II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 2 May 1984

concerning the State aids provided for by Law No 97 of the Region of Sicily of 6 May 1981 on measures to encourage productive sectors of agriculture and various agricultural standards

(Only the Italian text is authentic)

(84/557/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 2727/75 of 29 October 1975 on the common organization of the market in cereals (1), as last amended by Regulation (EEC) No 1018/84 (2), and in particular Article 22 thereof,

Having regard to Council Regulation (EEC) No 1035/72 of 18 May 1972 on the common organization of the market in fruit and vegetables (3), as last amended by Regulation (EEC) No 985/84 (4), and in particular Article 31 thereof,

Having regard to Council Regulation (EEC) No 516/77 of 14 March 1977 on the common organization of the market in products processed from fruit and vegetables (5), as last amended by Regulation (EEC) No 988/84 (6), and in particular Article 17 thereof,

Having regard to Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organization of the market in wine (7), as last amended by Regulation (EEC) No 1208/84 (8), and in particular Article 59 thereof,

Having regard to Council Regulation (EEC) No 804/68 of 27 June 1968 on the common organization of the market in milk and milk products (9), as last amended by Regulation (EEC) No 856/84 (10), and in particular Articles 23 and 24 thereof,

Having given formal notice to the parties concerned to submit their comments, in accordance with the first subparagraph of Article 93 (2) of the Treaty, and having regard to these comments (11),

I

Whereas, in its letter of 11 May 1981, the Italian Government notified to the Commission a draft Law of the Region of Sicily on 'measures to encourage productive sectors of agriculture and various agricultural standards'; whereas this notification was replaced by that dated 29 May 1981;

Whereas further details of the new text were requested on 1 June 1981, 15 July 1981 and 22 February 1982;

(1) OJ No L 281, 1. 11. 1975, p. 1.
(2) OJ No L 107, 19. 4. 1984, p. 1.
(3) OJ No L 118, 20. 5. 1972, p. 1.
(4) OJ No L 103, 16. 4. 1984, p. 1.
(5) OJ No L 73, 21. 3. 1977, p. 1.
(6) OJ No L 103, 16. 4. 1984, p. 11.
(7) OJ No L 54, 5. 3. 1979, p. 1.
(8) OJ No L 115, 1. 5. 1984, p. 77.
(9) OJ No L 148, 28. 6. 1968, p. 13.
(10) OJ No L 163, 22. 6. 1983, p. 56.
(11) OJ No C 155, 19. 6. 1982, p. 2.

Whereas the Italian authorities informed the Commission by letter of 29 March 1982 that the draft Law in question had been adopted by the Regional Assembly on 22 April 1981 and published on 9 May 1981 as Law No 97/81 ;

Whereas Articles 2 and 3 of the Law provide for authorization for expenditure of Lit 4 000 million for 1981 and Lit 5 000 millon for 1982 covering a subsidy of Lit 700 per quintal for durum wheat delivered into public storage ('ammasso volontario') ;

Whereas Article 4 provides for authorization for expenditure of Lit 300 million for 1981 covering subsidies of Lit 100 million to groups of cooperatives storing and marketing durum wheat ;

Whereas Article 5 provides for authorization for expenditure of Lit 100 million for both 1981 and 1982 covering subsidies to members of durum wheat producer organizations who sow fields for the production of selected certified durum seed wheat, amounting to 10 % of the unit intervention price fixed by the Community for each quintal of selected durum seed wheat ;

Whereas Article 6 provides for authorization for expenditure of Lit 500 million for both 1981 and 1982 covering subsidies to individual farmers equal to 20 % of the purchase price of selected durum seed wheat produced in Sicily, limited to 10 quintals per recipient ;

Whereas Articles 8 and 9 provide for authorization for expenditure of Lit 1 500 million for 1981 and Lit 1 500 million for 1982 covering subsidies of Lit 2 000 to 6 000 per quintal to producers of durum wheat damaged by pests during the 1980/81 season and delivering the wheat to cooperatives or groups organizing the reception, storage and joint sale of the wheat ;

