II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION
of 17 July 1996
on aid measures provided for in Sicilian Regional Law No 25/93

(Only the Italian version is authentic)

(97/106/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 93 (2) 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 [1], as last amended by Regulation (EC) No 1363/95 [2], and in particular Article 31 thereof,

Having given notice to the parties concerned, pursuant to Article 93 (2) of the Treaty, to submit their comments [3],

Whereas:

I

By letter of 25 October 1993, the Italian Permanent Representation to the European Union notified the Commission, in accordance with Article 93 (3) of the Treaty, of Regional Law No 25 of 1 September 1993 (hereinafter referred to as Law No 25/93). Since that Law was adopted before the Commission could state a position on the compatibility with the common market of the aid provided for therein, those aid measures were entered in the register of aid not notified.

As regards the measures covering agriculture and forestry provided for in that Law, by letters of 3 May and 19 September 1994 the Italian authorities forwarded additional information in response to the Commission's requests of 5 January and 28 July 1994.

By letter of 31 July 1995, the Commission informed Italy of its decision to initiate the procedure provided for in Article 93 (2) of the Treaty in respect of the aid measures provided for in:

— Article 44 of Law No 25/93,

— Article 50 of Law No 25/93 and Article 21 (1a) of Regional Law No 32 of 23 May 1991 (hereinafter referred to as 'Law No 32/91'),

— Article 84 (4) and (5) of Law No 25/93 as regards aid granted outside less-favoured areas,

— Articles 85, 86, 88, 90, 96, 103 and 105 of Law No 25/93.

In that letter the Commission gave notice to the Italian Government to submit its comments; it also gave notice to the other Member States and interested parties to submit their comments by publishing that letter in the Official Journal.

Italy forwarded its comments by letter of 5 October 1995. Comments were also put forward at the meetings which took place on 10 October 1995 and 22 January 1996.

No other interested party submitted any comments.

[1] OJ No L 118, 20. 5. 1972, p. 1.
[2] OJ No L 132, 16. 6. 1995, p. 8.
[3] OJ No C 295, 10. 11. 1995, p. 8.

This Decision does not cover the aid provided for in Article 88 of the Regional Law concerned (restructuring of Sanderson Agrumaria Meridionale SpA) or the aid for the restructuring of Siciliana Zootecnica SpA, which will be covered by a separate decision.

II

Article 44 of Law No 25/93

Article 44 of Law No 25/93 provides for the granting of low-interest loans for debt funding of companies selling fruit, vegetables and citrus fruit with less than 20 employees and experiencing financial difficulties. The Region grants medium/long-term loans (for a maximum of ten years) with a 7 % reduction in the interest rate. The Commission considers that this aid measure does not meet the conditions set out in the Community guidelines on State aid for rescuing and restructuring firms in difficulty (hereinafter referred to as the 'guidelines for firms in difficulty') [1]. Since by its very nature this type of aid involves no development of the sector or the region concerned, no derogation from those criteria is possible.

In the case in point no comment was put forward by Italy to show that the conditions laid down in the above-mentioned guidelines are satisfied. The Commission refers here to the arguments put forward at the time the procedure provided for in Article 93 (2) of the Treaty was initiated.

Article 50 of Law No 25/93

For the purposes of Article 21 (1) of Law No 32/91, this Article provides for expenditure of Lit 18 billion for the period 1993 to 1995. Article 21 (1) of Law No 32/91 provides for aid to stabilize the situation of cooperatives and consortia thereof in the form of interest-rate subsidies (4 %) to cover up to 75 % of the costs of implementing a financial restructuring plan for the recipient companies. The loans, which are to be paid back over 15 years, may cover liabilities of all types.

By the decision of 14 December 1992 (hereinafter referred to as the '1992 Decision'), the Commission authorized those aid measures for the period 1991 to 1993 on the grounds that the Italian authorities had stated that the measures in question were intended as compensation for damage caused by the drought of 1987-90 and on the basis of an undertaking on the Italian authorities' part regarding observance of the Community criteria applied by the Commission to national aid to compensate for damage caused by exceptional climatic occurrences.

