

II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 March 1986

on aid to Italian sugar producers

(Only the Italian text is authentic)

(86/498/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 regard to Council Regulation (EEC) No 1785/81 of 30 June 1981 on the common organization of the markets in the sugar sector⁽¹⁾, as last amended by Regulation (EEC) No 606/82⁽²⁾, and in particular Article 44 thereof,

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

Whereas :

I

On 14 November 1984, at a meeting of the Management Committee for Sugar, the Commission took note of an aid measure provided for in the CIPE (Comitato Interministeriale Programmazione Economica) *'Delibera'* (Decision) of 11 October 1984⁽⁴⁾, *'Provvedimento'* (Statutory Instrument) No 39/1984 of 24 October 1984⁽⁵⁾ and *'Provvedimento'* No 41/1984 of 16 November 1984⁽⁶⁾.

This measure provides for the granting of aid to Italian sugar producers for sugar grown in Italy or refined from imported raw sugar, at a rate of :

— Lit 59,12 per kilogram for white sugar held at 29 October 1984 on which manufacturing tax is still due and on which the surcharge (*'sovrapprezzo'*) has not yet been levied (the amount of the surcharge being the old rate increased by Lit 22),

or alternatively

— Lit 37,12 per kilogram for white sugar held at 29 October 1984 which is free of manufacturing tax and on which the surcharge has been levied at the old rate.

II

By letter of 23 November 1984, the Commission informed the Italian Government that it had decided to initiate in respect of the above measure the procedure provided for in Article 93 (2) of the EEC Treaty, which was subsequently extended to all the *ad hoc* implementing provisions of the CIPE Decision of 11 October 1984, and in particular those of Statutory Instrument No 41/1984; under that procedure the Commission gave notice to the Italian Government to submit its comments.

The Commission also gave notice to the other Member States and parties other than Member States to submit their comments.

III

On 10 December 1984, by letter No 9692, recorded as received on 13 December 1984, the Italian Government replied to the Commission's letter and at a Council meeting on 14 and 15 January 1985 it requested that the third subparagraph of Article 93 (2) of the Treaty be

⁽¹⁾ OJ No L 177, 1. 7. 1981, p. 4.

⁽²⁾ OJ No 74, 18. 3. 1982, p. 1.

⁽³⁾ OJ No C 342, 22. 12. 1984, p. 9.

⁽⁴⁾ Gazzetta Ufficiale della Repubblica Italiana No 313, 14. 11. 1984.

⁽⁵⁾ Gazzetta Ufficiale della Repubblica Italiana No 298, 29. 10. 1984.

⁽⁶⁾ Gazzetta Ufficiale della Repubblica Italiana No 319, 20. 11. 1984.

applied and lodged an official request to the Council for an authorization regarding the aid, in accordance with the third subparagraph of Article 93 (2) of the Treaty. The Council did not take a decision within the time limit laid down by the Treaty.

On 23 April 1985, at a bilateral meeting convened by the Commission staff at the request of the Italian authorities, the Italian Government confirmed its position, invoking suspension of the procedure under Article 93 (2).

However, on 22 July 1985, the Italian authorities notified their intention to modify the aid scheme. At the bilateral meeting on 1 October 1985, and in the latest telex of 29 October 1985, they gave notification of the modified measure, which would appear at present to involve aid to the Italian sugar industry for investments, as provided for in Law No 700/83 of 19 December 1983 laying down provisions to improve the sugarbeet sector (Aid No 10/84). In its letter of 23 May 1984 to the Italian Government, the Commission considered this law to be compatible with the common market; the aim was in fact to bring about an improvement of the sugar sector in Italy. This aid, taken together with that provided for in Law No 700/83, will not exceed the maximum rates authorized by the Commission (50 % for the Centre-North and 75 % for southern Italy).

IV

The Irish and Danish authorities supported the Commission Decision by letters of 14 and 21 January 1985.

V

The quantities of sugar in respect of which aid is to be granted to sugar producers, as compared with the quantities produced in and imported into Italy, are as follows:

— quantity of sugar held on producers' premises at 29 October 1984 eligible for the aid:

59 685 tonnes (according to information provided by the Italian authorities) i.e.:

- 4,68 % of Italian production for 1984/85, equalling 1 274 000 tonnes (source: EUROSTAT),
- 24,8 % of quantities imported in 1984/85 (source: EUROSTAT).

Using these data as a basis, aid will total Lit 2 600 million (1 778 000 ECU).

— quantities of raw sugar imported annually from Member States (EUR 10) (source: EUROSTAT):

- 1982/83: 283 000 tonnes,
- 1983/84: 273 000 tonnes,
- 1984/85: 239 773 tonnes.

As Italy produces less than its sugar requirements, its output cannot exceed the A quota.

VI

1. In the letter of 23 November 1984, initiating the procedure under Article 93 (2) of the Treaty, the Commission had informed the Italian authorities that the aids involving Lit 59,12 and Lit 37,12 per kilogram granted to sugar producers for sugar grown in Italy, or refined from imported raw sugar held at 29 October 1984, as provided for in the Italian provisions, were operating aids which brought about no lasting improvement of the structures of the sector concerned; they favoured national production at the expense of sugar imported from other Member States after 29 October 1984. They were also liable to distort competition through the direct effect they could have on prices and therefore on intra-Community trade; in addition, they constituted a breach of the common organization of the market in sugar.