Whereas Article 10 provides for authorization for expenditure of Lit 500 million for 1981 — in implementation of Article 8 of Regional Law No 83/80 — covering aid to tomato producers belonging to cooperatives, groups of cooperatives and producer organizations of Lit 700 per quintal of tomatoes supplied for processing ;

Whereas Article 11 provides for authorization for expenditure of Lit 350 million for 1981 — in application of Article 9 of Regional Law No 83/80 — covering a subsidy to the bodies referred to in Artcle 10 of Regional Law No 97/81 of Lit 500 per quintal of tomatoes to cover some of the costs involved in storage and transport of produce to processing plants ;

Whereas Article 12 provides for authorization for expenditure of Lit 3 000 million for 1981 — in compliance with Article 12 of Regional Law No 83/80 — to assist the granting to citrus fruit growers belonging to cooperatives, groups of cooperatives and/or producer organizations, of a subsidy to cover management expenses of Lit 750 per quintal of citrus fruit supplied for processing ;

Whereas Article 13 provides for authorization for expenditure for 1981 of Lit 600 million covering subsidies to cooperatives, groups of cooperatives and producer associations of up to 70 % of expenditure incurred in the handling, processing and marketing of citrus fruit ;

Whereas Article 14 provides for reduced-interest loans (about 4 %) granted for one year to private firms with State participation which operate plants in Sicily for the processing of citrus fruit into juice, concentrates and freeze-dried products ; whereas these loans are granted only for the quantities of citrus fruit supplied under contract between 1 April and 30 September 1981 by cooperatives, groups of cooperatives and producer associations formed in accordance with Law No 622 of 27 July 1967 on condition that the recipient firms pay farmers delivering their produce no less then the minimum prices laid down by Community regulations ;

Whereas Article 15 provides for authorization for expenditure of Lit 500 million for 1981 covering aid of Lit 15 per kilogram of blood oranges damaged by bad weather in order to compensate the lower juice content ; whereas this aid is granted to recognized groups of producers, cooperatives and groups of cooperatives and to firms with a majority State participation, having citrus fruit processing plants ; whereas this aid is granted to firms only on the conditions that they guarantee payment of a minimum purchase price ;

Whereas Article 17 provides for an increased appropriation for the fund set up with the IRCAG (Istituto Regionalo Credito Agrario) by Article 3 (4) of Regional Law No 12 of 7 February 1963, from 1981, of an annual sum of Lit 1 200 million covering reduced-interest loans (about 12 %) to farming cooperatives and groups of cooperatives for 15 years to meet all the liabilities outstanding on 31 March 1981 arising out of loans taken out for the payment of advances to members for the supply of agricultural products during the 1978/79 season, running costs and expenditure related to costs incurred up to 31 July 1978 for setting up and modernizing social structures, after deducting regional, national or Community subsidies received ;

Whereas Article 21 provides for authorization for expenditure of Lit 4 800 million, 50 % to cover the execution of work by the 'Istituto Regionale della Vite e del Vino' referred to in Article 6 of Regional Law No

28 of 30 July 1973 to refinance the publicity campaign for 1981, and to support the export of wines in bulk to non-Community countries, particularly the Soviet Union, and the marketing of bottled wines and wines in bulk in Italy and in the Community;

Whereas Article 22 provides for authorization for expenditure, for 1981, of Lit 200 million covering a subsidy provided for in Article 5 of Regional Law No 14 of 6 June 1968, amounting to Lit 3 000 per quintal of grapes produced in 1981 by wine-growers on the islands of Pantelleria and Lipari;

Whereas Article 30 provides for authorization for expenditure of Lit 500 million in 1981 and Lit 1 000 million for both 1982 and 1983 covering a subsidy to cooperatives, groups of cooperatives and producer associations of Lit 4 500 per hl of milk produced and delivered in Sicily to reduce the costs of collecting, transporting and chilling milk;

