II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 10 November 1999

on the aid scheme which Italy intends implementing to assist small and medium-sized enterprises in Objective 1 regions

(notified under document number C(1999) 3867)

(Only the Italian text is authentic)

(2000/235/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments in accordance with the abovementioned provisions [1] and having regard to those comments,

Whereas:

I. **Procedure**

(1) By letter of 10 April 1997, the Permanent Representation of Italy notified the Commission, in accordance with Article 88(3) of the Treaty, of a draft amendment to the CIPE (Interministerial Committee for Economic Planning) Decision on the rules for applying the Guarantee Fund for SMEs in Objective 1 regions provided for in Article 2 of Law 341 of 8 August 1995.

(2) Examination of the measures in question was divided up as follows:

As regards Aid N 249/A/97, in the light of Articles 87 and 88 of the Treaty (Commission letter SG(97)D/7216 of 25 August 1997), the Commission examined and authorised the amendments to the measure covered by the CIPE Decision of 10 May 1995 applying to sectors other than agriculture, fisheries and aquaculture.

The application in the agricultural, fisheries and aquaculture sectors of the measures provided for in Article 2 of Decree-Law 244 of 23 June 1995 laying down the general principles governing the Fund, ratified in Law 341 of 8 August 1995 (hereinafter referred to as 'Law 341/1995'), and in the CIPE Decision of 10 May 1995 laying down rules for the application of Law 341/95, as amended by the provisions notified by the Italian authorities in their letter of 10 April 1997, was examined by the Commission in connection with Aid N 249/B/97.

(3) Additional information was requested by telexes 52140 of 5 May 1997, 31756 of 5 August 1997 and 14/3786 of 19 September 1997. By telex 2326 of 12 January 1998, the Commission called on the Italian authorities to reply to the telex of 19 September 1997.

Additional information was forwarded by letter of the Permanent Representation of Italy of 2 June 1997, recorded as received on 5 June 1997, by fax of 21 July 1997, recorded as received on 22 July 1997, by letter of 27 November 1997, recorded as received on 3 December 1997, and by letter of 18 February 1998, recorded as received on 4 March 1998.

(4) By letter of 20 May 1998 (SG(98)D/4034), the Commission informed the Italian authorities of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty in respect of the application of those measures in the agricultural, fisheries and aquaculture sectors.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited interested parties to submit their comments on the aid measure.

[1] OJ C 245, 5.8.1998, p. 3.

[2] See footnote 1.

(6) The Italian authorities submitted their observations to the Commission by letters of 24 June and 26 November 1998 and 9 March and 11 May 1999. No comments were received from other Parties. The Commission did, however, receive a letter from a potential beneficiary under the aid scheme, protesting at the delay in authorising it.

(7) This Decision relates solely to the applicability of the measures concerned to the sectors referred to in Annex I to the Treaty (i.e. agriculture, whether primary production or the processing and marketing of agricultural products, fisheries and aquaculture).

II. **Description**

(8) Article 2 of Law 341/1995 and the relevant rules of application laid down by the CIPE Decision of 10 May 1995 and subsequent amendments provide for a system of guarantees for small and medium-sized enterprises operating in Objective 1 areas in Italy. The scheme will apply until 31 December 1999. It provides for guarantees and interest rate subsidies on debt consolidation operations, guarantees for equity loans, and guarantees for contributions from banks and other public or private institutions to the capital of SMEs. Beneficiaries may receive aid in the form of debt consolidation and equity investments in combination. The budget is ITL 3 500 billion (approximately EUR 1 750 million). The aim of the measure is to permit one-off consolidation of short-term debts by reducing the cost of loans available on the market and to facilitate SMEs' access to new forms of financing by promoting their capitalisation.

(9) In order to qualify for guarantees for debt consolidation operations, the consolidation must extend over a period of six years and repayment can be made up to one year early. The Fund provides the banks concerned with a guarantee covering 60 % of the consolidated capital at a fee of 2 % of the latter. The guarantee cannot be called upon if the undertaking is declared bankrupt within 18 months of the granting of the financing. Where bankruptcy occurs after that period, the guarantee covers 60 % of the bank loan outstanding at the time the undertaking becomes insolvent. The guarantee is paid when debt recovery procedures are initiated. In the interests of the Fund, the banks are also responsible for following the debt recovery procedures. The Fund may also grant the undertakings an interest rate rebate of 4,5 percentage points on the annual rate for the consolidation operation. The rebate may not exceed 40 % of the reference rate applying at the time the contract covering the consolidation is concluded.

