COMMISSION DECISION

of 22 December1999

on the State aid scheme implemented by Italy for the production, processing and marketing of products listed in Annex I to the EC Treaty (Sicilian Regional Law No 68 of 27 September 1995)

(Notified under document number C(1999) 5202)

(Only the Italian text is authentic)

(2000/319/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 pursuant to the provision cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 8 August 1995 the Italian Permanent Representation to the European Union notified the Commission on Sicily's behalf, and in accordance with Article 88(3) of the Treaty, of a draft regional law, subsequently adopted as Sicilian Regional Law No 68 of 27 September 1995 on the 'Establishment of a guarantee fund to consolidate the debts of industrial and commercial undertakings and a fund to consolidate the debts of small businesses. Aid for commercial operators' (hereinafter referred to as Regional Law No 68/95).

(2) Examination of the measure was split into two parts as follows:

Under aid N 750/A/95, the Commission examined and authorised under Articles 87 and 88 of the Treaty (Commission letter SG(96) D/8236 of 24 September 1996) the measures in the Law applying to sectors other than agriculture, fisheries and aquaculture.

Application of the measures in the Law as they related to agriculture, fisheries and aquaculture were examined by the Commission as aid N 750/B/95.

(3) The Commission asked for more information on 2 October 1995 (telex No 36342), on 13 March 1996 (telex No 11717) and on 2 September 1996 (telex No 33700). Some of the information sought was provided by the Italian Permanent Representation in its letters of 18 July and 6 November 1996.

On 3 December 1996 (telex No 46422), the Italian authorities were asked for specific detailed information on the sectors covered by Regional Law No 68/95.

By letter dated 15 September 1997, the Italian authorities sent some information on Article 6 of the Regional Law. The other information requested was never provided. In reply to a reminder from the Commission dated 22 October 1997 the Italian authorities told the Commission by letter dated 28 October 1997 that they had no more information to offer.

On 24 September 1997, the Commission approved aid N 750/A/95 (letter to the Italian Government SG(96) D/8236).

In the light of the information supplied by the Italian authorities, Articles 6 and 7 of Regional Law No 68/95 certainly apply to the production, processing and marketing of the products listed in Annex I to the EC Treaty. As regards the Law's other provisions, the Italian authorities have not replied to the Commission's question regarding the sectors covered by the aid schemes provided for in Articles 1, 3 an 5 of the Law (question posed in a telex dated 3 December 1996).

(4) By letter dated 13 February 1998 (SG(98) D/1223), the Commission notified Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid as it applied to agriculture, fisheries and aquaculture.

[1] OJ C 86, 21.3.1998, p. 3.

(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.

(6) By letter dated 30 June 1998, the Italian authorities submitted their comments to the Commission. No comments were received from other interested parties.

Following an informal meeting between the Commission and the Italian authorities at which they said they would ask for the aid under Article 6 of the Law to be examined apart from the other measures against which the procedure under Article 88(2) of the Treaty was initiated, the Commission sent telex No 42510, dated 10 November 1998, asking for further information on Article 6. By letter dated 19 November 1998, the Italian authorities provided the Commission with further information on that Article.

(7) This Decision relates solely to the eligibility of the aid measures in the sectors covered by Annex I to the Treaty (agriculture in its primary production sense, the processing and marketing of agricultural, fisheries and aquaculture products). Unless otherwise stated in this Decision the term 'sectors concerned' shall refer to all agricultural and fisheries products listed in Annex I to the EC Treaty.

II. DETAILED DESCRIPTION

(8) The measures covered by this Decision are exclusively those contained in the Articles of Regional Law No 68/95 described below in so far as they apply to Annex I products (agricultural and fisheries products). Where they apply to sectors other than agriculture, fisheries and aquaculture, the measures contained in the Law have already been examined and approved by the Commission under Articles 87 and 88 of the EC Treaty in its letter SG(96) D/8236 of 24 September 1996.

(9) **Article 1 of Law No 68/95**

This Article sets up two guarantee funds (one for industrial undertakings, the other for commercial businesses) intended to cover the risks of financial restructuring operations implemented under Article 34 of Regional Law No 15/93, Article 43 of Regional Law No 25/93, as amended by Article 3 of Regional Law No 68/95, and Article 44 of Regional Law No 25/93.

