JUDGMENT OF THE COURT
11 JULY 1984 [1]

Commission of the European Communities v Italian Republic

(Aids granted in Sicily in the wine and fruit and vegetable sectors)

Case 130/83

Aid granted by States — Commission decision declaring aid incompatible with the Common Market — Obligation of the Member State concerned
(EEC Treaty, Arts 92 and 93)

Where a formal decision has been adopted by the Commission declaring aid granted by a State to be incompatible with the Common Market, the Member State concerned is under an obligation to give effect to the decision within the prescribed period, by taking the measures necessary to ensure the formal repeal of the provisions found by the Commission to be contrary to the requirements of Article 92 of the EEC Treaty.

In Case 130/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Marie-José Jonczy and Giuliano Marenco, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by Arnaldo Squillante, head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration that, by not complying within the prescribed period with the Commission's decision of 5 May 1982 concerning aid granted in Sicily in the wine and fruit and vegetable sectors, the Italian Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans and K. Bahlmann (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco and O. Due, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: H. A. Rühl, Principal Administrator

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts

By a letter of 7 March 1981 the Government of the Italian Republic notified to the Commission, in accordance with Article 93 (3) of the EEC Treaty, a bill before the Sicilian regional assembly on measures to be taken in the wine, citrus fruit, fruit and vegetables and olive sectors and amending Regional Law No 80 of 9 August 1980.

On 8 April 1981 the Italian Government notified to the Commission the final text of the bill approved by the regional assembly.

The bill had already become Regional Law No 16/81 of 2 March 1981 (Gazzetta Ufficiale [Official Journal] of the Sicilian Region, No 10, of 4. 3. 1981, p. 207; Gazzetta Ufficiale of the Italian Republic, No 138, of 21. 5. 1981, p. 3285).

Article 1 of Law No 16/81 provides for the granting of a subsidy of LIT 1 000

per 100 kg of grapes delivered in cooperatives in the 1980 wine year.

Article 13 of the Law provides for the allocation of LIT 3 000 million to the Istituto Regionale della Vite e del Vino [Regional Wine and Wine-growing Board] to encourage the collection of grapes at wine cooperatives during the 1981 wine year.

Article 2 of the Law provides, with a view to attaining the objectives referred to in Article 25 of Regional Law No 36/76, for an increase of LIT 5 000 million in the 1981 operating fund of the Istituto Regionale di Credito alla Cooperazione (Ircac) [Regional Board for Credit to Cooperatives].

The measures provided for in Article 25 of Regional Law No 36/76 consist *inter alia* in the granting of medium-term loans at low rates of interest to second-tier and third-tier syndicates of wine cooperatives in order to finance the distillation of wine, the processing of by-products of wine-making, the production and bottling of table wines and quality wines produced in specified regions (vqprd). Provision is also made for the granting of operating loans.

Article 7 of Law No 16/81 provides, in particular in application of Article 19 of Regional Law No 14/68 of 6 June 1968, for the granting, to groups of producers and cooperatives and associations thereof, of subsidies of up to 90% of expenditure on preserving, processing, distributing and selling fruit and vegetables, including citrus fruit, in respect of the 1980/1981 marketing year.

The Commission took the view that that aid fell within the scope of Articles 92 to 94 of the EEC Treaty, by virtue of Article 59 of Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (Official Journal 1979, L 54, p. 1) and by virtue of Article 31 of Regulation No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437).

Following a preliminary examination of Law No 16/81, the Commission came to the view that the subsidy of LIT 1 000 per 100 kg provided for in Article 1 and the aid for grape collection provided for in Article 13 infringed the rules of the common organization of the market in wine and accordingly could not be justified under Article 92 (3) of the Treaty and must therefore be regarded as incompatible with the Common Market.

The Commission also considered that the granting of loans at low rates of interest provided for in Article 2 of Law No 16/81 infringed the rules of the common organization of the market in wine; it also considered that the other aids for syndicates, with the exception of aid in the form of operating loans, amounted to operating subsidies which did not lead to lasting improvement and could not therefore qualify for exemption under Article 92 (3) of the Treaty.