The provision which provides for refinancing of the measures for 1993 to 1995 (Article 50 of Law No 25/93) establishes no link between the measures refinanced and any exceptional climatic occurrences which may be deemed natural disasters within the meaning of Article 92 (2) (b) of the Treaty. Accordingly, the aid measure as set out in the legislative provisions in force involves aid to stabilize the recipients' financial situation and must be appraised in the light of the criteria adopted by the Commission for the examination of this type of aid in accordance with Articles 92, 93 and 94 of the Treaty. Since compliance with those conditions is not ensured, the Commission decided to initiate the procedure provided for in Article 93 (2) of the Treaty.

In response to the procedure thus initiated, Italy stated in its letter of 5 October 1995 that:

— the provisions of Article 21 of Law No 32/91 became operational in 1993 only (after the Commission decision and the adoption of the implementing provisions). Accordingly, most of the funds allocated for the application of the measure for 1991, 1992 and 1993 have not been used and have subsequently become unusable. The measure under examination here (refinancing of Article 21 of Law No 32/91) seeks to supplement the measure provided for in the text approved by the 1992 Decision and to permit payment of the aid to the recipients already selected on the basis of the conditions set out in that Decision,

— in the same letter Italy informed the Commission that in the meantime the funds allocated to the refinancing measure had been reduced to Lit 6 500 million (of which Lit 3 000 million was for 1995 and Lit 3 500 million was for 1996).

From the point of view of substance, Italy does not dispute the Commission's assessment at the time the procedure was initiated, in particular the fact that the measure provided for in Article 21 of Law No 32/91 involves aid to stabilize the financial situation of cooperatives in difficulty and must accordingly be assessed in the light of the criteria applicable to that type of aid (that is, either the conditions laid down by the Community Guidelines for firms in difficulty or the criteria adopted in practice by the Commission on aid to stabilize the financial situation of agricultural holdings). No argument was put forward in the Italian Government's letter to show that those criteria were satisfied.

The Commission considers that its analysis at the time the procedure was initiated continues to be fully valid. Accordingly, simple refinancing of the measure provided for in Article 21 of Law No 32/91 should be deemed incompatible with the common market.

The very general way the basic provisions (Article 21 (1) and (1a) of Law No 32/91) are worded indicates that, outside the limits laid down in the 1992 Decision approving the financing of the aid measures in question in 1991, 1992 and 1993 by virtue of the serious circumstances arising in Sicily as a result of the drought in the preceding years and in the absence of specific conditions for verifying that the aid is granted in compliance with the criteria applicable to aid for firms in difficulty, any refinancing of such aid is incompatible with the common market.

[1] OJ No C 368, 23. 12. 1994, p. 12.

Italy states, moreover, that the aim of the refinancing measure was not to extend the arrangements provided for in Article 21 referred to above but solely to respond to applications from potential recipients who had not received the aid on account of delays in application and notwithstanding compliance with the conditions set out in the 1992 Decision.

In view of the foregoing, the measure provided for in Article 21 (1) and (1a) of Law No 32/91 must be regarded as incompatible with the common market and must accordingly be repealed.

However, in view of the fact that, on account of the exceptional circumstances obtaining, the grant of the aid was approved under certain conditions for a given period (1991 to 1993) and since for technical reasons the measure has not been fully implemented, it seems justifiable for the measure to be refinanced to the extent strictly necessary to ensure its application, subject to compliance with the conditions laid down in the 1992 Decision regarding the measures provided for in Article 21 of Law No 32/91.

Since it simply involves providing practical follow-up to projects already covered by an initial examination by the regional administration, refinancing must be restricted to programmes which the Region found to comply with the criteria set out in the 1992 Decision before 31 December 1993 (time-limit laid down in that Decision authorizing the aid provided for in Article 21 of Law No 32/91).

Since in the Italian Government's view such refinancing should not be regarded as extending the measures provided for in Article 21 of Law No 32/91, the period during which the payments can be made should be limited. As the Italian financing plan covers the years 1995 and 1996, the time-limit for payment must be set at 31 December 1996.

Article 84 (4) and (5) of Law No 25/93

Article 84 (4) and (5) of that Law state that the aid provided for in the Regional Law of 25 March 1986 (hereinafter referred to as Law No 13/86), plus 10 %, may be granted with a view to adapting livestock holdings structures to the health and hygiene standards laid down by national and Community regulations on the subject. The benefit granted corresponds to aid for investment as provided for in Article 12 (5) of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures [1], as last amended by Regulation (EC) No 2387/95 [2]; the rate of aid, according to the information provided, ranges from 65 % to 70 % of admissible expenditure in less-favoured 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 [3], as last amended by Directive 82/786/EEC [4].