(10) The aid scheme provided for in Article 34 of Regional Law No 15/93 was approved by the Commission as aid N 730/95. The aid is in the form of reduced interest rates for the financial restructuring of undertakings in the manufacturing sector.

(11) The aid scheme provided for in Article 43 of Regional Law No 25/93 was approved by the Commission as *de minimis* aid as part of aid N 472/94. The aid is to reschedule the debts of commercial businesses.

(12) As regards the aid provided for in Article 44 of Regional Law No 25/93, the Commission decided that it was incompatible with the common market (decision of 17 July 1996, adopted under procedure C 30/95 — ex N 113/B/93). Article 44 provides for aid in the form of reduced interest rates on loans to consolidate the bank debts of undertakings trading in fruit and vegetables, citrus fruits in particular.

(13) **Article 3 of Regional Law No 68/95**

Article 3 of Regional Law No 68/95 amends the conditions for applying the aid introduced by the scheme to reschedule the debts of commercial businesses provided for in Article 43 of Regional Law No 25/93 and approved as *de minimis* aid as part of aid N 472/94.

(14) **Article 5 of Regional Law No 68/95**

Article 5 of Regional Law No 68/95 provides for aid in the form of reduced interest rates on loans to reschedule the debts of small businesses and was approved as *de minimis* aid under aid N 750/A/95.

(15) In the case of Articles 1, 3 and 5, the Commission made the points below in its decision to initiate the procedure.

(16) As regards Article 1, in view of the mechanism set up (the guarantee is granted on loans benefiting from the initial regional aids), compatibility of the aid in the form of a guarantee must be assessed in the light of the compatibility of the initial aid granted in the form of an interest rate reduction for loans to consolidate debts. As regards the guarantee granted by the fund for the operations provided for in Article 44 of Regional Law No 25/93, since the Commission has already decided that

([2]) See footnote 1.

those operations are incompatible with the common market, it must also view the guarantee as incompatible.

(17) By letter dated 16 January 1997, the Italian authorities informed the Commission that, although it has not been formally repealed, Article 44 had not been applied because the budgetary resources provided for the scheme by Regional Law No 25/93 were not committed in time (before the end of the 1993 financial year). The reference made in Article 1 of Regional Law No 68/95 to the scheme provided for in Article 44 of Regional Law No 25/93 is therefore null and void. The Commission noted this when initiating the procedure laid down in Article 88(2) of the EC Treaty.

(18) As regards the other aid schemes established by Article 1 of Regional Law No 68/95, doubts were raised about their non-applicability to the sectors concerned when the aid in the form of a guarantee was being examined. The Italian authorities were therefore asked on 3 December 1996 about the sectoral scope of each of the provisions of Regional Law No 68/95 (and, therefore, of the aid schemes in question). Since the Italian authorities have not supplied this information, the Commission was unable to exclude the possibility that Articles 1, 3 and 5 of Regional Law No 68/95 and the regional provisions referred to above also apply to these sectors.

(19) The Commission was therefore also unable to verify that the aid provided for in Articles 1, 3 and 5 of Regional Law No 68/95 was compatible with the common market in the light of the criteria for assessment which apply to State aid in the sectors in question (in particular as regards State guarantees and national aid to firms in difficulties). The Commission was therefore obliged to initiate the procedure provided for in Article 88(2) of the Treaty against Articles 1, 3 and 5 of Regional Law No 68/95 to the extent that they apply to the sectors in question.

(20) Under the procedure, the Commission requested the Italian Government to provide, with regard to the scheme provided for in Article 34 of Regional Law No 15/93 (and Article 1 of Regional Law No 68/95 referring thereto) and in the event that it had been applied in the sectors concerned, information enabling the Commission to verify that the rules on State aid in those sectors were being complied with. As regards the schemes provided for in Article 43 of Regional Law No 25/93 (and Articles 1 and 3 of Regional Law No 68/95 referring thereto) and Article 5 of Regional Law No 68/95, the Commission reminded the Italian Government that the *de minimis* rule does not apply to the sectors concerned. It asked the Italian authorities to confirm that the schemes were actually implemented (and continued to be so) in accordance with that rule outside the sectors concerned.