In the Commission's opinion, Article 7 of Law No 16/81, if applied in conjunction with Community aid, in particular aid to associations of fruit and vegetable producers, infringes the provisions of Regulation (EEC) No 1035/72; even if

that measure does not infringe the provisions of the common organization of the market in fruit and vegetables, it constitutes an operating subsidy for cooperatives and syndicates thereof which does not contribute to structural improvement in the sector concerned. The aid cannot therefore, in the Commission's view, qualify for exemption under Article 92 (3) of the Treaty.

By a letter of 31 July 1981, the Commission initiated the procedure provided for in Article 93 (2) of the Treaty against the Government of the Italian Republic in respect of the measures in question, with the exception of the operating loans.

The Italian Government submitted its observations in a telex message of 5 October 1981; further information was given to the Commission in a telex message from the Italian Permanent Representation of 5 October 1981, at a meeting between the parties on 10 and 11 December 1981 and in a telex message from the Italian Permanent Representation of 12 February 1982.

The observations submitted by the Italian Government in response to the Commission's letter may be summarized as follows:

(a) The subsidy of LIT 1 000 per 100 kg provided for in Article 1 of Law No 16/81 was applicable in 1980 only and, in future, the region would move towards structural measures intended to prevent surplus production.

(b) The aid provided for in Article 13 was intended to finance the operation of the Istituto Regionale di Credito alla Cooperazione and was not used for encouraging collection of grapes at wine-making cooperatives.

(c) The measures laid down in Article 2 stemmed from the need to launch cooperatives and such measures did not directly concern wine distillation operations, which remained subject to Community rules.

(d) The measure referred to in Article 7 was intended to wipe out debts arising from investment by newly created associations of producers with a view to achieving structural improvements in production.

After inviting those concerned, including the other Member States, to submit their comments, the Commission adopted Decision No 82/401 of 5 May 1982 concerning aid granted in Sicily in the wine and fruit and vegetables sectors (Official Journal 1982, No L 173, p. 20); that decision was notified to the Italian Government by a letter from the Commission dated 10 June 1982.

In the decision, the Commission puts forward essentially the following considerations:

(a) The subsidy of LIT 1 000 per 100 kg of grapes delivered to cooperatives under Article 1 of Law No 16/81, the subsidy for collection of grapes at cooperatives under Article 13 of the Law and the medium-term loans at low rates of interest for distillation of wines, processing of wine by-products and production and bottling of table wines and quality wines produced in specified regions under Article 2 of the Law have a direct impact on the price of wine and the by-products of wine-making since they reduce the cost of the basic products and the costs of processing and packing. Accordingly, such measures, which constitute an addition to the subsidies provided for under the com-

mon organization of the market in wine, are contrary to the rules of that organization. It is apparent from consistent decisions of the Court that once the Community has legislated to establish a common organization of the market in a given sector, Member States are under an obligation to refrain from taking any measure which might undermine or create exceptions to it; in that connection, they must comply not only with the letter of the legislation but also with its spirit.

(b) The subsidy for members of wine cooperatives provided for in Article 1 of Law No 16/81 was applied in respect of a major share of Sicily's production of grapes — about one million tonnes out of 1.4 million tonnes in 1980; it is equivalent to about 5 to 8% of the value of the grapes delivered to cooperatives and about 4 to 7% of the cost of wine produced by the latter. That subsidy, and also the aid for grape collection under Article 13 of the Law, constituted an artificial incentive to increasing or at any rate maintaining at their present level the production of grapes intended for wine-making and thus increased the quantity of wine produced in Sicily. Moreover, such aid may well have induced members of cooperatives to dispose of their produce at prices below those which would have applied in the absence of such intervention by the public authorities; the cooperatives were thus able to offer wine at lower prices. If that was indeed the case, the measure in question is likely to affect trade within the Community and distort competition, since it gives Sicilian wine cooperatives an advantage over producers in other Member States who wish to export to Italy but do not receive similar aid.