2. The measure in question complies with the conditions set out in Article 92 (1) of the Treaty, which provides that aid that meets the criteria which it specifies is in principle incompatible with the Common Market.

That prohibition may not be lifted under Article 92 (2) of the Treaty, since the derogations provided for therein are clearly not applicable in this case. The provisions of Article 92 (3) state the precise objectives to be achieved by the granting of aids, which must involve the attainment of a Community interest; they may be granted only if the Commission can establish that the aid is required to achieve one of the objectives referred to in those provisions. Allowing aid not achieving such aims to qualify under such derogations would mean tolerating a situation which was detrimental to trade between Member States, distortion of competition which was completely unjustified from the viewpoint of the interests of the Community and, consequently, unwarranted advantages for certain Member States.

The measure in question was clearly not likely to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b); nor did it involve measures to remedy a serious disturbance in the economy of the Member State concerned within the meaning of that provision.

As to the derogations provided for in Article 92 (3) (a) and (c), in respect of aid to promote or facilitate the economic development of regions and that of certain activities referred to in aforementioned paragraph (c), it should be noted that the aids would have benefited certain producers exclusively, irrespective of criteria relating to the alteration or improvement of the structures of underta-

kings in the sugar sector, energy savings or regional development. Consequently, the aids would have had to be regarded as operating aids for those producers, a type of aid which the Commission has in principle always opposed on account of the fact that the grant of such aids is not linked to conditions qualifying them for one of the derogations provided for in Article 92 (3) (a) and (c).

3. Granting the aid in question would have been to ignore the principle according to which the Member States no longer have the power to give unilateral rulings on incomes within the framework of a common market organization by granting aids of this type.

Moreover, there are restrictions on the power of Member States to intervene directly in the operation of the common market organizations with a system of common prices, which fail henceforward within the exclusive competence of the Community.

Consequently, even if it had been possible to contemplate a derogation under Article 92 (3) of the Treaty, the fact that the aid measure under examination constitutes an infringement of the common organization of the market in question rules out the application of any such derogation.

VII

1. On the basis of the latest reply, dated 29 November 1985, from the Italian Government, the aids to producers should be considered as having been altered and at present as constituting measures involving investments for the restructuring and improvement of the Italian sugar sector under Law No 700/83, which was considered by the Commission as being compatible with the Common Market.

2. By letter dated 23 May 1984, the Commission delivered a favourable opinion on Law No 700/83 in view of the latter's restructuring and improvement objective, provided that it was informed:

- of the specific intervention plans as provided for in Article 1 of the said Law before their implementation, in accordance with Article 93 (3) of the EEC Treaty,
- under the said provision of the Treaty, of the financial rules of application relating to long-term loans, as provided for in Article 2 (c) of the said Law, and in Article 3 (6) of Decree-Law No 371 of 12 August 1983.

The Commission stated that its position was justified only in so far as the improvement plan actually:

- had a limited duration (five years),
- provided for a production target not exceeding the quantities produced in the past nor those provided for in the A and B quotas laid down by the Community Regulations in force, i.e. 1 570 million kilograms of sugar per year, assuming an optimum duration of the season.

The Commission stressed that this position could not constitute a precedent with regard to the general position which it expressed in its letter of 1 February 1972 to Italy and the other Member States, which prohibited all aid for investments in the sugarbeet and cane and sugar sector.

3. The aids to producers referred to in point 1, which, according to information provided by the Italian authorities, have not yet been paid, will be granted within the maximum limits authorized by the Commission and communicated by the latter to the Member States by letter; the maximum rates for Italy are:

- 50 % for the Centre-North and 75 % for the Mezzogiorno for projects forming part of national or regional programmes approved by the Commission under Council Regulation (EEC) No 355/77⁽¹⁾,
- 35 % for the Centre-North and 50 % for the Mezzogiorno for other projects.

4. In these circumstances, the Commission need no longer raise any objections to the granting of such aids subject to the assurances referred to in point 1 above,

HAS ADOPTED THIS DECISION:

Article 1

The Commission of the European Communities raises no objections with regard to the measure concerning aid to Italian sugar producers provided that:

1. the aid of Lit 59,12 per kilogram and Lit 37,12 per kilogram to Italian sugar producers, for white sugar held at 29 October 1984 and obtained from sugar grown in Italy or refined from imported raw sugar is granted in accordance with Law No 700/83, and in compliance with the Decision by which the Commission approved the latter;
2. this aid, combined with that provided for in that Law, does not exceed the following maximum rates:

⁽¹⁾ OJ No L 51, 23. 2. 1977, p. 1.

- (a) 50 % for the Centre-North and 75 % for the Mezzogiorno, for projects forming part of national or regional programmes approved by the Commission pursuant to Regulation(EEC) No 355/77 ;
- (b) 35 % for the Centre-North and 50 % for the Mezzogiorno, for other projects.

Article 2

Italy shall inform the Commission, within two months from notification of this Decision, of the steps it intends to take to comply with Article 1.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 March 1986.

For the Commission

Frans ANDRIESSEN

Vice-President