The maximum rate of aid permitted under the criteria adopted by the Commission for the examination of investments in primary production is 75 % in less-favoured areas within the meaning of the abovementioned Directive and 35 % in other areas. The regional measure under examination does not comply with those maximum rates as regards aid granted outside less-favoured areas.

Italy has put forward the following arguments:

— for the purposes of examining aid for investments on agricultural holdings, to be assessed with an eye to Articles 92 and 93 of the Treaty, the Commission set the maximum rate of aid against the cost of investment at 35 % and 75 % (in less-favoured areas). According to the Italian Government, it should be possible to vary those rates to bring them into line with the rate of aid for investments authorized and part-financed by the Commission pursuant to Regulation (EEC) No 2328/91. Strictly limiting the rate of aid in question to 35 % outside less-favoured areas would result, according to the Italian authorities, in a difference in treatment between aid for investments assessed by the Commission having regard to Articles 92 and 93 of the Treaty by virtue of the reference to Article 12 (5) of Regulation (EEC) No 2328/91 and aid for investments authorized by the Commission under Article 30 of that Regulation,

— pursuant to Article 30 of the Council Regulation in question, the Commission authorized Sicily to increase by 10 % the rate of aid provided for in Article 7 of that Regulation (pursuant to that derogation, the rate applicable in the Region for investment aid outside less-favoured areas is 45 %),

— accordingly the Commission should take that derogation into account and permit a higher rate of aid in addition in the case of the investment aid under examination having regard to Articles 92 and 93 of the Treaty,

— pursuant to Articles 92 and 93, the Commission also authorized aid provided for in Article 4 of Law No 13/86 (aid falling within the scope of Article 12 (1) of Regulation (EEC) No 2328/91) at a rate of 55 % (60 % in less-favoured areas).

The latter reference is not relevant in the case in point, since the legal basis for the applicability of Articles 92, 93 and 94 to the aid at issue is not Article 12 (1) of Regulation (EEC) No 2328/91 (which refers to Articles 92, 93 and 94 for the purpose of assessing aid regarding that part of the investments covered by that Article in excess of the limits set by Article 7 (2) of the Regulation) but Article 12 (5) of that Regulation.

[1] OJ No L 218, 6. 8. 1991, p. 1.
[2] OJ No L 244, 12. 10. 1995, p. 50.
[3] OJ No L 128, 19. 5. 1975, p. 1.
[4] OJ No L 327, 24. 11. 1982, p. 19.

As regards the remark to the effect that the Commission should ensure that the rates of aid authorized under Community part-financing pursuant to Regulation (EEC) No 2328/91 are consistent with the rates applicable to aid provided for in Article 12 (5) of that Regulation, the Italian Government's arguments should be accepted and account should consequently be taken of the derogation authorized for the Region in question by the Commission Decision of 23 November 1994 (hereinafter referred to as the 1994 Decision).

Pursuant to that decision and notwithstanding the maximum rates provided for in Article 7 (2) of Regulation (EEC) No 2328/91, the rates of aid for investment authorized in Sicily were increased by 10 percentage points until 31 December 1997. The maximum rate of aid permitted until that date outside less-favoured areas was increased from 35 % to 45 %.

It is accordingly justified, in order to ensure that the limits applicable to aid for investments qualifying for Community part-financing under Regulation (EEC) No 2328/91 are consistent with those applicable, pursuant to Articles 92 and 93, to the aid in question, to extend the scope of the derogation provided for in the 1994 Decision in the case in point.

It would accordingly be permissible to grant the aid for investments covered by the measure at issue (Article 84 (4) and (5) of Law No 25/93) at a rate of 45 % in areas outside less-favoured areas in the Region until the date set out in the abovementioned Decision.

The measure, however, does not meet those conditions, firstly because the rate of aid (65 %) also exceeds the 45 % limit obtained when the derogation provided for in the 1994 Decision is applied by analogy to the Region in question and secondly because there is no provision for a limit in time in the case in point.

In view of the foregoing, the aid provided for in Article 84 (4) and (5) of Law No 25/93 for aid for investment in areas outside less-favoured areas must be regarded as incompatible with the common market as regards that part of the aid exceeding 45 % of the cost of the investment.