(c) The medium-term loans under Article 2 of Law No 16/81 also constitute an artificial incentive to increasing or at any rate maintaining at their present level the quantities of table wines, quality wines from a specific region, distilled wines and by-products of wine-making produced in Sicily; in this case also, persons receiving such aid will be in a position to offer their products on more favourable terms than those which would have applied in the absence of intervention by the regional authorities.

Those loans, which are in addition to all the other measures provided for in Law No 16/81 and other regional laws in the wine sector, are likely to affect trade within the Community and to distort competition in that they give Sicilian wine-growers an advantage over wine-growers in other Member States who wish to export to Italy but do not receive any aid.

(d) The same arguments also apply as regards the aid granted under Article 7 to associations of producers, co-operatives and syndicates thereof engaged in the marketing of fruit and vegetables.

(e) The grounds put forward by the Italian Government were not regarded as acceptable by the Commission.

(i) The aid provided for in Article 1 of Law No 16/81 does not cease to be incompatible with the common organization of the market in wine by virtue of the fact that it was granted for one year only, namely 1980.

ii) With regard to Article 13, there are no grounds for believing that the

amounts allocated as subsidies to wine cooperatives under the Law in question were used for purposes other than those originally intended.

In this case, there is no evidence to suggest that the aid granted under Articles 1, 13, 2 and 7 of Law No 16/81 meets the conditions for an exemption under Article 92 (2) and (3) of the Treaty; the measures in question are not intended to promote the economic development of certain areas within the meaning of Article 92 (3) (a) and (c) of the Treaty since they do not in any way constitute measures for encouraging the development of the region or the products concerned but amount to operating aid with no structural impact.

(iii) Likewise, there are no grounds for believing that the aid under Article 2 will not be used, in accordance with that Law, for the distillation of wine, the processing of by-products of wine-making and the operation of second-tier and third-tier associations.

There will be no lasting change in the situation of Sicily or of the products concerned after the aid has ceased.

(iv) With regard to Article 7, no mention has been made of any regional provision proving that the amount allocated under that article may have been used, or indeed has been used, to facilitate investment by newly created cooperatives.

Such aid does not constitute an important project of common European interest or a measure to remedy a serious disturbance in Italy's economy; accordingly, Article 92 (3) (b) of the Treaty is not applicable.

(f) The measures in question therefore fall within the terms of Article 92 (1) of the Treaty and are incompatible with the Common Market. The provisions contained in paragraph (3) of that article must be interpreted strictly when any national or regional measure is considered; in particular, an exemption may be granted only if the Commission is able to establish that the aid is necessary for the purpose of achieving one of the objectives laid down in those provisions. To grant exemptions in the case of aid which does not meet those conditions would be tantamount to allowing an adverse effect on trade between Member States, a distortion of competition not justified from the Community's point of view and, by the same token, an unjustified advantage for certain Member States.

Moreover, such aid constitutes operating aid for the farmers concerned; the Commission has always opposed such aid since it does not meet the requirements for exemption under Article 92 (3) (c) of the Treaty, being too ineffective to facilitate development as laid down in the said provision.

In view of the situation on the markets in wine and in fruit and vegetables even a small amount of aid will adversely affect trading conditions to an extent contrary to the common interest.

Accordingly, the Commission sees no grounds for allowing any of the exemptions under Article 92 (3) of the Treaty to apply to the measures in question. Even if it had been possible to consider an exemption under Article 92 (3), such an exemption would not have been possible in view of the infringement of the common organization of the markets in wine and in fruit and vegetables constituted by Article 1 of Law No 16/81 (with regard to the subsidy of LIT 1 000), Articles 13 and 2 (with regard to the aid for distillation, processing and bottling) and by Article 7 (in the event of its being applied in conjunction with Community aid).

