COMMISSION DECISION

of 14 July 1998

on aid for lentil producers in the Prefecture of Levkas (Greece)

(notified under document number C(1998) 2367)

(Only the Greek text is authentic)

(1999/100/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 93(2), first subparagraph, thereof,

Having regard to Council Regulation (EEC) No 827/68 of 28 June 1968 on the common organisation of the market in certain products listed in Annex II of the Treaty ([1]), as last amended by Regulation (EC) No 195/96 ([2]), and in particular Article 5 thereof,

After giving notice to the parties concerned to submit their comments to the Commission in accordance with Article 93(2), first subparagraph, of the Treaty ([3]),

Whereas:

I

1. In its letter of 19 November 1996, registered on 22 November 1996, the Permanent Representation of Greece to the European Union notified the measures in question to the Commission in accordance with Article 93(3) of the Treaty.

   In its letter of 7 March 1997, registered on 10 March 1997, the Permanent Representation of Greece to the European Union communicated to the Commission the additional information requested by the Commission in its letter of 21 January 1997. In that letter, the Greek authorities stated that the draft Joint Ministerial Decision had already been adopted at national level. Nevertheless, the Greek authorities gave assurances that it had not yet been applied.

2. In 1996 drought affected the economic situation of producers in the Prefecture of Levkas (Ionian islands). Most of these farmers live in hill communities and their incomes depend largely on the cultivation of lentils. The State aid under consideration relates to the provision of financial assistance for lentil cultivators in the Prefecture of Levkas, at least 50 % of whose crops were destroyed by drought in 1996, to compensate them for their loss of income during that year.

   The aid for each farmer who sustained losses amounts to 30 % of the gross value of the production concerned up to a maximum of GRD 500 000/hectare. The amount of aid was calculated by the Greek authorities as follows:

   — the production of lentils taken into account is the mean yield per hectare over the previous four years, equal to 680 kg/hectare,

   — the prices paid to producers ranged from GRD 1 500 to 2 000 per kg, and for the purposes of calculating the aid the latter figure (GRD 2 000/kg) was used,

   — the gross production value is 680 kg/hectare x GRD 2 000/kg = GRD 1 360 000/hectare,

   — the maximum aid, representing 30 % of the gross production value, amounts to 30 % of GRD 1 360 000 per hectare = GRD 408 000 per hectare.

   The Greek authorities estimated the number of beneficiaries at 120 and the total budget made available by the Greek State for this measure amounted to GRD 40 million.

II

1. In its letter SG(97) D/4136 of 30 May 1997 the Commission informed the Greek authorities of its decision to set in motion the procedure laid down in Article 93(2) of the Treaty in relation to the measures notified.

2. In that letter the Commission informed the Greek authorities that the measure did not appear to qualify for the derogation provided for under Article 92(2)(b) of the Treaty, and that it therefore had to be considered incompatible with the common market.

([1]) OJ L 151, 30. 6. 1968, p. 16.
([2]) OJ L 26, 2. 2. 1996, p. 13.
([3]) OJ C 225, 24. 7. 1997, p. 19.

The Commission considered that the aid seemed to satisfy the conditions for application of the Commission's established practice concerning compensation for losses resulting from natural disasters or other untoward circumstances. The Commission considers that climatic events such as frost, hail, hoar-frost, rain or drought can be regarded as natural disasters within the meaning of Article 92(2)(b) of the Treaty only when the damage caused attains a certain level as regards each beneficiary of the aid. For annual crops this level is defined as 30 % loss of production relative to a normal period (in principle, the average of the three years preceding that during which the event took place), and 20 % in less-favoured areas within the meaning of Article 21(2) of Council Regulation (EC) No 950/97 [1]. The damage can be compensated up to a maximum of 100 % of the losses sustained.

In fact, in the case under consideration the compensation mechanism is activated only if the level of damage amounts to 50 % of the usual production level. Moreover, the compensation level was set at 30 % of the gross production value.

Nevertheless, the Commission considered that the maximum gross production level for lentil cultivation was ECU 881 hectare (± GRD 270 000/hectare in April 1997) [2] at Community level. According to the calculation communicated by the Greek authorities, the gross production value of lentils on Levkas amounted to GRD 1 360 000/hectare, which at the exchange rate applicable in April 1997, represented about five times as much as the maximum production value for the same crop in other parts of the Community.

The market price of GRD 2 000/kg was considered by the Commission to be abnormally high for products such as lentils. Indeed, the market value of lentils from Levkas was nine times higher than the Community price at the top of the range of ECU 0,7 kg (± GRD 215/kg) received by producers in other Member States. The said value was so high that the Commission doubted its credibility, even taking into account the special quality characteristics attributed by the Greek authorities to the said lentils.