Whereas Article 31 provides for authorization for expenditure of Lit 500 million in 1981 and Lit 1 000 million for both 1982 and 1983 covering a subsidy to members of associations of cheese producers of Lit 4 500 per hl of milk produced in Sicily and processed into Caciocavallo, Pecorino siciliano and Canestrato misto cheeses;

Whereas Article 32 provides for authorization for expenditure of Lit 650 million for 1981 covering reduced-interest loans for 12 months to cooperatives and groups of cooperatives producing and handling milk, which make 'inter-trade' agreements for the purchase at agreed prices of milk produced in Sicily, in accordance with the provisions of National Law No 306/75; whereas the size of these loans depends upon the quantities of milk delivered to these bodies in the course of a year;

Whereas Article 39 provides for authorization for expenditure of Lit 5 000 million for 1982 covering a subsidy of 25 % of the price of diesel fuel used in crop cultivation and the processing and marketing of agricultural produce;

Whereas Article 43 provides for authorization for expenditure of Lit 45 000 million for 1981 mainly to refinance Article 1 of Regional Law No 23 of 28 July 1978 covering subsidies of 70 % of the eligible expenditure incurred in purchasing, constructing, enlarging or modernizing cooperative facilities for wrapping, preparing and packaging agricultural products;

Whereas, under Article 22 of Regulation (EEC) No 2727/75, Article 31 of Regulation (EEC) No 1035/72, Article 17 of Regulation (EEC) No 516/77, Article 59 of Regulation (EEC) No 337/79 and Articles 23 and 24 of Regulation (EEC) No 804/68, these aids are covered by Articles 92 to 94 of the Treaty;

II

Whereas the Commission, having conducted a preliminary examination of Law No 97/81, found:

— that the aids provided for in Articles 2, 3, 4, 8 and 9 contravene the rules of the common organization of the market in cereals,

— that the aids provided for in Articles 10, 11 and 14 contravene the rules of the common organization of the market in fruit and vegetables,

— that the aids provided for in Articles 12 and 15 contravene the rules of the common organization of the market in products processed from fruit and vegetables.

— that the aids provided for in Articles 21 and 22 contravene the rules of the common organization of the market in wine,

— that the aids provided for in Articles 30, 31 and 32 contravene the rules of the common organization of the market in milk and milk products;

Whereas these aids therefore should not be eligible for the exceptions provided for in Article 92 (3) of the Treaty and should be considered incompatible with the common market;

Whereas the Commission also found, as a result of this examination, that:

(a) the aids provided for in Articles 5, 6, 13, 17 and 39 constitute operating aid, producing no lasting structural improvement and therefore not qualifying for one of the exemptions provided for in Article 92 (3) of the Treaty;

(b) the aids provided for in Article 43 in the form of investment aid of 70 % towards eligible expenditure incurred in purchasing, constructing, enlarging or modernizing cooperative facilities for wrapping, preparing and packaging agricultural products, do not conform to the maximum limits generally applied to investment aid for marketing and processing agricultural products, and none of the projects financed are therefore eligible for the exception provided for in point (c) of Article 92 (3), the only provision possibly applicable in this case;

Whereas, in view of the foregoing, the Commission initiated the procedure provided for in Article 93 (2) of the Treaty in respect of the above measures, in its letter of 6 May 1982, and gave notice to the Italian Government to submit its comments;

Whereas the Commission gave notice to the other Member States and non-member States concerned to submit their comments;

III

Whereas the Italian Government, in its replies of 25 October 1982 and 18 January 1983 to the Commission's letter of notification, stated that :

(a) the provisions of Articles 2 and 3 granting a subsidy of Lit 700 per quintal of durum wheat delivered into public storage have been replaced, for 1982, by Articles 19 and 20 of Regional Law No 87/82 providing for management loans covering advances to members of cooperatives and the costs of collective reception, storage and sale of wheat ;

(b) the subsidy of Lit 100 million, provided for in Article 4, granted to each of the three groups of cooperatives having harvested durum wheat in 1981 was in fact non-renewable starting-up aid to assist the groups to meet running costs during the initial years of their operations since their foundation in 1975/76 ;