Article 1 of the Commission decision states that the aid under Articles 1, 2, 13 and 7 of Sicilian Regional Law No 16/81 must no longer be granted and that the provisions in question must be amended so that the aid is abolished.

Article 2 orders the Italian Republic to adopt the necessary measures to comply with the decision within a period of one month from notification thereof and to inform the Commission of the adoption of such measures without delay.

By a telex message sent to the Commission on 11 October 1982 the Government of the Italian Republic stated as follows:

(a) The Commission's view is correct as regards Article 1 and 7 of Law No 16/81 since there are doubts as to the compatibility of the aid in question with the common organization of the markets and with the competition rules. The provisions in question have, however, never been implemented and in fact should be regarded as having lapsed, since the relevant appropriations were not incorporated in the 1982 budget.

(b) The loans at low rates of interest granted to cooperative associations (syndicates) in order to improve wine products do not constitute an aid additional to the Community aid for wine distillation and the processing of by-products of wine-making but merely a normal agricultural credit operation intended to make loans available to associations concerned with the treatment, processing and marketing of the product. The aid is not intended to reduce the costs of processing but to enable the associations to obtain funds to undertake and complete the processing. Without such a regional measure, the associations would be obliged to have recourse to the ordinary capital market and would have to bear high and unacceptable charges, the interest rate being around 30%. The associations in question are of recent creation and are intended to achieve concentration of supply and uniformity of production, objectives which are considered fundamental to the common agricultural policy.

(c) The granting of an annual contribution to the Istituto Regionale della Vite e del Vino under Article 13 of Law No 16/81 is intended to enable that body to carry out the tasks entrusted to it. The fact that the contribution is paid

to that body in advance on the basis of the quantity of grapes delivered to the Sicilian wine cooperatives during the previous wine year is of no importance except for the fact that it provides a yardstick for calculating the advance paid by the regional authorities at the beginning of the financial year. The aid does not constitute a direct subsidy for the grapes delivered or, therefore, a direct production aid, the payment of which is prohibited by the Community rules for that sector. Moreover, the Commission has acknowledged that the activities of the Istituto regarding market surveys, technical assistance, scientific research and promotion campaigns are wholly legitimate.

II — Written procedure and conclusions of the parties

By an application lodged on 8 July 1983 the Commission brought an action before the Court under the second subparagraph of Article 93 (2) of the EEC Treaty against the Italian Republic for a declaration that it had failed to fulfil its obligations under the Treaty by not complying with the decision of 5 May 1982.

The Commission claims that the Court should:

(a) Declare that, by not complying within the prescribed period with the Commission decision of 5 May 1982 concerning aid granted in Sicily in the wine and fruit and vegetable sectors, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;

(b) Order the Italian Republic to pay the costs.

The Government of the Italian Republic contends that the Court, having regard to the fact that the Italian authorities have substantially complied with the Commission decision, should:

(a) Dismiss the application;

(b) In the alternative, declare that the action has become devoid of purpose.

The written procedure followed the normal course.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The Commission was invited to explain at the hearing the meaning of the reference, in the preamble to its decision, to Article 24 of Regulation No 804/68 of the Council of 27 June 1968 on the common organization of the market in milk and milk products; the Government of the Italian Republic was invited to state at the hearing whether it had been possible to make progress towards full implementation of the Commission decision since the conclusion of the written procedure.

III — Submissions and arguments put forward by the parties in the course of the written procedure

The *Commission* points out that under Article 189 of the EEC Treaty its decisions are binding in their entirety upon those to whom they are addressed and that by virtue of Article 191 they take effect upon notification.

The decision of 5 May 1982 required the Italian Republic, first, to refrain from granting the aid in question and, secondly, to amend Regional Law No 16/81 so as to repeal the provisions

providing for such aid. The fact that the Italian Republic has complied with the first part of the decision does not exempt it from compliance with the second part.

(a) As regards the aid provided for in Articles 1 and 7 of Law No 16/81, it is not in dispute that the provisions criticized by the Commission have not been amended, despite the Italian Government's invitation to the Sicilian region to repeal them.