(21) **Article 6 of Regional Law No 68/95**

This Article provides for aid in the form of reduced interest rates on loans for a period not exceeding 12 months granted to traders in Sicily at least 70 % of whose turnover is accounted for by the sale of fruit and vegetables, including citrus fruits, outside the region.

(22) The interest rate payable by the traders after application of the reduction corresponds to the rate laid down in Article 4, second paragraph, point 1 of Regional Law No 13/1986 and the loan may not exceed 50 % of the average turnover for the previous three years. The budget for the measure in the three-year period 1995 to 97 is ITL 15 000 million, 70 % of which was allocated to the citrus fruit sector.

(23) In its decision to initiate the procedure, the Commission made the following comments on Article 6 of Regional Law No 68/95:

'The Italian authorities asked that this aid be examined in the light of the criteria used by the Commission for operating loans before adoption of the guidelines published in the *Official Journal of the European Communities* (OJ C 44, 16.2.1996) [1]. The criteria in question are as follows: the loans must be 'seasonal credits' to cover general overheads (purchase of input, payment of workers, etc.), the loan must not be granted for a single product or linked to a single operation; the duration of the loan must not exceed 12 months. There are doubts, however, about whether the aid in question can be considered as a true operating loan (in the sense of a 'seasonal credit') … . If account is taken of the rules for the granting of aid, in particular the restriction of aid to export-oriented undertakings and calculation of the size of the reduced interest rate loan (50 % of the undertaking's turnover), the aid would seem to correspond to the definition of export aid given in the Commission communication on application of the *de minimis* rule ('"export aid" means any aid directly linked to the quantities exported […] or to current expenditure linked to the export activity'). The aid in question is directly linked to the quantities exported, firstly, because their relative volume is important in determining the undertaking's eligibility for the measure and, secondly, because the aid is calculated on the basis of the undertaking's turnover (which must be mostly accounted for by export earnings). In view of these special conditions, the aid, even if it is presented in the form of a 'traditional' operating loan, would appear, in covering part of the costs involved, to have the intention (and the effect) of supporting exports of the two types of product

referred to in the Article 6 concerned (citrus fruits and fruit and vegetables). It cannot therefore be considered as a seasonal credit intended to cover advance payment of the operator's expenditure linked to the agricultural production cycle pending receipt of income during that same cycle. It is Commission practice to consider export aid as operating aid ineligible for any of the derogations provided for in Article 87(2) and (3) of the Treaty (see Commission communication on the method for the application of Article 87(3)(a) and (c) to regional aid). The aid has no lasting effect on the development of the sector or region concerned and its effect disappears when the payment of aid ceases. The Commission has therefore decided to open the procedure provided for in Article 93(2) (now 88(2)) of the Treaty in respect of this aid.

(1) Application of the guidelines to new aid schemes is currently suspended (see Commission letter to the Member States dated 4 July 1997).'

(24) **Article 7 of Regional Law No 68/95**

Article 7 authorises the IRCAC (Istituto Regionale per il Credito alla Cooperazione — Regional Institute for Cooperative Credit), under Regional Law No 37/78, to grant young people loans at a reduced rate of interest as working capital to set up undertakings.

(25) Regional Law No 37/78 (since repealed) provided for an aid scheme for young entrepreneurs permitting the grant of: (a) aid in the form of grants and reduced rate loans for investments and (b) aid in the form of reduced rate loans for running undertakings during the first three years after those investments had been made and brought on line. Because of delays in making investments, a number of cooperatives (25 based on the information available) could not begin production before the end of the period of grace (three years) for repaying the loans taken out to make the investments and so could not repay them. The cooperatives were therefore ineligible for the operating loan.

(26) Article 7 of Regional Law No 68/95 permits, in substance, the grant of one of the aid measures provided for in Regional Law No 37/78 to undertakings which, under that Law, did not fulfil the eligibility criteria for that aid. The Article in question allows those undertakings access to the operating loan provided for in Regional Law No 37/78 provided that the loan granted under the provisions of that Law is equal to or greater than the debt incurred (on financing the investment). IRCAC sets unpaid debts off against new loans (i.e. part of the new loan is used to pay off the loan taken out to make the investments).