(c) the subsidy of 10 % of the unit intervention price fixed by the Community to be paid for each quintal of selected durum seed wheat to members of durum wheat producer organizations provided for in Article 5, and the subsidy of 20 % of the purchase price of selected durum seed wheat to individual growers, provided for in Article 6, were intended for a programme on dissemination of agricultural advice, of limited duration, to encourage the use of new cultivation techniques ;

(d) the subsidies of Lit 2 000 to 6 000 per quintal of durum wheat provided for in Articles 8 and 9 to durum wheat producers were intended to compensate growers of wheat affected by pests ; this was a special intervention measure and in future the Region would undertake to finance joint pest-control programmes of a preventive nature ;

(e) the payment to growers of the subsidy of Lit 700 per quintal of tomatoes supplied for processing, and the payment to cooperatives, groups of cooperatives and producer organizations of a subsidy of Lit 500 per quintal of tomatoes to cover part of the storage and transport costs (Articles 10 and 11), already provided for in Articles 8 and 9 of Law No 83/80, were suspended as soon as the Commission initiated the infringement procedure under Article 169 of the Treaty on 5 February 1982 ;

(f) the subsidy of Lit 750 per quintal of citrus fruit supplied for processing, provided for in Article 12 and introduced by Article 12 of Law No 83/80 was limited to the 1981 season and would not be included in future legislation ;

(g) the finance provided for in Article 13 granted to cooperatives, groups of cooperatives and producer associations, by credit institutions associated with the IRCAG (Istitute Regionale del Credito Agrario) to cover management expenses for up 70 % of the permissible amounts deducted were intended to facilitate access to credit ; furthermore, the regional provisions on credit were repealed by Article 24 of Regional Law No 87/82, which states that the interest rates payable by the beneficiaries must be those laid down for equivalent credit operations at national level ;

(h) the reduced-interest loans provided for by Article 14 for private firms with State participation which operate plants in Sicily for the processing of citrus fruit into juice, concentrates and freeze-dried products, were also intended to facilitate access to credit ;

(i) the subsidy provided for in Article 15 of Lit 15 per kilogram of blood oranges damaged by bad weather, paid to recognized producer associations, cooperatives, groups of cooperatives and firms with a majority State participation, was intended to compensate them for the lower juice content of the oranges ;

(j) the reduced-interest loans (about 12 %) for 15 years, provided for in Article 17 and intended to absorb the operating deficits of the cooperatives and groups of cooperatives were not granted and will not be granted in the future, owing to the complexity of the procedures ;

(k) the subsidy of Lit 4 800 million provided for in Article 21 of which 50 % was intended to refinance the activities for 1981 of the Istituto Regionale della Vite del Vino described in Article 6 of Regional Law 28/73, consisting of publicity aid, aid for exports to non-member States, particularly the USSR, and aid for bottled wine marketed in Italy and the Community, has enabled congestion on the wine market to be relieved and distillation to be avoided ; it would therefore be advisable to continue to tolerate a lower amount of this aid in 1982 ;

(l) the granting of a subsidy of Lit 3 000 per quintal of grapes for the 1981 harvest, provided for by Article 22, to the wine-growers of the islands of Pantelleria and Lipari had a duel purpose : supporting agriculture in areas where the activity is

vulnerable, and preventing the disappearance of traditional crops which are important for income and employment; the quantities involved were in fact small;

(m) the subsidy to milk producers belonging to cooperatives, groups of cooperatives and producer associations of Lit 4 500 per hl of milk delivered to these bodies, provided for in Article 30, with a view to reducing the costs of collecting, transporting and chilling milk, and the subsidy of Lit 4 500 per hl for milk produced in Sicily and processed into Caciocavallo, Pecorino siciliano and Canestrato misto cheeses to members of associations of cheese producers, provided for in Article 31, should be eligible for the exceptions to the provisions of point (a) of Article 92 (3) of the Treaty, given that the milk producers in Sicily work in especially disadvantaged areas, on small farms, far from collection and processing centres;