(10) Consolidation must cover the smallest of the following amounts:

(a) the short-term debt outstanding at 30 September 1994;

(b) outstanding short-term debt as set out in the latest balance sheet;

(c) 10 times the undertaking's turnover as set out in the latest balance sheet.

To qualify for the aid, the permanent financial resources must not represent less than 0,75 % of the tangible and intangible assets after consolidation. In no case may the consolidated capital be more than 10 times the undertaking's turnover. In accordance with Article 88(3) of the EC Treaty, the Commission must be notified of any cases where consolidation involving individual undertakings exceeds ITL 40 billion (EUR 20 million).

(11) The Fund may also provide guarantees of a maximum of 10 years' duration covering up to 60 % of equity loans advanced by banks or other institutions at a flat-rate fee of 1 % of the principal. Such guarantees cannot be called upon if the undertaking is declared bankrupt within 30 months of the granting of the loan. The rate of interest on the loan is agreed between the bank and the undertaking. The Fund may also grant guarantees on public and private equity investments in SMEs, with the exception of equity investments by institutions that are completely controlled, either directly or indirectly, by the State. The fee for the guarantee is 0,75 % of the investment, which must be for a maximum of five years.

(12) As regards debt consolidation loans and guarantees as referred to in recitals 8 and 9, in its decision to initiate the procedure the Commission noted that, on the basis of the information provided by the Italian authorities, it was not possible to determine whether the debit-consolidation measures were intended for undertakings that are viable or whether they were intended for the rescue of undertakings in difficulty. Where the debt consolidation measures were intended for viable companies, the Commission noted that they would appear to constitute operating aid, which is prohibited in the agricultural, fisheries and aquaculture sectors. In so far as the debt consolidation measures were intended for undertakings in difficulty, the Commission noted that they did not appear to meet the conditions laid down in the 1994 and 1997 Community guidelines on State aid for rescuing and restructuring firms in difficulty [3]. As regards rescue aid, the Commission noted in particular that the loans and guarantees provided for were of greater than six months' duration and were not granted at market rates. As regards aid for restructuring, the Commission noted that the beneficiaries were not required to present a restructuring plan and that the measures could therefore prove not to be compatible with the guidelines.

[3] OJ C 368, 23.12.1994, p. 12 and OJ C 283, 19.9.1997, p. 2.

(13) As regards guarantees on equity loans granted by banks and guarantees on public or private equity investments in undertakings, the Commission noted that such measures would constitute aid in so far as they allowed the beneficiaries to obtain access to equity capital at below normal market rates. Furthermore, where guarantees were granted to companies in difficulty, the entire amount guaranteed should be considered aid. Where such aid was granted to viable companies in order to finance specific investments by the beneficiary, the Commission noted that the aid could only be considered compatible with the common market if it met the specific conditions applicable to the sector concerned. Aid that is granted to viable companies and is not linked to specific investments is considered to constitute operating aid, which is prohibited in the agricultural, fisheries and aquaculture sectors.

(14) In its decision to open the procedure, the Commission also drew attention to point 20 of the CIPE Decision of 20 May 1995, as amended by the notification, which contains a sentence to the following effect.

'In its capacity as a public financial institution, in accordance with Law 662/96 and solely in the agri-food sector, RIBS SpA may take part in operations to increase capital; it shall present an annual report on operations carried out and developments in them to the Ministry of Agricultural Resources, which shall inform the CIPE.'

(15) The Commission pointed out that operations carried out by RIBS SpA, a public financial institution for the agri-food sector (hereinafter referred to as 'RIBS'), were not guaranteed by the Fund and took note of the Italian authorities' declaration to the effect that such operations were carried out in accordance with Article 2(132) of Law 662/96 (1997 Budget Law), i.e. at market rates, and did not constitute aid. The Commission observed, however, that contrary to its Communication on the provision of capital by public authorities [4], it had received no information from the Italian authorities about such operations, despite the fact that it had requested the Italian authorities to provide the relevant information.

III. **Remarks from Italy**

(16) The Italian authorities' written observations relate both to questions of procedure and to matters of substance.