The fact that, according to the Italian Government, the aid has not been paid because of the absence of budget appropriations is irrelevant.

The fact that application of the provisions in question was limited to the 1980 wine harvest or to the 1980/81 marketing year does not mean that the Commission's decision can be regarded as having been implemented. The repeal of the legislative provisions creating aid which is incompatible with the Common Market would exclude any legal possibility of payments being made; if the provisions are not repealed, it will still be possible to grant such aid at a later stage.

(b) As regards the aid under Article 13 of the Law, it is not in dispute that the Commission's decision has not been implemented since the Sicilian regional authorities have not acted upon the Italian Government's invitation to repeal the provision in question.

It would be superfluous to discuss the reasons for which the aid was regarded as incompatible with the Common Market; moreover, no such discussion is permissible after the expiry of the period within which the Commission's decision could be challenged in proceedings before the Court.

(c) As regards the aid under Article 2 of the Law, the fact that the medium-term loans at low rates of interest have not in fact been granted does not affect the finding that the Commission's decision has not been complied with; such compliance entails an obligation to amend the Law so as to exclude any possibility of such loans being granted.

The *Government of the Italian Republic* considers that it has substantially complied with the Commission's decision.

(a) The subsidies and aid provided for in Articles 1 and 7 of Regional Law No 16/81 have not been paid; the rules creating them have not been applied and could not be applied in the future owing to the absence of the relevant appropriations. Since the rules are temporary, it is unnecessary to repeal them; nevertheless, the Italian Government has invited the authorities in the Sicilian region formally to repeal them in order to eliminate any grounds for litigation.

(b) Article 13 of the Law merely provides that the subsidy granted to the Istituto Regionale della Vite e del Vino is to be paid in advance at the beginning of each financial year "on the basis of the grapes collected". The Commission has objected only to payment of the subsidy by that method and not to the payment itself. The Sicilian region has been invited to repeal Article 13 so as to comply with the Commission's decision.

(c) As regards Article 2 of the Regional Law, the increase of the operating fund of the Istituto Regionale di Credito alla

Cooperazione by LIT 5 000 million has not been criticized; all that has been criticized is the possibility that that sum might be used for the granting of medium-term loans to associations for certain activities designed to improve the quality of wine products, whilst the granting of operating credits to those associations by the same organization is authorized. In fact, the medium-term loans in question have not been granted, with the result that, on this point also, there has been no substantial failure to comply with the Commission's decision. In any case, the measure in question was not implemented subsequently, being valid only for the 1981 financial year.

IV — Oral procedure

The Commission, represented by Mr Marenco, and the Government of the Italian Republic, represented by Mr Fiumara, presented oral argument at the sitting on 8 May 1984.

In reply to the question put to it by the Court, the Commission stated that the reference, in the preamble to its decision of 5 May 1982, to Article 24 of Regulation No 804/68 of the Council was justified by the fact that that provision enshrines the principle, which is equally valid in sectors other than that of milk and milk products, whereby it is forbidden to grant aid whose amount is determined on the basis of the price of the products for which it is granted.

The Government of the Italian Republic informed the Court that the provisions contested by the Commission had not yet, despite its approaches to the Sicilian regional authorities, been formally repealed by the latter.

The Advocate General delivered his opinion at the sitting on 6 June 1984.

Decision

1 By an application lodged at the Court Registry on 8 July 1983 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by not complying within the prescribed period with Commission Decision 82/401/EEC of 5 May 1982 concerning aid granted in Sicily in the wine and fruit and vegetable sectors (Official Journal 1982, L 173, p. 20), the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

2 In that decision the Commission declared incompatible with the Common Market certain subsidies and aid granted by the Sicilian region under Regional Law No 16/81 for the production of wine and of fruit and

vegetables. By virtue of Article 2 of the decision, the Italian Republic was to take the measures necessary to comply with the decision within a period of one month from notification thereof. It is to be noted that no action was brought against the decision.