Articles 85 and 86 of Law No 25/93

These Articles provide that the subsidies covered by Article 1 of Law No 13/88 should also be granted to farmers who purchase irrigation water from private companies. Article 1 of that Law provides for payment to ENEL (*Ente Nazionale per l'Energia Elettrica*) of a sum corresponding to the 50 % reduction in the rates applying to sales to farmers, agricultural cooperatives and consortia thereof and irrigation consortia for energy used to pump and distribute irrigation water. Articles 85 and 86 of Law No 25/93 adjust the aid as provided for in Law No 13/88 in so far as the measure is also applicable henceforward to quantities of water supplied to farmers by companies other than *Consorzi di Bonifica* (land-improvement cooperatives); in addition, the aid may be granted directly to farmers on the basis of the quantities of irrigation water used.

This aid must be regarded as operating aid which artificially reduces the cost prices of the recipient holdings and encourages the production and disposal of the latter's products over those of their competitors not in receipt of comparable aid.

By letter of 31 July 1995, the Commission notified Italy of its decision to initiate the Article 93 (2) procedure in respect of Articles 85 and 86 of the Law in question (extension of eligibility for the aid provided for in Law No 13/88 to farmers purchasing irrigation water from companies other than *Consorzi di Bonifica*) and also proposed appropriate measures to the Italian Government pursuant to Article 93 (1) of the Treaty for the repeal of the aid measure provided for in Law No 13/88 (existing aid measure No E 7/95).

In response to the proposals for appropriate measures, by letter of 10 February 1996, Italy sent the Commission a draft regional law repealing the aid provided for in Law No 13/88 as from the 1995/96 marketing year so that the aid in question would no longer be granted in respect of invoices for electricity after 31 December 1995. In connection with its examination of the existing aid measure, the Commission notified the Italian Government (by letter of 6 May 1996) that the contemplated repeal was a suitable way of complying with the Commission's proposals and that the obligation arising from the latter would be deemed to be discharged when the regional law repealing those measures came into force.

In a previous letter of 5 October 1995, Italy stated with regard to the amendments to Law No 25/93 that a new aid measure was not involved but rather a necessary extension of the scope of the measure introduced in 1988 to embrace all 'natural' recipients of the latter. The measure introduced by Articles 85 and 86 of Law No 25/93 should therefore also be regarded as existing aid within the meaning of Article 93 (1) of the Treaty.

The Commission does share that opinion since the scope of the measure authorized by the Commission Decision of 23 March 1989 is clearly limited by Article 3 of Law No 13/88, which only covers the cost of pumping irrigation water from the abovementioned consortia. As a consequence, by extending the scope of Law No 13/88, Articles 85 and 86 introduce a new measure which is not covered by the authorization granted in 1989.

From the point of view of substance, the appraisal of this measure when the procedure was initiated and of the proposals for appropriate measures within the meaning of

Article 93 (1) remains valid. It is therefore operating aid which must be regarded as incompatible with the common market.

Article 90 of Law No 25/93

This Article provides for aid for the costs of transport of Sicilian agricultural produce. The recipients are agricultural cooperatives and consortia thereof, recognized agricultural producer groups and various types of associations thereof, and processing and marketing companies which conclude contracts for the transport of Sicilian agricultural produce by rail, air, or combined means of transport with the railways, shipping or air-freight companies or Sicilian road-haulage consortia. The rate of aid is 50 % of the costs of transport actually incurred (40 % where transport takes place by road or air).

This measure must be regarded as operating aid which is incompatible with the common market and it constitutes State aid within the meaning of Article 92 (1) of the Treaty and discrimination to the detriment of companies processing or trading in (processed or unprocessed) agricultural products from outside the Region.

Furthermore, the wording of the provision, which makes the grant of the aid relating to road-haulage contracts subject to the condition that such contracts are concluded with 'Sicilian' enterprises is liable to raise doubts regarding its conformity with Article 52 of the Treaty.

No remark has been put forward by Italy regarding this measure. The Commission refers here to the arguments put forward at the time the procedure was initiated.

Article 96 of Law No 25/93

This Article provides for aid to producers of water-melons whose holdings have been affected by disease as a result of temperature imbalances.

The regional authorities' rules in this case did not permit any check on whether the criteria applicable to aid granted by way of compensation in the wake of natural disasters are observed. In particular, no condition was laid down to rule out the possibility that farmers may be overcompensated for damage suffered where two measures apply in combination (grant and loan with interest-rate subsidy).