Procedure

(17) As regards procedure, the Italian authorities first point out that the general system of regional aid, including aid awarded under the Guarantee Fund for SMEs operating in Objective 1 areas, was notified to the European Commission in accordance with Article 88(3) of the EC Treaty by letters of the Ministry of the Treasury, the Budget and Economic Planning of 16 December 1994 and 17 and 26 January 1995. The system was approved (aid N 40/95) by the Commission Decision of 1 March 1995, notified by letter SG(95)D/3693 of 24 March 1995.

(18) By letter of 31 May 1995, the national authorities notified the Permanent Representation of the CIPE Decision of 10 May 1995 on the criteria, rules of application and operating procedures for the Guarantee Fund for SMEs (aid N 662/95). In letter SG(95)D/11306 of 7 November 1995, the Commission stated that the abovementioned CIPE Decision fell within the scope — approved by the Decision of 1 March 1995 — of the Guarantee Fund and that it complied with the limits and requirements laid down in that Decision.

(19) By letter of 28 March 1997, the Ministry of the Treasury, the Budget and Economic Planning notified the Commission of a draft CIPE Decision amending the detailed rules applicable to the Fund. By Communication SG(97)D/7216 of 25 August 1997, the Commission noted that the proposed amendments fell with the scope of the Guarantee Fund — approved by the Decision of 1 March 1995 — and stated that a separate Commission Decision would be adopted on the application of the scheme to the agricultural, fishing and aquaculture sectors.

(20) The Italian authorities emphasise that the draft scheme was notified in accordance with Article 88(3) of the EC Treaty and was approved by the abovementioned Commission Decision of 1 March 1995 (see recital 17). The detailed implementing rules set out in the CIPE Decision of 10 May 1995 and notified by the abovementioned letter of 31 May 1995 fall, according to the Commission, within the scope of the approved Guarantee Fund (letter SG(95)D/11306 of 7 November 1995). Furthermore, the Commission has decided that the proposed amendments notified to it in the letter of 28 March 1997 fall within the scope of the approved scheme and that the other implementing rules are unchanged (letter SG(97)D/7216 of 25 August 1997).

(21) The Italian authorities therefore conclude that the scheme was notified in accordance with Article 88(3) of the EC Treaty, that it was approved by the Commission, and that the subsequent detailed implementing rules, which were duly notified to the Commission, do not comprise any aid components. Accordingly the Italian authorities conclude that the scheme is an 'existing scheme' within the meaning of the Commission's

[4] Bull. 9-1984.

consolidated procedural rules for State aids. In the case of existing schemes, pursuant to Article 88(1) of the EC Treaty, 'appropriate measures' must be proposed before the Article 88(2) procedure is initiated. The Italian authorities note that no such measures have been put forward in the case in point.

Substance

(22) As regards substance, the Italian authorities first point out that their remarks refer exclusively to debt consolidation operations and not to the acquisition of shareholdings or equity loans, because the Fund has not been used for that purpose.

(23) They emphasise that the aid is intended for firms in regions falling with the scope of Article 87(3)(a) and should therefore qualify, by virtue of the Commission Communication on the method for the application of Article 92(3)(a) and (c) now 87(3)(a) and (c) to national regional aid ([5]), for the exemption applicable to regions covered by Article 87(3)(a).

(24) The Italian authorities point out that the application of the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([6]) to the aid concerned is without prejudice to the application of aid schemes authorised for purposes other than rescues or restructuring, such as regional development or the development of SMEs, provided that aid for rescues or restructuring granted under such schemes fulfils the conditions that the Commission has approved for the schemes (second paragraph of point 2.5 of the guidelines).

(25) The Italian authorities have provided the following comments on the way the scheme operates. The purpose of the Guarantee Fund provided for in Article 2 of Law 341/95 is to rationalise the financial balance of SMEs operating in Objective 1 areas by encouraging proper access to loans and helping to overcome the structural handicaps besetting small firms in those areas as a result of undercapitalisation and the particularly high cost of borrowing recorded in the first half of the 1990s. The aim is accordingly to overcome the major financial obstacles to the development of the productive fabric of southern Italy by granting SMEs one-off benefits that are designed to alleviate their additional financial costs but do not constitute rescue aid or aid for restructuring.