3 In its defence the Italian Government states that it has made several approaches to the Sicilian regional authorities with a view to inducing them to repeal the provisions referred to in the Commission decision but that its efforts have so far not led to the formal repeal of those provisions. It states however that the aid, for which provision was made according to varying procedures for the 1980 and 1981 seasons, was not in fact paid. Since accounts for the years in question have been closed, payment is no longer possible, with the result that the Commission's decision has become devoid of purpose.

4 As regards Article 13 of Law No 16/81, supplementing Article 7 of Regional Law No 47/80, on the granting of aid to the Istituto Regionale della Vite e del Vino [Regional Wine and Wine-growing Board], the Italian Government draws attention to a misunderstanding in the Commission's decision. According to the fifth and ninth recitals in the preamble to the decision, and the second paragraph of Article 1 thereof, the aid in question was intended to encourage "the collection of grapes at wine cooperatives". However, it is apparent from consideration of the above-mentioned legislation that the aid in question was granted to the Istituto Regionale in order to enable it to carry out the tasks entrusted to it, that is to say its general activities in favour of wine-growing, and the quantity of grapes collected is merely a yardstick for calculating the amount of the subsidy.

5 For its part, the Commission considers that, even if the aid was not in fact paid, the risk nevertheless remains that it may be paid subsequently and it is therefore desirable for the provisions of the regional legislation referred to in the decision to be formally repealed.

6 As regards the subsidies granted to the Istituto Regionale della Vite e del Vino, the Commission submits that the Italian Government's argument is intended to challenge the decision of 5 May 1982, which it did not contest within the prescribed period and which has therefore become final. Hence

the Commission considers that argument to be inadmissible in these proceedings.

7 Having regard to the arguments put forward by the parties, it must be stated that, since the Commission adopted a formal decision in respect of the aid in question, the Member State concerned was under an obligation to give effect to it, within the prescribed period, by taking the measures necessary to ensure the formal repeal of the provisions found by the Commission to be contrary to the requirements of Article 92 of the EEC Treaty.

8 As regards the Italian Government's contention that the scope of the provisions on the aid granted to the Istituto Regionale della Vite e del Vino was misunderstood, the Court is unable, in the present proceedings, to consider whether or not it is well founded, since the disputed provisions of the decision of 5 May 1982 were not challenged within the prescribed period. If there was any doubt regarding the scope of that particular point of the decision of 5 May 1982, it was for the Italian authorities to deal with it when implementing the decision, if necessary by seeking the agreement of the Commission. However, such a contention cannot in any event be accepted so as to release the Italian Republic from its obligation to give effect to that part also of the Commission's decision, in accordance with the spirit of Article 5 of the EEC Treaty.

9 For those reasons, it must be held that by failing to comply with Commission Decision 82/401/EEC of 5 May 1982 the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

10 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby rules:

1. **By not complying within the prescribed period with Commission Decision 82/401/EEC of 5 May 1982 concerning aid granted in Sicily in the wine and fruit and vegetable sectors (Official Journal 1982, L 173, p. 20), the Italian Republic has failed to fulfil its obligations under the EEC Treaty.**

2. **The Italian Republic is ordered to pay the costs.**

Mackenzie Stuart Koopmans Bahlmann

Pescatore O'Keeffe Bosco Due

Delivered in open court in Luxembourg on 11 July 1984.

P. Heim
Registrar

A. J. Mackenzie Stuart
President

OPINION OF MR ADVOCATE GENERAL VERLOREN VAN THEMAAT DELIVERED ON 6 JUNE 1984 [1]

Mr President,
Members of the Court,

By Decision 82/401 of 5 May 1982 (Official Journal 1982, L 173, p. 20) the Commission declared that certain measures providing for aid laid down by the Sicilian authorities in Regional Law No 16/81 were incompatible with Article 92 of the EEC Treaty and the common organization of the markets in wine and vegetables and fruit. That decision was

1 — Translated from the German.