Following the initiation of the Article 93 (2) procedure, by letter of 5 October 1995 Italy provided data showing that the rules on the granting of the aid covered by the Article in question ensure that the sum paid by way of compensation could in no case have exceeded 46,3 % of losses suffered. As regards the recipients, the Italian authorities state that the loss of production of the crop in question was total.

In view of the foregoing, the procedure initiated with regard to that measure, which qualifies under the exception provided for in Article 92 (2) (b), should be terminated.

Article 103 of Law No 25/93

This Article refinances aid provided for in Article 4 of Regional Law No 23 of 7 August 1990 (hereinafter referred to as Law No 23/90) for 1993. The aid, which may cover 60 % of admissible expenditure, is intended for operations connected with the cultivation of almonds, walnuts, pistachio nuts and locust beans in 'sensitive' areas where such crops have an environmental function. The 'sensitive' areas in question are less-favoured areas within the meaning of Directive 75/268/EEC, areas covered by the programme to combat poverty adopted by the Commission pursuant to Council Decision 85/8/EEC [1], as amended by Decision 86/657/EEC [2], and certain municipalities covered by Article 13 of Law No 32/91.

In substance, this is operating aid, calculated per unit of area, in a sector covered by the provisions on the common organization of the market in the products concerned.

In the case in point, no undertaking is required on the part of the farmers receiving the aid, the only condition on the grant being that one of the crops concerned is grown in a 'sensitive' area. It has not been possible to identify any environmental criterion in the geographical scope of the measure. Accordingly, the aid cannot be regarded as offsetting an activity undertaken by the farmer to benefit the environment. As a consequence, the aid does not comply with the objectives of Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside [3], the general principles of which are followed when national aid covered by Article 10 of that Regulation is assessed.

The aid is operating aid with no lasting effect on the sector concerned by the measure as its impact (income supplement) will disappear with the measure itself; it brings about a direct improvement in the recipient operators' possibilities for disposing of the products in question as compared with other operators not receiving comparable aid. In addition, it is granted on products subject to the rules on the common organization of the market (Regulation (EEC) No 1035/72); in accordance with the case law of the Court of Justice, those rules should be considered a comprehensive, exhaustive system which precludes any right on the part of the Member States to take measures which might derogate from or impair it.

[1] OJ No L 2, 3. 1. 1985, p. 24.
[2] OJ No L 382, 31. 12. 1986, p. 29.
[3] OJ No L 215, 30. 7. 1992, p. 85.

Italy's arguments are as follows:

— the ninth and 10th recitals of Regulation (EEC) No 2078/92 acknowledge on the one hand the need to prevent depopulation in certain areas threatened by soil erosion and on the other hand the fact that 'because of the scale of the problems such schemes should be applicable to all farmers in the Community who undertake to use farming methods which will protect, maintain or improve the environment and the countryside and to refrain from further intensification of agricultural production',

— among the undertakings to be provided by recipients of the aid provided for in Regulation (EEC) No 2078/92 is that set out in Article 2 (1) (b) thereof to maintain extensive production methods introduced in the past. The maintenance in Sicily of the crops covered by the aid in question is in line with the abovementioned objectives,

— in addition, the multiannual programme for the application of Regulation (EEC) No 2078/92 in Sicily, approved by the Commission Decision of 10 October 1994, covers a measure of the same type as that at issue having regard to Article 93 (2). The two measures cannot apply in combination.

First, there are certain differences in substance between the measure part-financed under Regulation (EEC) No 2078/92 and the measure in question (refinancing of Article 4 of Law No 23/90).

Measure B2 of the multiannual programme for the application of the abovementioned Regulation in Sicily covers extensive crops exclusively, which is not the case of the measure covered by Article 4 of Law No 23/90.

In addition, measure B2 provides for the granting of a premium in exchange for certain undertakings on the part of recipient farmers, covering the maintenance of dry farming, a prohibition on the use of chemical fertilizers, the limited use of nitrogen, fire-prevention measures, and so on; the measure under examination provides for no specific undertaking on the part of recipients.

Italy views the maintenance of certain crops in certain areas as positive for the environment. In the Commission's view, however, specific features of the crops and the areas in question must allow a causal link to be established between the existence (maintenance) of the former and the environmental aim pursued. In the case in point no such features relating to crops or areas can be identified.