(26) This is accordingly fully in line with the aid scheme authorised by the Commission in its letter of 24 March 1995 setting out detailed rules and operational criteria that are clear, substantiated and limited to SMEs operating in areas that qualify under the exception provided for in Article 87(3)(a) of the EC Treaty. In Molise and Abruzzo (in the latter case until the end of 1996) this scheme has brought real benefits, has been widely utilised and has provided satisfaction, so much so that the funds set aside for the subsidised loans will by all accounts be exhausted by the autumn of 1998, i.e. well before the end of the period originally set, the end of 1999.

(27) Generally speaking, the SMEs that qualify for the subsidised loans must be small firms that:

— are substantially sound and are able to produce a profit, but suffer from a financial imbalance as a result of the interest they have to pay on short-term borrowing,

— have debts towards banking institutions at a certain date (30 September 1994). These must be banking liabilities (there is no provision for consolidating liabilities vis-a-vis suppliers or financial services and factoring firms),

— are economically sound and are not the subject of bankruptcy proceedings,

— have the potential to break even, on the basis of adequate financial flows, and structural indices that match predetermined criteria,

— do not already receive similar benefits and accordingly qualify for aid granted on a one-off basis for a given period that cannot, therefore, be regarded as operating or rescue aid for economically unsound production sectors, or as aid for the restructuring of firms experiencing difficulties,

— throughout the period after qualifying for the benefit, can provide evidence that they are not the subject of an enforcement procedure,

— can also prove, in respect of the interest rate subsidy for the consolidation operation authorised, that they are not involved in any illegal or money laundering operations.

(28) As well as being located in Objective 1 areas, SMEs that operate in agriculture, the processing/marketing of agricultural products, fishing and aquaculture sectors must, in addition to meeting the above requirements, overwhelmingly operate in southern Italian regions specialising in farming (Apulia and Campania).

(29) There are a total of 41 SMEs operating in the agricultural and fisheries sectors who are potential beneficiaries of the aid, accounting for not more than 1 % of the 3 800 applications for aid submitted to the Guarantee Fund up to 31 May. Aid applications submitted by SMEs

([5]) OJ C 212, 12.8.1988, p. 9.
([6]) OJ C 283, 19.9.1997, p. 2.

operating in sectors that have been 'suspended' since November 1997 concern the consolidation of liabilities only, i.e. excluding aid for the acquisition of shareholdings and equity loans, operations for which no subsidies have been granted even for authorised sectors. Aid applications for sectors that have been 'suspended' since November 1997 represent a total of ITL 44,686 billion with an interest-rate subsidy of ITL 5,4 billion, while possible guarantees total ITL 24 billion. None of the 41 SMEs in suspended sectors has received, even temporarily, a subsidy or other form of aid from the Guarantee Fund, and even if the suspension were to be lifted, the aid which might be granted would be limited.

(30) The essential soundness of the 41 SMEs concerned by the benefits provided for in Article 2 of Law 341/95 has already been established by the banks, which paid close attention to the assessment of the applicant firms when they carried out the liability consolidation operation. Moreover, the applications received are for non-automatic aid and take into account the fact that 40 % of the risk is to be borne by the bank and that the Fund guarantee cannot be called on in the first 18 months after payment of the aid.

(31) The Italian authorities emphasise that the SMEs operating in sectors that are still suspended have already concluded costly financing contracts (mostly before November 1997) by taking out mortgages that are already applicable, without receiving any benefits in terms of subsidies and with the prospect, should the suspensions be lifted, of obtaining variable assistance in respect of loans contracted at variable rates, based on reference rates that will undoubtedly be lower than those notified to the European Commission in November 1997.

(32) In the light of the above, the Italian authorities stress the need to authorise and grant assistance, particularly to smaller firms, in order to put them in a better position, thanks to aid paid on a one-off basis, to cope with their financial imbalances, which have represented a particularly high cost in recent years. Recognising and authorising aid, in particular in agriculture, the processing/marketing of agricultural products, the fisheries and aquaculture sectors, will help eliminate the structural factors that are external to firms in southern Italy and that, in so many cases, jeopardise and destroy their attempts to compete freely on the market and distort fair competition between businesses.

(33) In conclusion, the Italian authorities emphasise that this regional aid scheme was approved by the Commission and it only comprises aid granted from the Guarantee Fund which meets the requirements set out in the Commission Decision approving the scheme. They consider that the characteristics of the scheme are specifically linked to the attainment of the objective — provided for in the Pagliarini-Van Miert Agreement and referred to in point 1 of the CIPE Decision — of rationalising the financial balance of the SMEs (which have suffered as a result of the discontinuation of the *Cassa per il Mezzogiorno* and the general economic crisis) and of encouraging proper access to loans by facilitating relations between banks and firms.