(n) the 'inter-trade' agreements referred to in Article 32 were concluded on the basis of negotiations between the parties concerned without reference to the provisions of Article 11 of National Law No 306/75, so they cannot therefore give rise to an infringement;

(o) the subsidy provided for in Article 39 of 25 % of the price of diesel fuel used for crop cultivation and the processing of agricultural produce was granted owing to the fall in income brought about by the rising costs of farm inputs, the damage caused by poor weather conditions and the natural handicaps to mechanization;

(p) the contributions provided for in Article 43 are structural interventions, included in regional programmes satisfying the general conditions laid down by Council Regulation (EEC) No 355/77 of 15 February 1977 on common measures to improve the conditions under which agricultural products are processed and marketed (1), as last amended by Regulation (EEC) No 3164/82 (2);

Whereas several Member States and other parties concerned have forwarded their comments to the Commission; whereas they all take the view that the Sicilian measures contravene the rules of the common market organization and/or distort competition and affect trade between Member States;

(1) OJ No L 51, 23. 2. 1977, p. 1.
(2) OJ No L 332, 27. 11. 1982, p. 1.

IV

1. Whereas the Italian authorities have failed to fulfil their obligation under Article 93 (3) of the Treaty, firstly by giving notification of the draft Law and secondly by implementing the draft before the end of the period of examination allowed to the Commission to express an opinion;

Whereas this has led to a particularly serious situation, as the substance of most of the measures contravenes the rules of the common market organizations so that they must be regarded as incompatible with the provisions of Article 92 of the Treaty;

2. Whereas, in particular:

— the subsidy of Lit 700 per quintal of durum wheat delivered into public storage for 1981, in compliance with Article 10 of Regional Law No 47/80 by virtue of Articles 2 and 3 of Law No 97/81, is not allowed by Community regulations which have set up a production aid in this field,

— the subsidy of Lit 100 million to groups of cooperatives storing and marketing durum wheat provided for in Article 4 of Law No 97/81 is a measure encouraging durum wheat storage which is not allowed by Community regulations; whereas aid granted six years after the groups of cooperatives were set up cannot be regarded as starting-up aid,

— the aid to producers of durum wheat affected by pests, and delivering their products to cooperatives or groups organizing the collective reception, storage and sale of produce (Articles 8 and 9 of Law No 97/81), constitutes a supplementary income not allowed by Community regulations, which have set up a system of aid in this field;

whereas the aids provided for in Articles 2, 3, 4, 8 and 9 mentioned above, therefore contravene these rules;

Whereas the aids to the marketing of Sicilian wine in the Community and the aids for exports of Sicilian wines to non-member States, provided for by Article 21 of Law No 97/81 regarding refinancing for 1981 of the provisions of Article 6 of Regional Law 28/73, contravene the rules of the common organization of the market in wine which has introduced systems of intervention and export refunds; whereas Article 6 of Regional Law No 28/73 has been replaced by Article 5 of Regional Law No 58/83 which provides for publicity aid from 1 January 1983 in respect of which the Commission defined its position in its letter of 19 March 1984;

Whereas

— the subsidy of Lit 700 per quintal of tomatoes supplied for processing, provided for — in compliance with Article 8 of Regional Law No 83/80 — in Article 10 of Law No 97/81,

— the subsidy of Lit 500 per quintal for tomatoes to cover some of the costs involved in storage and transport to processing plants, provided for in Article 11 of Law No 97/81, in compliance with Article 9 of Regional Law No 83/80,

— the subsidy of Lit 750 per quintal for citrus fruit supplied for processing, provided for in Article 12 of Law No 97/81, in compliance with Article 12 of Law No 83/80,

— the reduced-interest loans (about 4 %) granted for one year to private firms with State participation which operate plants in Sicily for the processing of citrus fruit into juice, concentrates and freeze-dried products, designed to reduce the cost of buying, handling and processing the fruit, provided for in Article 14 of Law No 97/81,

