

COMMISSION DECISION**of 27 May 1970****on the Italian draft law providing for the restructuring, reorganization and conversion of the textile industry****(Only the Italian text is authentic)****(70/304/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), and Article 93 (3) thereof;

Whereas, by letter of 24 April 1969 from the office of its Permanent Representative, the Italian Government notified the Commission of a draft law providing for the restructuring, reorganization and conversion of the textile industry; whereas this draft law differs in certain basic respects from that notified to the Commission on 5 November 1965, in particular by substantially extending both the scope and the incidence of the proposed aid; whereas this draft law cannot be regarded as simply replacing that of 1965, which has in the meantime lapsed following the dissolution of the Italian legislative bodies; whereas the state of the textile industry and the competitive situation in the Community have changed considerably between 1965 and 1969; whereas the communication of the draft law must therefore, contrary to the view of the Italian Government, be considered as a notification within the meaning of Article 93 (3) of the EEC Treaty and whereas this draft law must be examined in accordance with the procedure laid down therein;

Whereas the draft law was first examined by the Commission and the representatives of the Member States at a multilateral meeting on 18 June 1969, and again by the Commission and Italian representatives alone at another meeting on 18 July 1969; whereas the Commission, in accordance with the second sentence of Article 93 (3) of the EEC Treaty, then initiated the procedure set out in Article 93 (2) and, in a letter addressed to all the Member States on 3 December 1969, called upon the parties concerned to submit their comments;

Whereas the draft law relates to a system of aid; this provides for credit facilities which, considered in

terms of subsidy, amount to between 10 and 20 % of investments covered by the draft law for the restructuring, reorganization and conversion of textile undertakings, together with certain tax concessions intended to facilitate the restructuring of those undertakings; whereas a ten-year exemption from all direct taxation on income from investments covered by the draft law goes with these concessions in respect of investments made by textile undertakings in the areas described as textile areas; whereas at least equally favourable credit facilities, together with a ten-year exemption from all taxation of income, are also provided for in order to assist the creation or expansion within those textile areas of non-textile industrial activities which are not dependent on textile undertakings;

Whereas aid granted for the restructuring and modernization of textile undertakings is likely to improve output and quality in the Italian textile industry and even, in some cases, to increase production capacity; whereas aid granted for the conversion of textile undertakings and aid granted to non-textile undertakings with a view to promoting diversification in the textile areas are likely to have the same effect on the industries concerned; whereas, therefore, such measures of aid threaten to distort competition by favouring Italian undertakings;

Whereas, by thus strengthening the competitive position of Italian undertakings receiving aid, to the detriment of those established in other Member States, the aid is liable to disturb trade between the Member States;

Whereas the effect which the system of aid is likely to have on competition and trade between Member States will be all the more serious in that the textile industry in several other Member States is experiencing difficulties which are, in some cases, the direct result of pressure exerted by imports from Italy; whereas intra-Community competition in respect of textile products is keen and trade within the Community is at a high level;

Whereas, therefore, the Italian Government's draft law falls under Article 92 (1) of the EEC Treaty;

Whereas aid for the restructuring and modernization of Italian textile firms may be considered as aid to facilitate the development of certain economic activities within the meaning of Article 92 (3) (c) of the EEC Treaty; whereas, however, in order to qualify for the derogation provided for in that provision, the aid must not adversely affect trading conditions to an extent contrary to the common interest;

Whereas, despite repeated requests, the Italian Government has not been willing to communicate to the Commission either a valid diagnosis of the problems now facing the Italian textile industry or an overall programme for their solution; whereas it has also not given concrete form to the general principles of application set out in the draft law; whereas, however, the Commission requires certain information in order to carry out its task in relation to Articles 92 *et seq* of the EEC Treaty; whereas, for instance, the Commission still does not know the criteria to be used for granting this aid, in terms of the seriousness of the structural problems arising as between different branches of the textile industry or in relation to the size of undertakings, of priorities to be determined as between the objectives pursued, or of the Community-wide position of certain branches of the industry;

Whereas on the basis of the information supplied by the Italian Government, the Commission is unable to verify whether the condition laid down in the first sentence of Article 92 (3) (c) of the EEC Treaty will be observed in respect of aid to the textile industry;

Whereas the general principles set out in the draft law for the definition of the areas described as textile areas do not permit the Commission to identify either the areas or even the parameters which will be applied in order to determine those areas; whereas the Commission, despite repeated requests, still has no knowledge of the economic situation in those areas, of their size or of how the concept of substantial unemployment, which should be a feature of such a situation, will be defined in practice;

Whereas, therefore, the Commission is not at present able to judge whether those areas are really entitled to receive development aid as provided for in the derogations set out in Article 92 (3) (a) or (c) of the EEC Treaty;

Whereas, nevertheless, from the information at present available to it, the Commission is already able to assess whether particular aspects of the draft law are compatible with the common market within the meaning of Articles 92 *et seq* of the EEC Treaty;