(34) As regards RIBS' involvement in the scheme (recitals 14 and 15), the Italian authorities stated in their letter of 11 May 1999 that, on the basis on the Decision at issue (which is not yet operational), RIBS has never carried out operations within the scope of the Guarantee Fund provided for in Article 2 of Law 341/95. Moreover, all the operations carried out by RIBS 'at market rates' (in accordance with Law 662/96) have been notified to the Commission, which has approved one only to date and is currently considering the others. Those operations meet the conditions laid down by the Commission for contributions granted by RIBS under Law 662/96 not to be deemed State aid.

IV. **Evaluation**

Procedure

(35) The Italian authorities maintain that the Commission has committed an error of procedure in initiating the procedure in respect of the application of the scheme in the agricultural and fisheries sectors. They claim that the measures notified (aid N 249/97) concern only one-off amendments to an aid scheme previously authorised by the Commission (aid N 40/95 and N 662/95). As stated in recital 21, since the issues raised by the Commission in its decision to initiate the procedure concern the implementation of an aid scheme already authorised, the Italian authorities consider that before opening the Article 88(2) procedure, the Commission should have proposed 'appropriate measures' to the Italian authorities in accordance with the procedure laid down in Article 88(1) of the Treaty.

(36) Although they do make no explicit reference to it, the Italian authorities appear to have in mind the judgment of the Court of Justice in the *Italgrani* Case [7]. In that case the Court ruled that when the Commission has before it a specific grant of an aid claimed to be made in pursuance of a previously authorised scheme, it cannot at the outset examine it directly in relation to the Treaty. Prior to initiating any procedure, it must first determine whether the aid falls within the scope of the general scheme and satisfies the conditions laid down in the decision approving it. If it did not do so, when it considered an individual aid the Commission could go back on its decision approving the aid scheme, which decision presupposed that it had conducted an examination in the light of Article 87(1) of the Treaty. This would jeopardise the principles underlying the protection of

[7] Judgment of 5 October 1994 in Case C-47/91, *Italian Republic* v *Commission* [1994] ECR I-4635.

legitimate expectations and legal certainty from the point of view of both the Member States and the operators, since individual aid in strict compliance with the decision approving the aid scheme could at any time be called in question by the Commission. If, following an examination thus restricted, the Commission finds that the individual aid is in compliance with its decision approving the relevant scheme, the aid in question must be regarded as authorised, and thus as existing aid. In such cases the Commission is required to propose 'appropriate measures' to the Member State concerned under Article 88(1) of the Treaty prior to any decision to open the Article 88(2) procedure. Conversely, where the Commission finds that the individual aid is not covered by its decision approving the scheme, the aid must be regarded as new aid, and the Commission is entitled to initiate the Article 88(2) procedure.

(37) As Italy has pointed out in its written observations (see recitals 17 and 18 above), the general system of regional aid, including aid granted in connection with the Guarantee Fund for SMEs operating in Objective 1 areas, was approved by letter SG(95)D/3693 of 24 March 1995 (aid N 40/95). The criteria, detailed rules and operating procedures for the Guarantee Fund for SMEs were approved by letter SG(95)D/11306 of 7 November 1995 (aid N 662/95).

(38) However, the two Commission Decisions authorising the Guarantee Fund for SMEs operating in Objective 1 areas in Italy were not unconditional. Both the Commission letter of 24 March 1995 (SG(95)D/3693) authorising State aid N 40/95 and the letter of 7 November 1995 (SG(95)D/11306) authorising State aid N 662/95 contain a final paragraph to the following effect.

'Lastly, the Commission draws the Italian authorities' attention to the fact that the scheme in question is to apply to the Community rules and provisions on the receipt in combination of aid for various purposes and the rules and provisions on certain sectors of industry, including those covered by the ECSC Treaty, transport, agricultural and fisheries.'

(39) It follows that so far as the application of the scheme in the agricultural and fisheries sectors is concerned, Commission approval was conditional on the fact that assistance from the Guarantee Fund for SMEs was to be granted in accordance with the various Community rules and provisions on these sectors.