(27) The Commission had the following to say about Article 7 in its decision to initiate the procedure. The aid provided for in Article 7 of Regional Law No 68/95 must be examined in the light of the criteria used by the Commission for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out (criteria applicable to agricultural and fisheries undertakings), in accordance with which: the cumulated grant equivalent of the aid granted when the loans were taken out and the aid in question may not exceed the rate generally allowed by the Commission for investment aid (for the production and the processing and marketing of Annex II (now Annex I) products); any sectoral limits must be respected; the aid in question must follow adjustments in the rate of interest on new loans to take account of changes in the price of money (the aid must be less than or equal to the change in the rate for new loans) or must be for agricultural undertakings presenting guarantees of viability, particularly where the financial charges resulting from existing loans are such that there is a risk that the undertakings could be placed in danger or could fail; the undertakings' difficulties must be the result of external rather than internal factors. The Italian authorities provided no information permitting verification that the criteria had been complied with. The Commission therefore decided to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid provided for under Article 7 of Regional Law No 68/95.

(28) Before concluding this description of the measures it should be noted that Article 9 of Regional Law No 68/95 expressly makes the aid provided for in that Law subject to the conclusion of the procedures provided for in the then Article 93(2) and (3) of the Treaty. Furthermore, in their letter of 30 June 1998, the Italian authorities stated that the appropriations for Article 1 of the Regional Law had lapsed in their entirety because the necessary commitments could not be given by the deadlines stipulated in the law on public accounts and, in their letter of 19 November 1998, they further stated that the entire appropriation for Article 6 had been removed

from the regional budget in the absence of a Commission decision by the end of 1998.

III. **COMMENTS FROM ITALY**

(29) In their letter of 30 June 1998, the Italian authorities note in particular that, given the absence of a provision to the contrary, the production, processing and marketing of products listed in Annex I (previously Annex II) to the Treaty (agricultural and fishery products) do not appear to be excluded from the aid provided for in Regional Law No 68/95, as worded.

(30) The Italian authorities also emphasise that the aid for the agricultural sector is intended to compensate for the disadvantages (the seasonal nature of production and the structure of the holdings) penalising agricultural operators relative to those in other economic sectors and that, in any event, the aid would be granted to all operators in the sector without any discrimination and regardless of the type of agricultural activity involved.

(31) The Italian authorities also point to the exceptional nature of this aid, which is intended to compensate for the general handicap faced by enterprises in Sicily because of the island's high interest rates, which are on average higher than those elsewhere in Italy. They point out that this handicap would be likely to result in distortions of competition. For this reason, the national authorities conclude that aid in the form of an interest rate subsidy, albeit operating aid, should be exceptionally authorised. The Italian authorities note that this aid would comply with the Community rules in force on the date Regional Law No 68/95 was approved because (a) the maximum length of a loan is one year and (b) it is not restricted to a single product and single operation. Furthermore, Community rules do not lay down aid intensity limits and allow for annual renewals of the loan.

(32) The national authorities also point out that the case in point does not involve loans for the undertakings' short-term needs, but a rescheduling of their debts resulting from short-term bank loans taken out at high interest rates which have affected the competitiveness of the island's undertakings relative to the rest of Italy and the European Community. The Italian authorities believe that if the undertakings had been able to borrow short-term at an interest rate equivalent to the subsidised rate, which is roughly identical to the rate applied outside Sicily, they would not now have their current debt burden. The Law, therefore, was intended to compensate for an initial handicap faced by Sicilian businesses which were unable to make use of a relief already provided for in the legislation of other countries. Moreover, the possibility of annual renewals of the loans, allowed under the Community rules and regulations cited, would diminish, where necessary, the effect of the provision in the regional legislation on the redemption of the debts over 36 months. The national authorities claimed that the length of the redemption period should be stressed because the loan amount would start to diminish from the first month in which it was granted, so that its average duration would be certainly less than 36 months.