— the subsidy of Lit 15 per kilogram for blood oranges damaged by had weather to compensate the lower juice content, provided for in Article 15 of Law No 97/81, granted to recognized producer associations, cooperatives, groups of cooperatives and firms with a majority State participation having citrus-fruit processing plants,

are allowed neither by the rules of the common organization of the market in products processed from fruit and vegetables (for tomatoes), nor by the rules of the common organization of the market in fruit and vegetables, in particular the rules laying down special measures to encourage the processing of certain varieties of oranges ; whereas Regulation (EEC) No 516/77, and Council Regulation (EEC) No 2601/69 of 18 December 1969 laying down special measures to encourage the processing of certain varieties of oranges [1], as last amended by Regulation (EEC) No 987/84 [2], have in fact introduced a system of Community aid for the production of certain processed products, including tomato- and citrus-based products ; whereas these regional aids distort competition between growers and also encourage — beyond choices of Community policy — production of agricultural products the price of which should not be maintained by unlawful unilateral measures ;

Whereas the subsidy of Lit 3 000 provided for in Article 22 of Law No 97/81 per quintal for Malvasia di Lipari grapes to wine-growers on the islands of Pantelleria and Lipari for the 1981 wine harvest contravenes the rules of the common organization of the market in wine, since the aid is paid on the basis of quantities delivered to the cooperatives ;

Whereas

— the subsidy of Lit 4 500 per hl of milk to producers delivering milk to cooperatives or groups of cooperatives with a view to reducing the costs of collecting, transporting and chilling milk, provided for in Article 30 of Law No 97/81

and

— the subsidy of Lit 4 500 per hl to members of associations of cheese producers for milk produced in Sicily and processed into Caciocavallo, Pecorino siciliano and Canestrato misto cheeses, provided for in Article 31 of Law No 97/81

contravene the provisions of Article 24 (1) of Regulation (EEC) No 804/68 which prohibits 'aids the amount of which is fixed on the basis of the price or quantity of (the) products' ;

Whereas the Commission feels that the said Article 24 (1) merely confirms one of the restrictions of the Member States' power to intervene directly in the operation of the common market organizations having a common price system which are henceforth within the exclusive competence of the Community ; whereas this principle is laid down by consistent judgments of the Court of Justice, particularly in the judgments delivered on 23 January 1975 and 6 November 1979 in Cases 51/74 (P. J. van der Hulst's Zonen v. Produktschap voor siergewassen) and Case 10/79 (Toffoli and others v. Regione Veneto) [3] ;

Whereas, as a general principle, these judgments state that, once the Community has adopted regulations on the common organization of the market in a given sector, Member States may not take any action liable to undermine or create exceptions to it ; whereas, in this connection, they must comply not only with the express provisions of the legislation but also with its aim and objectives ;

Whereas, by introducing aids contravening the common market organizations, the Italian authorities have ignored the principle that the Member States no longer have the power to make unilateral arrangements relating to farmers' incomes within the framework of a market organization ; whereas the Council, when setting up common market organizations and fixing the prices of agricultural products, has taken account of the various objectives and factors of common policy mentioned in Article 39 of the Treaty ; whereas it is clear that, in view of the diversity

[1] OJ No L 324, 27. 12. 1969, p. 21.
[2] OJ No L 103, 16. 4. 1984, p. 10.

[3] [1975] ECR 79 and [1979] ECR 3320.

of these objectives, priorities have been established which a Member State may not alter unilaterally without reopening the options adopted at Community level and without tending to create distortions which could affect trade between Member States ;

Whereas, therefore, the granting of reduced-interest loans for 12 months, provided for in Article 32 of Law No 97/81 in favour of cooperatives and groups of cooperatives producing and processing milk, which sign 'inter-trade' agreements for the purchase of milk produced in Sicily at fixed prices, contravenes Community regulations ; whereas the system of a fixed selling price for milk is incompatible with the common organization of the market in milk and milk products since the simple fact that a Member State promotes a compulsory fixed production price — even indirectly by means of a contract — is incompatible with the pricing system of the common organization of the market in milk ;