(40) After receiving the Italian authorities' letter of 10 April 1997 notifying the amendments to the implementing rules for the scheme introduced by the CIPE, the Commission realised that the scheme might in fact be applied in the agricultural and fisheries sectors in a manner which was not in accordance with the various Community provisions and rules on those sectors. In particular, the explicit reference, for the first time, to RIBS' role in the capitalisation operations for SMEs in Objective 1 areas raised doubts that aid might be granted in favour of those sectors in a manner which was not in accordance with the relevant rules. Those doubts were confirmed by the Italian authorities' replies to the Commission's four telexes requesting additional information on the application of the scheme.

(41) Under the circumstances, the Commission cannot accept the Italian authorities' argument that the scheme is an 'existing scheme' within the meaning of the Commission's consolidated rules of procedure for State aids. The Commission regards aid granted in contravention of a condition laid down in the Decision authorising it as misuse of aid, and this entitles it to open the Article 88(2) procedure directly, without first proposing appropriate measures pursuant to Article 88(1) of the Treaty.

Substance

(42) In accordance with Article 87(1) of the Treaty, any aid granted by a Member State or using State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is, in so far as it affects trade between Member States, incompatible with the common market. In the case in point the Commission considers that all the conditions for the application of Article 87(1) are fulfilled. Furthermore, the Commission notes that this is not disputed by the Italian authorities.

(43) The description of the aid scheme and the comments from the Italian authorities set out above show that the objective of the scheme is to provide SMEs located in the Objective 1 areas of Italy with access to finance on more favourable terms than those currently provided by the capital markets. The aid measures provided for consist of guarantees and subsidised loans.

As regards guarantees, the Commission's consistent policy, in accordance with its letter to the Member States of 5 April 1989 (SG(89)D/4328), is to regard all guarantees granted by the State directly or through financial institutions entrusted with that task as falling within the scope of Article 87(1) of the Treaty. In its decision to initiate the procedure, on the basis of the information provided by the Italian authorities in their letter of 27 November 1997, the Commission calculated the current value of the guarantees on loans for debt consolidation as equal to 0,2 % [8].

[8] The calculation was worked out as follows: the reference rate was 8,2 %; the interest paid by the State on loans of a similar duration (6 %) and the fee payable for the guarantee (2 % for debt consolidation loans) were deducted from that amount.

As regards the subsidised loans, the Fund may grant undertakings an interest rate rebate reducing the annual rate for the consolidation operation by 4,5 percentage points. However, the amount of the subsidy may not exceed 40 % of the national reference rate applying at the time the contract is concluded. In its decision to open the procedure, using the same information the Commission calculated the grant equivalent of the subsidised loans to be 12,9 %.

The Commission therefore concluded that the cumulative rate of aid was 13,1 % and that it could rise to 100 % in the case of companies in difficulty ([9]).

In their written observations, the Italian authorities note that since the national reference rate has subsequently fallen, the actual rate of aid at the time the loans and guarantees are granted could be below that calculated by the Commission.

It is therefore not possible to calculate the amount of aid precisely, because this will depend upon the relevant interest rates applying at the time the loan is granted and the conditions attaching thereto. The Commission therefore concludes that granting the subsidised loans and guarantees constitutes State aid within the meaning of Article 87(1). Furthermore, this has not been contested by Italy.

(44) In addition, the scheme distorts competition and affects trade between Member States. According to the information provided by the Italian authorities, 41 SMEs in the agricultural and fisheries sectors could qualify for aid. Although payments are currently suspended pending the Commission's final decision on the application of the scheme in those sectors, if approval were granted the aid would represent interest rate subsidies amounting to ITL 5,4 billion on consolidation operations, with possible guarantees covering a total of ITL 24 billion. Given the lack of information to the contrary from the Italian authorities, the Commission considers that it is entitled to assume that at least some of these companies are active in sectors where substantial intra-Community trade takes place. In 1996, agri-food products consigned to Italy from the other Member States totalled ITL 28,734 billion, while Italian consignments to the other Member States amounted to ITL 17,821 billion ([10]).

(45) The prohibition on State aid in Article 87(1) of the Treaty is not unconditional. However, the exceptions provided for in Article 87(2) are manifestly inapplicable, and they have not, moreover, been invoked by the Italian authorities. Similarly, the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance of the economy of a Member State within the meaning of Article 87(3)(c), nor is it intended to promote culture or heritage conservation within the meaning of Article 87(3)(d). Consideration must therefore be given to whether the application of the measures provided for can qualify as an exception under Article 87(3)(a) or (c) of the Treaty.