The Commission also considered that the method employed by the Greek authorities to calculate the gross production value led to overcompensation, additional to that mentioned in connection with the product sale price, by 22,5 %. The Commission considered that there were indications that the losses caused by drought were being overcompensated, and that the aid in question could not be considered compatible with the provisions of Article 92(2)(b).

(1) OJ L 142, 2. 6. 1997, p. 1.

(2) When the procedure laid down in Article 93(2) of the Treaty was instituted, the Commission's calculations and conclusions were based on the exchange rate ECU 1 = GRD 305 which applied in April 1997.

3. Within the scope of this procedure, the Commission set the Greek Government a time limit for it to submit its comments on the matter.

The Commission also published in the *Official Journal of the European Communities* an invitation to other Member States and other interested parties to submit their comments.

III

1. In its letter of 23 June 1997 the Greek Government submitted its comments on the subject of the measures described above.

(a) As regards the procedural aspects, the Greek authorities state that the support measures have not been implemented before the procedure has led to a final decision.

Indeed, the Greek authorities state that the adoption of the Joint Ministerial Decision by the relevant Ministers does not necessarily mean that it will be implemented automatically. According to the said authorities, implementation of the decision requires the adoption of two further decisions by the Ministry for Agriculture defining the details pertaining to the implementation and payment of the aid.

Those texts have not been adopted and consequently Greece has not implemented the disputed Joint Ministerial Decision. The Greek authorities inform the Commission that the aid will not be implemented before the adoption of the Commission's final decision in the context of the procedure laid down by Article 93(2) of the Treaty.

(b) As to the substance, the Greek authorities inform the Commission that the high price per kilogram stems from the fact that the lentil variety 'Enklouvi' is cultivated on terraces of low strength so that machinery cannot be used. All the cultivation work, as well as the threshing after harvesting, has to be done by hand and this greatly increases the cost of production.

The Greek authorities also state that in the specific case, the price paid to the producers is a retail price since the producers themselves sell their (very small) production immediately after the harvest. The said authorities add that the production amounts to very little (30 to 35 tonnes in all).

Finally, the Greek authorities state that should the Commission agree to the aid in question, they will calculate it on the basis of the lower limit of the price paid to producers, namely GRD 1 500/kg, within the scope of the decision determining the implementation details.

2. The Commission has not received any comments from other Member States or other interested parties.

IV

Regarding the arguments put forward by the Greek authorities, the Commission makes clear the following:

(a) The last sentence of Article 93(3) of the Treaty provides that the Member State concerned may not put its proposed measures into effect before the Commission has reached a final decision regarding those measures.

'Putting into effect' means not only the actual provision of aid to the beneficiary, but also the granting of authorisation enabling the aid to be provided without further formalities ([1]). To avoid such an infringement, when adopting the measures at legislative level, Member States are recommended either to notify them while still at the planning stage or, failing that, to insert a provision pursuant to which the body which is to pay the aid can make the payments only with the Commission's approval.

In the case under consideration, the Greek authorities transmitted to the Commission with the notification a draft Joint Ministerial Decision. In its reply accompanying the additional information requested by the Commission, the Greek authorities informed the Commission that the Joint Ministerial Decision had already been adopted but it had not yet been implemented. In the information initially communicated, no mention was made of the need to adopt orders concerning the measure's implementation. In those circumstances and given that the aid measures had been put into effect within the meaning of the aforesaid Community definition, the aid was reclassified as aid that had not been notified.

However, the Commission takes note of the fact that the two decisions by the Ministry of Agriculture on provisions concerning implementation and payment were necessary for the aid to be provided, that they had not yet been adopted, and that the measures notified had therefore not actually been implemented.

(b) When setting in motion the procedure provided for in Article 93(2) of the Treaty, the Commission had considered that the arguments put forward by the Greek authorities did not seem sufficient to justify the tenfold increase in the commercial value of the crop. Even if it were true that the particular characteristics of production improved the quality of these lentils and consequently increased their commercial value, the Commission expressed strong reservations about whether that value could really be 10 times as much as the ordinary market price for lentils.

The nature of the additional information provided by the Greek authorities has done nothing to modify the Commission's original position.

Although it has clear consequences for the competitiveness of the enterprises in question, the higher production cost resulting from the impracticability of using machinery for the cultivation work, the very small production, and the fact that the product is sold directly to consumers, do not provide sufficient reasons to justify a higher commercial value. The Greek authorities have not supplied, and the Commission has not been able to ascertain, any information demonstrating that consumers are prepared to pay for these lentils a price 10 times higher than the highest price paid by the average European consumer for the same product. Bearing in mind the aid mechanism (30 % of the gross production value), this commercial valuation of the lentils would result in the payment of compensation three times greater than the losses calculated at normal market prices.