According to Italy, most of the areas covered by the territorial scope of the measure are in fact on steep slopes where the use of machinery is highly restricted; cessation of cultivation or grubbing-up of the crops in question on those areas would result in major environmental damage. However, it is clear that the territorial scope of the measure also covers other areas (see above) where the 'environmental' impact of the measure as presently defined is not demonstrated by the information available to the Commission.

In view of the foregoing, the aid measure provided for in Article 103 of Law No 25/93 (refinancing of Article 4 of Law No 23/90) is only partly in line with the principles of Regulation (EEC) No 2078/92. Such refinancing must accordingly be regarded as incompatible with the common market.

Article 105 of Law No 25/93

This Article authorizes IRCAC (regional body granting loans to cooperatives) to grant ten-year loans at 4 % interest to cooperatives taking out such (short-term, low interest rate) loans with financial institutions in order to pay for the produce of members who, because the purchasers have gone bankrupt, have been unable to repay these loans. In other words, the Region intervenes by consolidating short-term debt (short-term, low-interest loans) until such time as the abovementioned cooperatives can assert their rights as creditors.

The contribution from public funds provided for in Article 105 grants the recipient cooperatives two distinct benefits: on the one hand, the short-term consolidation of debt, which is in itself designed to stagger the financial cost to the cooperative pending the outcome of the winding-up of customers' affairs; on the other, the interest-rate subsidy to be paid on the consolidation loan (which was fixed at 4 % as compared with the present reference rate of 11,35 %). The effect of the operation is therefore not only to defer payment of these costs but also to reduce them through a further subsidy. The criteria set out above with regard to the aid provided for in Article 50 of Law No 25/93 (Community guidelines for firms in difficulty) therefore apply.

No remarks were put forward by Italy to demonstrate compliance with the conditions laid down in the abovementioned Guidelines. The Commission refers here to the arguments put forward when the procedure was initiated.

III

Italy has failed to fulfil its obligations under Article 93 (3) of the Treaty by adopting Law No 25/93 before the Commission could state a position with regard to the measures provided for therein.

This failure creates a particularly serious situation since the aid in question, leaving aside that provided for in Article 96 and, within the limits set out above, that provided for in Article 50 of that Law, is incompatible in substance and for the reasons set out above with the common market pursuant to Article 92 of the Treaty.

IV

The aid measures in question meet the criteria laid down in Article 92 (1) of the Treaty.

They have a direct and immediate effect on recipients' cost prices; as a consequence, they place the latter at an advantage as compared with producers of the same products not qualifying for comparable aid in Italy or in any other Member State.

Accordingly, these measures are likely to distort the conditions of intra-Community trade in the agricultural products concerned, such trade being affected by any aid granted in respect of national production.

Aid meeting the criteria set out in Article 92 (1) of the Treaty is in principle incompatible with the common market. Exceptions from that principle are set out in paragraphs 2 and 3 of that Article.

The exceptions provided for in Article 92 (2) are clearly not applicable in the case in point, except as stated above regarding the aid provided for in Article 96 of Law No 25/93, to which the exception laid down in Article 92 (2) (b) of the Treaty applies.

In order for the exceptions provided for in Article 92 (3) of the Treaty to apply, objectives pursued in the common interest and not solely in that of individual sectors of the national economy must exist.

Those exceptions (which must be interpreted strictly) can in particular only be granted where the Commission is able to ascertain that such aid is necessary to achieve one of the objectives set out in those provisions. To allow those exceptions to apply to aid which does not involve the achievement of any such objective would be tantamount to permitting disturbance of trade between Member States and distortion of competition without justification having regard to the Community interest and, at the same time, to placing operators in certain Member States at an undue advantage.

In the case in point, the conditions governing the granting of the aid in question do not require that such an objective must be met. The Italian Government has not provided, nor has the Commission identified, any grounds for claiming that the aid in question meets the conditions laid down for any exception provided for in Article 92 (3) of the Treaty to apply.

Aid to promote the execution of an important project of common European interest within the meaning of Article 92 (3) (b) is not involved, particularly as the aid measures in question run counter to the common interest by virtue of the effects they may have on trade.

Nor do the measures remedy a serious disturbance in the economy of the Member State concerned within the meaning of that provision.

