitute aid.

On the other hand, as the Commission has already pointed out in its notice initiating the procedure provided for in Article 93 (2) of Treaty, the assistance for the treatment and recovery of industrial waste constitutes operating aid since it reduces the business costs of the enterprises receiving it. This aid is therefore liable to affect competition and trade between Member States since it is intended indiscriminately for business in all sectors. For that reason it is caught by the prohibition in Article 92 (1) of the Treaty, and no argument in support of an exception to that prohibition has been put forward.

V

The aid measures provided for in Articles 5 (1) (c), 11 and 12 of Law No 102/90 also apply to agriculture. Those provisions and the Lombardy development plan for the provinces of Sondrio, Bergamo, Brescia and Como indicate that the various aid measures envisaged (either in the form of grants or in the form of interest rate subsidies on loans) for agriculture relate to:

1. investment in the primary production sector;
2. investment in improving the processing and marketing of agricultural products;
3. the advertising of agricultural products;
4. vocational training for farmers;
5. the improvement of wooded areas;
6. research.

In presenting their comments (letter of 16 June 1993) following the initiation of the Article 93 (2) proceedings,

the Italian authorities stated that the aid measures relating to agriculture provided for in the Law and the development plan were not measures which were already well defined and specific, but merely represented priorities to be observed (notably, sectors that should receive assistance) when the specific aid envisaged was granted.

The specific aid measures, their precise nature and the details of how they would be implemented would be established at a later stage.

In the same letter, the Italian authorities also gave an assurance that, in providing this specific assistance,

- as regards the aid referred to under 1, the sectoral restrictions and the maximum intensities indicated in Regulation (EEC) No 2328/91⁽¹⁾, as last amended by Regulation (EEC) No 870/93⁽²⁾, and in the Community guidelines for the sugar sector (Commission's letter to the Member States of 1 February 1972, No 936/VI/72) would be complied with,
- as regards the aid referred to under 2, the Community guidelines in force on aid for investments for improving the processing and marketing conditions for agricultural products, the sectoral restrictions provided for in point 2 of the Annex to Commission Decision 90/342/EEC⁽³⁾ and the maximum rates allowed by the Commission for aid of this type would be complied with,
- as regards the aid referred to under 3, the guidelines on the advertising of agricultural products⁽⁴⁾ would be complied with.

The initiation of Article 93 (2) proceedings in respect of agriculture was based on the fact that the measures envisaged for agriculture appeared, in the absence of precise information on aid intensities, the products concerned and compliance with the Community guidelines and sectoral restrictions on state aid for agriculture, to be incompatible with the common market.

However, the Italian authorities have provided additional information on the abovementioned aspects with regard to the measures specified under points 1, 2 and 3; they have given an assurance that they will comply with the Community criteria applicable when aid of this type is examined pursuant to Articles 92 to 93 of the Treaty.

⁽¹⁾ OJ No L 218, 6. 8. 1991, p. 1.

⁽²⁾ OJ No L 91, 15. 4. 1993, p. 10.

⁽³⁾ OJ No L 163, 29. 6. 1990, p. 71.

⁽⁴⁾ OJ No C 302, 12. 11. 1987, p. 6.

On the basis of the undertakings given by the Italian authorities, therefore, these measures should be regarded as having as their objective the development of the sectors concerned and as being eligible for the derogation provided for in Article 92 (3) of the Treaty.

As far as the vocational training aid for farmers is concerned (point 4); the Commission has always allowed aid of this type to cover 100 % of permissible expenditure. No objections should therefore be raised in respect of this aid.

As regards the aid for research and for the improvement of wooded areas (points 5 and 6), the Italian authorities have not provided the necessary information to enable the Commission to assess these measures under the Community rules governing agriculture.

However, since, on these points too, the specific aid and details of how it will be granted will be established by the national authorities at a later stage, the Commission will decide on such specific measures once they have been notified to it in accordance with Article 93 (3) of the Treaty.