Whereas these measures also artificially favour Sicilian producers in relation to those of other regions of Italy and other Member States ; whereas these measures are therefore liable to affect trade between Member States ;

3. Whereas the following aid measures

(a) subsidies — per quintal of certified durum seed wheat — amounting to 10 % of the intervention price fixed by the Community for durum wheat, to members of durum wheat producer organizations who prepare fields for the production of selected durum seed wheat as provided for in Article 5 of Law No 97/81 ;

(b) subsidies covering 20 % of the cost of producing selected durum seed wheat in Sicily, to individual farmers, provided for in Article 6 of Law No 97/81 ;

(c) subsidies of up to 70 % of the expenditure incurred in the handling, processing and marketing of citrus fruit, provided for in Article 13 of Law No 97/81, to cooperatives, groups of cooperatives and producer associations ;

(d) reduced-interest loans (about 12 %) for 15 years to farming cooperatives and groups of cooperatives, to enable these organizations to meet operating deficits, as provided for in Article 17 of Law No 97/81 ;

(e) subsidy of 25 % of the price of diesel fuel, provided for in Article 39 of Law No 97/81, used in crop cultivation and the processing and marketing of agricultural produce,

are operating aids which directly reduce costs and improve production conditions, enabling the growers concerned to dispose of their products more easily than those of other regions of Italy and of other Member States which do not qualify for comparable aids ; whereas their effect is therefore to distort competition and affect intra-Community trade ;

4. Whereas under the terms of Article 43 of Law No 97/81, subsidies of up to 70 % towards eligible expenditure incurred in purchasing, constructing, enlarging or modernizing cooperative facilities for wrapping, preparing, packaging, etc. agricultural products, are granted without differentiating aids as between less-favoured areas and other areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (1), as last amended by Directive 82/786/EEC (2) ; whereas, however, the maximum levels of investment generally allowed for Sicily for the processing and marketing of agricultural products are 75 % for installations located in mountain, hill or less-favoured areas within the meaning of Directive 75/268/EEC, or 50 % for installations in other areas ; whereas the text of the Law, by failing to differentiate between less-favoured and other areas, allows improper use of aid in areas not designated as less favoured ; whereas such high-level aid should nevertheless require of the recipient of the aid a sufficient contribution to the financing of the project ; whereas a financial contribution of 25 % or 50 % should in fact be a minimum, below which there is the risk of encouraging the establishment of undertakings which would not be viable without further aid and of aggravating the structural weaknesses of the island, so increasing production which might affect trading conditions to an extent contrary to the common interest, with the added risk of difficulty in disposing of the products concerned without support from the EAGGF ;

Whereas, in view of the foregoing, the justifications put forward by the Italian authorities cannot be accepted, except as regards the aids provided for in Articles 5 and 6 of Law No 97/81 ; whereas the Commission appreciates that the aim of agricultural advisory services is likely to bring about a lasting improvement in the sector concerned ; whereas the Commission therefore feels that these aids may be authorized for a period of two years ;

5. Whereas the measures challenged satisfy the conditions set out in Article 92 (1) of the Treaty ; whereas the aids provided for by Articles 5 and 6 of Law No 97/81 may nevertheless qualify as the exception provided for in point (c) of Article 92 (3) of the Treaty ;

(1) OJ No L 128, 19. 5. 1975, p. 1.
(2) OJ No L 327, 24. 11. 1982, p. 19.