Besides, the fact that the Greek authorities commit themselves, when establishing the details of how the aid is to be implemented, to use a production value corresponding to a market price of GRD 1 500/kg, does not mean that those producers will not still receive excessive compensation for their losses. In fact, the commercial valuation of the lentils would still remain six times higher than the maximum value achieved by other producers in the Community. Bearing in mind the aid mechanism, that price would represent excessive compensation amounting to almost twice as much as the losses calculated at normal market prices.

V

Article 5 of Regulation (EEC) No 827/68 stipulates that Articles 92, 93 and 94 of the Treaty are applicable to the production and trade of products listed in the Annex to that Regulation.

Under Article 92(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, in so far as it affects trade between Member States, incompatible with the common market.

The Community's production of protein-rich crops amounts to 5,26 million tonnes ([2]). Greece's production of protein-rich crops amounts to 39 300 tonnes. The products concerned are traded between the other Member States and Greece. In fact, Greece imports 3 600 tonnes of protein-rich crops from the other Member States every year and exports 513 tonnes. The monetary value of those transactions so far as Greece is concerned amounts to ECU 0,73 million for exports and ECU 1,54 million for imports.

([1]) Letter from the Commission to the Member States SG(89) D/5521 of 27 April 1989.

([2]) Source Eurostat.

Consequently, these measures could affect trade in protein-rich crops between the Member States, such being affected when aid schemes favour entrepreneurs active in one Member State compared with those in others. The measures in question have a direct and immediate impact on the production costs of the enterprises in question. They give them an economic advantage relative to enterprises in the same sector which do not have access, in Greece and in other Member States, to comparable aid. Consequently, they distort or threaten to distort competition.

In view of the foregoing, the aid in question is to be regarded as State aid which satisfies the criteria specified by Article 92(1) of the Treaty.

VI

Article 92(1) of the Treaty provides that aid which meets the criteria it specifies is in principle incompatible with the common market.

The derogations from such incompatibility specified in Article 92(2)(a) (aid having a social character) and (c) (aid for certain areas of Germany) clearly do not apply in the case of the aid in question. Indeed, the Greek Government did not invoke them.

The derogation provided for by Article 92(2)(b) (aid to make good the damage caused by natural disasters or exceptional occurrences) does not apply since the measure affords excessive compensation for the damage caused by the drought.

As for the derogations provided for by Article 92(3), it is stated that the objectives pursued must be in the interest of the Community and not just of particular sectors of a national economy. Those derogations (which have to be interpreted strictly) can be allowed only in cases where the Commission is able to ascertain that the aid is necessary for the realisation of one of the objectives envisaged by that provision. If aid not meeting that condition were granted the benefit of those derogations, this would effectively allow trade between the Member States to be affected and competition to be distorted without its being justified by the common interest, and consequently allow unjustified advantages to be conferred in relation to traders in other Member States.

In this case, no such condition is met by the granting of the said aid. The Greek Government has not provided and the Commission has not ascertained any justification to show that the aid satisfies the conditions required for application of any of the derogations envisaged in Article 92(3) of the Treaty.

The measures do not serve to promote the execution of an important project of common European interest within the meaning of Article 92(3)(b) since because of its possible effect on trade, the said aid conflicts with the common interest.

Nor do the measures proposed serve to remedy a serious disturbance of the economy of the Member State in question, within the meaning of the same provision.

As for the derogations envisaged by Article 92(3)(a) and (c), which relate to aid intended to promote or facilitate the economic development of certain regions or activities, it must be pointed out that since the aid in question is in the nature of operational aid, it cannot bring a lasting improvement to conditions in the sector and the region concerned (1).

Consequently, the said aid does not qualify for any of the derogations provided for under Article 92(3) of the Treaty.

It should further be borne in mind that the aid in question relates to one of the products covered by a common organisation of the market and that there are limits to the authority of any Member State to intervene in the operation of any such organisation, which is now the exclusive prerogative of the Commission.

Common organisations of the market must be regarded as complete and exhaustive systems that exclude any power on the part of the Member States to enact measures which can derogate from them or modify them.

The aid in question must therefore be held to contravene Community rules. Consequently, none of the derogations provided by Article 92(3) can be invoked.

The said aid measure is therefore incompatible with the common market,

HAS ADOPTED THIS DECISION:

Article 1

The aid measure which Greece proposes to grant to lentil producers in the Prefecture of Levkas is incompatible with the common market. The grant of that aid cannot therefore be permitted.

Article 2

Greece must inform the Commission within two months following notification of this Decision of the measures it has adopted to comply therewith.

(1) Judgment of the Court of First Instance in Case T-459/93, Siemens v. Commission [1995] ECR II-1675.

Article 3

This Decision is addressed to the Hellenic Republic.

Done at Brussels, 14 July 1998.

For the Commission

Karel VAN MIERT

Member of the Commission