On the basis of these factors, the Commission considers that as regards the aid measures envisaged for investment in the primary production sector, for investment in improving the processing and marketing of agricultural products and for the advertising of agricultural products, it has no objections under the competition rules laid down in the Treaty. In arriving at this position, it took account of the Italian authorities assurance of compliance with :

- the sectoral restrictions and maximum intensities laid down in the Community rules (as set out in Regulation (EEC) No 2328/91 and in the Community guidelines for the sugar sector — letter to the Member States of 1 February 1972, No 936/VI/72) in the case of aid in the primary production sector,
- in the case of the aid for investment relating to processing and marketing, the sectoral restrictions provided for in point 2 of the Annex to Commission Decision 90/342/EEC on the selection criteria to be adopted for investments to be financed pursuant to Council Regulation (EEC) No 866/90⁽¹⁾, as last amended by Regulation (EEC) No 3577/90⁽²⁾, which is used by analogy in applying Article 92 of the Treaty, and the Community framework for aid in the dairy sector⁽³⁾ and the framework for the sugar and isoglucose sectors (letters to the Member States, No 936/VI/72 of 1 February 1972 and SG(77) D/3832 of 29 March 1977),
- the maximum rate allowed by the Commission in respect of aid for investment in the processing and marketing of agricultural products,
- the guidelines on the advertising of agricultural products.

As regards the measures to improve wooded areas and for carrying out research, the Commission is not at present

able to take a decision pursuant to Articles 92 and 93 of the Treaty on such measures, which are presented only in general terms. It will examine the measures once it has been informed on the specific aid that the national authorities propose to adopt; it accordingly requests the Italian Government to notify it, in sufficient time, in accordance with Article 93 (3) of the Treaty, of the plans to grant such specific aid,

HAS ADOPTED THIS DECISION :

Article 1

The aid schemes for sectors other than agriculture provided for in Articles 5 (1) (c), 11 and 12 of Italian Law No 102 of 2 May 1990, as specified in points 5.2.1, 5.2.2 and 5.2.3 of the plan for the reconstruction and development of the Valtellina, approved by Prime Ministerial Decree on 4 December 1992 and adjusted in accordance with point III of this Decision, are compatible with the common market on the conditions set out in Article 2, except for the aid specified in the first paragraph of Article 3.

The aid schemes for agriculture provided for in Articles 5 (1) (c), 11 and 12 of Italian Law No 102 of 2 May 1990, as specified in points 5.2.1 and 5.2.4 of the plan for the reconstruction and development of the Valtellina are, in view of the Italian authorities' undertaking to comply with the intensity ceilings and sectoral restrictions referred to in point V of this Decision, compatible with the common market, except for the aid specified in the second paragraph of Article 3.

Article 2

The aid granted to enterprises other than those defined as small and medium-sized enterprises in the Community guidelines on State aid for small and medium-sized enterprises shall be limited, for each three-year period, to :

- ECU 50 000 for each investment, irrespective of type and purpose, other than research and development, and
- ECU 50 000 for all other expenditure.

Article 3

The aid for the recovery and treatment of industrial waste provided for in point 5.2.3 (1/4) of the plan for the reconstruction and development of the Valtellina is incompatible with the common market. Italy shall refrain from granting it.

The aid measures for improving wooded areas and for carrying out research in agriculture will be decided on separately on the basis of the specific measures to be notified by the Italian authorities pursuant to Article 93 (3) of the Treaty.

⁽¹⁾ OJ No L 91, 6. 4. 1990, p. 1.

⁽²⁾ OJ No L 353, 17. 12. 1990, p. 23.

⁽³⁾ OJ No C 302, 12. 11. 1987, p. 4.

Article 4

The guarantees provided by the 'ConSORZI garanzia fidi' in the Province of Sondrio may not be made available to enterprises which were known, or should have been known, to be insolvent at the time when the guarantee was provided.

Article 5

The aid must conform to the rules of Community law on the combination of aid for different purposes and on certain industries, including those covered by the ECSC Treaty, agriculture and fisheries.

Article 6

This Decision is addressed to Italy.

Done at Brussels, 22 September 1993.

For the Commission

Karel VAN MIERT

Member of the Commission