As regards the exceptions provided for in Article 92 (3) (a) and (c) to promote or facilitate the economic development of certain areas or of certain economic activities, inasmuch as they involve operating aid the measures in question cannot bring about a lasting improvement in the conditions in the sector or the region concerned.

Accordingly, the aid cannot qualify under any of the exceptions provided for in Article 92 (3) of the Treaty.

The aid in question must therefore be regarded as incompatible with the common market.

However, for the reasons and within the limits set out under point I, the aid provided for in Articles 50 of Law No 25/93 and 21 of Law No 32/91 may until 31 December 1996 continue to qualify under the exception laid down in Article 92 (3) (c) of the Treaty, in accordance with the Decision of 14 December 1992.

V

The aid provided for in Law No 25/93 is illegal pursuant to Article 93 (3) of the Treaty since it was granted before the Commission could state a position on its compatibility with the common market.

In this connection it should be reiterated that in view of the binding nature of the rules of procedure laid down in Article 93 (3) of the Treaty, the direct effect of which has been recognized by the Court of Justice of the European Communities, *inter alia,* in its Judgments of 19 June 1973 in Case 77/72, Capolongo v. Maya [1] and 21 November 1991 in Case C-354/90, Fédération Nationale du commerce extérieur des produits alimentaires v. French State [2], the illegality of the aid in question cannot be reversed after the event.

By letter of 23 October 1995 the Commission called on the Italian Government to state whether the measures provided for in Law No 25/93 had been applied (since the Regional Law came into force before the Commission could state a position on the aid provided for therein). By letter of 6 December 1995 the Italian authorities informed the Commission that:

— the funds allocated for the aid provided for in Article 44 (Lit 20 000 million over ten years to stabilize the debt situation of commercial enterprises) had become unusable since the provisions in question had not been applied,

[1] [1973] ECR 611.
[2] [1991] ECR I-5505.

— the funds allocated for the aid provided for in Article 90 (Lit 20 000 million for 1993 covering the costs of transporting agricultural produce) had not been used and had become unusable; the regional administration does not appear to have any intention of refinancing this provision.

The abovementioned letter makes no mention of the other provisions of the Regional Law in question. What follows applies, except where stated otherwise, to any sum which may be paid pursuant to the regional provisions at issue.

Where aid measures are incompatible with the common market and in breach of Article 93 (3) of the Treaty, the Commission considers itself duty-bound to avail itself of the possibility provided for in the judgment of the Court of Justice of 12 July 1973 in Case 70/72, Commission v. Germany [1], as confirmed by the Judgments of 24 February 1987 in Case 310/85, Deufil v. Commission [2] and 20 September 1990 in Case C-5/89, Commission v. Germany [3], and to compel the Member State to recover from the recipients any aid granted illegally. In the case in point the sums must be reimbursed in order to reinstate, to the extent possible, the situation obtaining beforehand, by cancelling as from the date of payment the financial advantages unduly enjoyed by the recipient enterprises of aid granted improperly.

In view of the foregoing, aid granted pursuant to Article 44, Article 84 (4) and (5) (as regards that part which exceeds the permissible rates outside less-favoured areas within the meaning of Directive 75/268/EEC) and Articles 85, 86, 90 and 105 of Law No 25/93 must be reimbursed.

Reimbursement must take place in accordance with the procedures laid down by Italian law, interest being payable from the date on which the illegal aid was paid. Such interest is to be calculated on the basis of the commercial rate, by reference to the rate used for calculating the subsidy equivalent for the purposes of regional aid.

As regards the aid measures provided for in Article 103 of Law No 25/93, the following points were taken into account:

— defining the geographical scope of the measure at issue with greater consideration for the environment in accordance with the Commission's practice in assessing programmes for the application of the measures provided for in Regulation (EEC) No 2078/92 would not necessarily bring about a substantial change in the geographical scope of the aid;

— given the way the aid provided for in Article 4 of Law No 23/90 is applied at present, recipients of the aid who do not meet the conditions for the aid to be regarded as compatible with the common market cannot be identified.

In order to avoid jeopardizing the continued positive effects on the environment that the measure may have produced, consideration was given to the advisability of recovering the aid.