Whereas the draft law provides for a ten-year exemption from all direct taxation on income from invest-

ments, approved under that law and made in the said textile areas; whereas such aid constitutes operational assistance rather than aid for regional economic development within the meaning of the derogations provided for in Article 92 (3) of the EEC Treaty; whereas, moreover, aid of this kind is opaque, there being no connection between the advantages granted and the amount of the investments; whereas it cannot, therefore, qualify for any of the derogations provided for in Article 92 (3) of the EEC Treaty;

Whereas the draft law also lays down as a criterion for granting aid the need to avoid any increases in production capacity in sectors where capacity is only partially utilized; whereas the Italian authorities stated at the bilateral meeting in Rome on 18 July 1969 that the provisions designed to avoid the development of excess capacity (last paragraph of Article 5 of the draft law) would be assessed only from a national standpoint; whereas it is to be noted, however, that, now that the customs union has been achieved, it is all the more necessary to ensure that aid for the restructuring and modernization of the textile industry does not affect trading conditions in a manner contrary to the common interest, a condition hard to reconcile with an assessment made solely from a national standpoint; whereas the proposed aid cannot therefore qualify for the derogation provided for in Article 92 (3) of the EEC Treaty and can, moreover, be considered compatible with the common market only if the criterion for the granting of aid is amended in such a way as to take into account any excess capacity in the Community as a whole;

Whereas a decision on the particular points referred to in the two preceding paragraphs does not conclude the Commission's examination of the draft law under Article 93 (3) of the EEC Treaty, since the Commission has not yet, as is required by the first sentence of Article 93 (3), received from the Italian Government all the necessary information relating to the proposed aid, nor all the details essential to a full assessment and which the Commission is entitled to receive;

Whereas in this case the lack of information is a matter of still greater concern in that, because of the particular structure and the location of the textile industry, other applications of the draft law may be incompatible with the common market, that is to say:

- that the precarious equilibrium in certain branches of the Community's textile industry could be seriously affected by the application of aid of such wide scope as that provided for in the draft law in its present form, particularly in view of the extent of Community trade done by the Italian textile industry and the competitiveness of certain of its branches;
- that attempts at restructuring and reorganization undertaken in the other States of the Community,

without assistance or with only limited assistance from public authorities, could lead, unless adequately coordinated, to an escalation of aid for the textile industry;

- that the choice open to undertakings between aid provided for in the draft law and aid granted under general or regional systems could lead to a distortion of the sectorial application criteria which have still to be clarified; that, although a system of aid specifically designed for the textile industry may be considered compatible with the common market on the condition that only undertakings which met the criteria for its application can qualify under that system, the condition would cease to be fulfilled where undertakings which did not meet the criteria for the application of the aid could take advantage of other systems of aid;
- that the Italian textile industry is situated mainly in northern Italy and, therefore, in its most highly industrialized region;

Whereas the decision taken on these two particular points can in no way prejudice any decisions which the Commission may take when it is in possession of all the information needed to assess the situation and which is due to it under Article 93 (3) of the EEC Treaty; whereas, therefore, no final decision has been taken within the meaning of the last sentence of Article 93 (3) which authorizes a Member State to put its proposed measures of aid into effect if they are not covered by such decision,

HAS ADOPTED THIS DECISION:

Article 1

The Italian Republic shall abolish the ten-year exemption from all direct taxation – provided for in Article 12 of the draft law on the restructuring, reorganization and conversion of the textile industry communicated to the Commission on 24 April 1969 by the Office of the Permanent Representative of Italy to the European Community – on income from investments approved under that draft law which are made in the areas described as textile areas.

Article 2

The Italian Republic shall amend the provisions of the last paragraph of Article 5 of the draft law which lays down as a criterion for granting aid the 'need to avoid any increase in production capacity in sectors where capacity is only partially utilized' in such a way that the criterion is not applied in relation only to the situation in Italy, but takes into account also any excess capacity in the Community as a whole.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 27 May 1970.

For the Commission

The President

Jean REY

STATE AIDS

(Articles 92 to 94 of the Treaty establishing the European Economic Community)

Communication addressed to the parties concerned, other than the Member States, in accordance with the first sentence of Article 93 (2) of the Treaty establishing the European Economic Community, on the Belgian Law of 30 September 1970¹ on economic expansion

1. The Commission has initiated the procedure provided for in the first sentence of Article 93 (2) of the Treaty establishing the European Economic Community in respect of the abovementioned measures of aid before they enter into force, on account of the procedures for and the nature of certain aid provided for therein and the absence of implementing regulations. Implementation of the proposed measures on the basis of earlier implementing regulations, which are no longer appropriate to the present social and economic situation of the regions, cannot be considered compatible with the common market.
2. In accordance with the first sentence of Article 93 (2) of the EEC Treaty, the Commission hereby gives notice to the parties concerned, other than the Member States, that they should submit any comments they have on those measures of aid within four weeks from the date of this communication.

Commission of the European Communities,
200 rue de la Loi,
Brussels 1040.

¹ Moniteur Belge of 1 January 1971.