Whereas, as regards the other aids challenged, the prohibition enacted in Article 92 (1) of the Treaty may not be waived under Article 92 (2), since the exceptions allowed by that provision clearly do not apply to this case ;

Whereas, for the purposes of examining any national or regional measure, the exceptions provided for in Article 92 (3) should be interpreted strictly ; whereas in particular they may be allowed only if the Commission can establish that the aid is necessary to achieve one of the objectives of these provisions ;

Whereas to allow such exceptions in respect of aid which does not offer such compensating benefits would amount to allowing trade between Member States to be affected and competition to be distorted without justification from the point of view of the Community interest and would therefore bring about unfair advantage for certain Member States ;

Whereas, in the case in point, the aids provided for by Articles 2 and 3 (1981), 4, 8, 9, 10, 11, 12, 13, 14, 15, 17, 21, 22, 30, 31, 32 and 39 of Sicilian Law No 97/81, show no evidence of such a compensating benefit ; whereas there is not sufficient evidence either of such compensating benefit for the aid provided for by Article 43 of the Law in so far as the amount of the aid envisaged in the provision exceeds the maximum levels fixed by the Commission ; whereas some of these measures even contravene the rules of the various common market organizations ;

Whereas the Italian Government has not been able to give, or the Commission to detect, grounds to establish that the aids in question satisfy the qualifying conditions for one of the exceptions provided for in Article 92 (3) of the Treaty ;

Whereas the measures involving infringements may not under any circumstances qualify for one of the exemptions provided for in Article 92 (3) of the Treaty ;

Whereas the other measures are not designed to promote the economic development of areas where the standard of living is abnormally low or where there is serious under-employment within the meaning of point (a) of Article 92 (3), since these measures are not in any way liable to promote the development of the region or of the cultivation of the agricultural products concerned ; whereas they in fact constitute operating aids, with no lasting structural effect ; whereas the situation of Sicily and the abovementioned products will not be permanently changed after the end of the intervention concerned ;

Whereas these intervention measures are not an important project of common European interest, nor are they measures such as to remedy a serious disturbance in the Italian economy ; whereas it is not therefore appropriate to apply point (b) of Article 92 (3) of the Treaty ;

Whereas, moreover, these measures constitute operating aids to the farmers concerned ; whereas the Commission has always been opposed to such aids since they do not satisfy the conditions of the exception provided for in point (c) of Article 92 (3) of the Treaty since, owing to their very low degree of effectiveness, they are not liable to promote development within the meaning of that provision ;

Whereas, in particular, in the present situation of the markets for fruit and vegetables, wine and milk products, any aid, even of limited scope, affects the conditions of trade to an extent contrary to the common interest ;

Whereas it is clear from the foregoing that the abovementioned aids do not satisfy the qualifying conditions for one of the exemptions provided for in Article 92 (3) of the Treaty ;

Whereas this Decision is without prejudice to any conclusions the Commission may reach regarding the financing of the common agricultural policy by the EAGGF, as a result of the payment of the abovementioned aids ;

HAS ADOPTED THIS DECISION :

Article 1

1. The aids provided for in Articles 2 and 3 in relation to 1981, and Articles 4, 8 to 15, 17, 21, 22, 30 to 32 and 39 of Law No 97 of the Region of Sicily, of 6 May 1981, are incompatible with the provisions of Article 92 of the EEC Treaty and with the provisions of the common market organizations in the sectors concerned and may therefore no longer be granted.

2. The aids provided for in Articles 5 and 6 of Law No 97/81 may be regarded as compatible with the provisions of Article 92 of the EEC Treaty only for a period of two years, namely 1981 and 1982, taking account of the objective pursued.

3. The part of the aids provided for in Article 43 of Law No 97/81 which exceeds :

(a) the limit of 75 % of eligible expenditure for projects in mountain and hill areas and in less-favoured areas within the meaning of Directive 75/268/EEC covered by national and regional programmes approved by the Commission in compliance with Regulation (EEC) No 355/77, or

(b) the limit of 50 % in other areas or for projects not covered by such programmes

is incompatible with the provisions of Article 92 of the EEC Treaty and may no longer be granted.

Article 2

Italy shall inform the Commission, within two months of the notification of this Decision, of the measures taken to comply with the provisions of Article 1.

Article 3

The Decision is addressed to the Italian Republic.

Done at Brussels, 2 May 1984.

For the Commission

Poul DALSAGER

Member of the Commission