(46) As regards debt consolidation operations involving the Guarantee Fund, the Commission notes first of all that in accordance with the relevant guidelines on State aid in the agricultural ([11]) and fisheries ([12]) sectors, these aid measures are not intended to finance new investments.

(47) Furthermore, the Italian authorities have insisted that the beneficiary SMEs cannot be considered enterprises in difficulty. In this connection, the Italian authorities emphasise that the guarantees granted under the scheme cover only 60 % of the sums loaned and that they cannot be called upon if the undertaking is declared bankrupt within 18 months of the granting of the loan. According to the Italian authorities, the beneficiary undertakings are substantially sound and are able to produce a profit, but they suffer from a financial imbalance as a result of the interest they have to pay on short-term borrowing. In the light of these explanations, the Commission accepts that the Community guidelines on State aid for rescuing and restructuring firms in difficulty ([13]) should not apply to the measures in question. The inapplicability of those guidelines is confirmed by the fact that the beneficiary is not required to present a restructuring plan in order to qualify for the aid.

(48) In its decision to initiate the procedure, the Commission observed that in so far as the aid measures were not linked to investments and were not intended for the rescue or restructuring of enterprises in difficulty, doubts remained as to whether the measures applied by the Italian authorities could be considered compatible with Article 87 of the Treaty. The measures concerned appear to constitute operating aid, which cannot be approved by the Commission under Article 87(3)(c) of the Treaty. The Italian authorities' observations confirm that the

([9]) Commission communication to the Member States — Application of Articles 92 and 93 of the Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector (OJ C 307, 13.11.1993, p. 3).

([10]) *Source*: Ministry of Agricultural Policies.

([11]) Guidelines for State aid in connection with investments in the processing and marketing of agricultural products (OJ C 29, 2.2.1996, p. 4).

([12]) Guidelines for the examination of State aid to fisheries and aquaculture (OJ C 100, 27.3.1997, p. 12).

([13]) See footnote 6.

objective of the measure is to ease the costs borne by the beneficiaries and that there is no corresponding benefit contributed by the beneficiaries that might be seen as furthering the development of certain economic activities or certain regions. Having regard to the principles laid down in the decisions of the Court [14], the Commission is therefore bound to conclude that the measure in question cannot qualify as an exception under Article 87(3)(c) of the Treaty.

(49) In their observations, the Italian authorities emphasise that the aid is intended for firms located in regions falling within the scope of Article 87(3)(a), which should therefore qualify for exemption under those provisions in accordance with the Commission's regional aid guidelines [15].

(50) In accordance with point 6.1 of the 1998 guidelines on national regional aid [16], aid proposals notified to the Commission before the guidelines were communicated to Member States were to be assessed on the basis of the criteria in force at the time of notification. Point I.6 of the 1988 Commission Communication [17] on the method for the application of Article 92 [18] (3)(a) and (c) to regional aid provides that in recognition of their special difficulties, the Commission may, by way of a derogation, authorise certain operating aid measures in those regions under specific conditions, which are set out thereinafter. The second indent of point I.6 specifies that the aid should 'be designed to promote a durable and balanced development of economic activity and not give rise to a sectoral overcapacity at the Community level such that the resulting Community sectoral problem produced is more serious that the original regional problem; in this context a sectoral approach is required and in particular the Community rules, directives and guidelines applicable to certain industrial (steel, shipbuilding, synthetic fibres, textiles and clothing) and agricultural sectors, and those concerning certain industrial enterprises involving the transformation of agricultural products are to be observed'.

(51) In the agricultural and fisheries sectors, which cover the production, processing and marketing of Annex I products, it has been the Commission's consistent policy for many years to prohibit the payment of operating aid in all regions, including regions which fall within the scope of Article 87(3)(a) of the Treaty. By its very nature, such aid is likely to interfere with the mechanisms of the common organisation of the markets, which take precedence over the competition rules laid down in the Treaty [19]. This policy has been confirmed many times [20]. In particular, the Commission has adopted several final negative decisions in respect of aid measures notified by Italy, in which it has expressly stated that operating aid in the agricultural sector cannot qualify under the exception laid down in Article 87(3)(a) of the Treaty [21].