Any recovery would have to affect all the recipients of the measure without distinction or be based on selection criteria laid down after the event (the fact of belonging to certain areas and compliance with certain obligations, to be defined), which is likely to produce discrimination. In the former case, recovery is liable to be detrimental as regards the positive effects on the environment achieved by the application of the measure. In the latter case, the balance between the effect of recovery in reinstating the pre-existing situation and the effort necessary, in decision-making and administrative terms, to preclude discrimination as referred to above leads to the conclusion that the repayment of the aid provided for in Article 103 of Law No 25/93 is not called for in the case in point, even though the measures must be regarded as incompatible with the common market for the reasons set out in point I.

This decision is without prejudice to any consequences which the Commission may draw as regards the financing of the common agricultural policy by the European Agricultural Guidance and Guarantee Fund (EAGGF),

HAS ADOPTED THIS DECISION:

Article 1

1. The aid measures provided for in Articles 44, 85, 86, 90, 103 and 105 of Law No 25/93 are illegal since those provisions came into force before the Commission could state a position with regard to their compatibility with the common market. They are also incompatible with the common market having regard to Article 92 (1) of the Treaty and they do not qualify under any of the exceptions provided for in paragraphs 2 and 3 of that Article.

2. The aid provided for in Article 96 of Law No 25/93 may qualify under the exception provided for in Article 92 (2) (b) of the Treaty.

3. Italy shall repeal the aid measures referred to in paragraph 1 within two months of notification of this Decision.

4. Within six months of notification of this Decision, Italy shall take the measures necessary to recover the aid paid pursuant to the regional provisions referred to in paragraph 1. The obligation regarding recovery shall not apply to aid as provided for in Article 103 of Law No 25/93.

[1] [1973] ECR 813.
[2] [1987] ECR 901.
[3] [1990] ECR I-3437.

5. Recovery shall be undertaken in accordance with the procedures laid down by Italian law, interest being payable from the date on which the illegal aid was paid. The interest shall be calculated on the basis of the commercial rate, by reference to the rate used to calculate the subsidy equivalent for the purposes of regional aid.

Article 2

1. Refinancing of the aid provided for in Article 21 of Law No 32/91 is illegal since the provision providing therefor (Article 50 of Law No 25/93) came into force before the Commission could state a position with regard to its compatibility with the common market.

2. Without prejudice to paragraph 4, the measure referred to in paragraph 1 is incompatible with the common market in accordance with Article 92 (1) of the Treaty and it does not qualify under the derogations provided for in paragraphs 2 and 3 of that Article.

3. Italy shall repeal the aid measures referred to in paragraph 1 by 31 December 1996 at the latest.

4. Aid of up to Lit 6 500 million paid before 31 December 1996 to finance stabilization programmes regarded prior to 31 December 1993 by the regional administration as in conformity with the conditions set out in the Commission Decision of 14 December 1992 is compatible with the common market.

Article 3

1. The aid measures provided for in Article 84 (4) and (5) of Law No 25/93 are illegal since they came into force before the Commission could state a position with regard to their compatibility with the common market.

2. Aid as referred to in paragraph 1 granted outside less-favoured areas within the meaning of Directive 75/268/EEC is incompatible with the common market where it exceeds 45 % pursuant to Article 92 (1) of the Treaty and it does not qualify under any of the derogations provided for in paragraphs 2 and 3 of that Article.

3. Within two months of notification of this Decision, Italy shall repeal the aid measures referred to in paragraph 2. Where such repeal entails adjusting the rates of aid laid down in the regional provisions providing therefor, the rates applicable shall be 45 % until the time-limit set out in the Commission Decision of 23 November 1994 and 35 % thereafter.

4. Within six months of notification of this Decision, Italy shall take the measures necessary to recover that part of the aid referred to in paragraph 2 exceeding the rates referred to in paragraph 3.

5. Recovery shall be undertaken in accordance with the procedures laid down by Italian law, interest being payable from the date on which the illegal aid was paid. Such interest shall be calculated on the basis of the commercial rate, by reference to the rate used to calculate the subsidy equivalent for the purposes of regional aid.

Article 4

1. Italy shall keep the Commission constantly informed of measures adopted to comply with this Decision. The first such report shall be made within two months of notification of this Decision.

2. Within two months of expiry of the time-limit laid down in Articles 1 (4) and 3 (4), Italy shall forward information to the Commission to enable it to ascertain, without further investigation, that the obligation regarding recovery has been discharged.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 1996.

For the Commission

Franz FISCHLER

Member of the Commission