(52) Furthermore, in accordance with the Commission guidelines on State aid in connection with investments in the processing and marketing of agricultural products, no aid may be granted in respect of investments which contravene the sectoral limitations set out in Commission Decision 94/173/EC [22]. Those sectoral limitations preclude investments in processing and marketing activities in agricultural sectors where there is overcapacity within the Community and, in accordance with the conditions set out in Decision 94/173/EC, they apply throughout the Community, including in regions falling within the scope of Article 87(3)(a). It would clearly be inconsistent for the Commission to prohibit aids for investments in favour of certain activities in the agricultural sector while at the same time allowing operating aid in favour of the same activities, particularly as there is no guarantee that funds intended for debt alleviation purposes might not be used to finance investments incompatible with the common market.

(53) In the light of the above, it must be concluded that the manner in which Italy intends granting interest rate subsidies for debt consolidation operations and guarantees to undertakings operating in the agricultural and fisheries sectors pursuant to Article 2 of Law 341/1995 and the relevant rules of application laid down by the CIPE Decision of 10 May 1995, as subsequently amended, constitutes State aid within the meaning of Article 87(1) that does not qualify under any of the exceptions provided for in Article 87(2) or (3).

[14] See in particular the judgment of the Court of First Instance in Case T-459/93, *Siemens* v *Commission*, [1995] ECR II-1675 and the decisions cited therein.
[15] See footnote 5.
[16] OJ C 74, 10.3.1998, p. 9.
[17] See footnote 5.
[18] Now Article 87.
[19] Judgment of the Court of Justice in Case 177/78, *Pigs and Bacon, Commission* v *McCarren* [1979], ECR 2161.
[20] 20th Report on Competition Policy, 1990, paragraphs 337 and 347; 21st Report on Competition Policy, 1991, paragraphs 316 and 317; 22nd Report on Competition Policy, 1992, paragraphs 503 and 504; 23rd Report on Competition Policy, 1993, paragraphs 547 and 548; 25th Report on Competition Policy, 1995, p. 238 to 240; 26th Report on Competition Policy, 1996, p. 251 to 255.
[21] Commission Decision 95/366/EC of 14 March 1995 on aid granted by Italy (Sardinia) in the agricultural sector (OJ L 218, 14.9.1995, p. 20); Commission Decision 97/106/EC on aid measures provided for in Sicilian regional Law 25/93 (OJ L 37, 7.2.1997, p. 11); Commission Decision of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agricultural sector (OJ L 248, 11.9.1997, p. 27).
[22] Commission Decision of 22 March 1994 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agricultural and forestry products and repealing Decision 90/342/EEC (OJ L 79, 23.3.1994).

(54) In view of the Italian authorities' explanations to the effect that the Fund has not been used to guarantee equity loans or equity investments, there is no need to consider this aspect further in this Decision.

(55) Furthermore, in view of the Italian authorities' statement to the effect that the CIPE Decision concerning the participation of RIBS in capitalisation operations does not provide for any grants of aid going beyond the provisions of Law 662/96 (see recital 15) and that all capitalisation operations undertaken by RIBS under that Law are notified individually to the Commission, there is no need to consider this aspect further in this Decision.

V. **Conclusions**

(56) The Commission finds that by failing to take account of the specific rules applicable in the agricultural and fisheries sectors, Italy has unlawfully adopted the aid measures provided for in Article 2 of Law 341/1995 and the relevant rules of application laid down in the CIPE Decision of 10 May 1995, as subsequently amended, and in breach of the conditions laid down in the Commission's Decision of 10 March 1995, notified by letter of 24 March 1995.

(57) However, in view of the Italian authorities' statement that all procedures for the payment of the aid were suspended following the intervention of the Commission and that no aid was paid previously, there is no need to take any steps to recover the aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy intends granting to undertakings operating in the agricultural and fisheries sectors for debt consolidation operations in accordance with Article 2 of Decree-Law 244 of 23 June 1995, ratified in Law 341 of 8 August 1995, is hereby deemed incompatible with the common market and the EEA Agreement. That aid shall accordingly not be implemented.

Article 2

Within two months of notification of this Decision, Italy shall inform the Commission of the steps it has taken to comply therewith.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 November 1999.

For the Commission

Franz FISCHLER

Member of the Commission