(33) The Italian authorities also noted that the problem is further aggravated by the fact that many undertakings cannot avail themselves of the relief laid down in existing rules and regulations because they do not have sufficient funds to guarantee the loans sought. This shortcoming should not be seen in absolute terms, however, because, where the guarantees are the same, the banks are willing to grant operators in other regions what they refuse to grant to Sicily's. The reasons for this, according to the national authorities, are Sicily's environmental and economic circumstances, which place the island at a disadvantage relative to the other regions of Italy. The Italian authorities claim that Article 1 would therefore eliminate this differential penalising the island's businessmen.

(34) The Italian authorities also state that particular attention should be paid to Article 3 of the Law and that the aid provided for in Article 43 of Regional Law No 25/93 (which Article 3 of the Law under examination amends) was approved as *de minimis* aid. They also point out that, unlike in the case of Article 44 of Regional Law No 25/93 (on which the Commission adopted a negative decision on 17 July 1996) 'the national authorities felt legitimately entitled to conclude they had "tacit consent" since for some years (three) the relevant Directorate (which was certainly informed, as usual, by the other departments) had made no comment whatsover on the said Article 43'. According to the national authorities, such comments would apply to Article 1 of Regional Law No 68/95 in that it refers to Article 3 of that same Law and to Article 43 of Regional Law No 25/93.

(35) The Italian authorities further state that the appropriation for the purposes of Article 1 has lapsed in its entirety, given that the commitments could not be made within the time limits laid down in the law on public accounts.

(36) As regards Article 6 of Regional Law No 68/95 in particular, the national authorities note that the Article does not introduce a new aid scheme, but should instead be considered a refunding of Article 48 of Law No 32/91. That Article, examined by the Commission as part

of aid N 377/91, provided for an appropriation of ITL 30 000 million for operating loans of less than one year, at a subsidised rate of interest, in the three-year period 1991 to 1993; the loans were offered to holdings at least 70% of whose turnover related to sales of citrus fruit, other fruit and vegetables outside the region. The provision made no reference to a marketing year, laying down instead a single time limit, that for the budget appropriation. When the relief introduced by the Article came into operation unopposed by the Commission, the national authorities found themselves unable to use up the appropriation fully. In addition, most of the appropriation actually used, about ITL 17 000 million, was used only in 1993 and so after the dates laid down in the Law. This has made it impossible for those beneficiaries with bank loans for the 1991, 1992 and 1993 marketing years to benefit from the Law's subsidising effects. Therefore, Article 6 of Regional Law No 68/95 and Article 7 of Regional Law No 81/95 are intended to recover the part of the appropriation provided for in Article 48 of Regional Law No 32/91 left unused and Article 6 of Regional Law No 68/95 in particular allows for a reduction in interest on debts incurred in the years after 1993 until 1995/1996. Article 6 of Regional Law No 68/95 and Article 7 of Regional Law No 81/95 are the completion, from a financial standpoint, of Article 48 of Regional Law No 32/91 which the Community accepted as an exceptional measure. Given that Article 6 of Regional Law No 68/95 provides for appropriations until 1997, that the said Article must be considered a refinancing of Article 48 of Regional Law No 32/91, of which it retains the content, and lastly that the Commission by letter dated 19 December 1997 suspended application of the rules on State aid for short-term loans in the agricultural sector until 30 June 1998, the Italian authorities conclude that Article 6 is compatible with the Community rules and regulations in force when Article 48 of Regional Law No 32/91 was examined. The authorities further state that, if the Commission intended to change the previous policy and carry out its examination in the light of the rules on export aid, as stated in its decision to initiate the procedure, they would give due consideration to the new policy, even though it seemed rather inappropriate given that previous cases had legitimately led the regional legislature to adopt a solution based on the success of earlier precedents.

(37) In view of the possible splitting of the examination of the measure concerned from the rest of the notification, the Italian authorities submitted further observations on Article 6 to the Commission in a letter dated 19 November 1998. These observations contested the description of the aid measures envisaged therein as 'export aids'. According to the national authorities, the proposed aid measures could not be considered 'export aid' for the following reasons:

(a) Most of the citrus producers in Italy or in other EU countries benefiting from authorised aid tend to export some of their production abroad, and certainly most of it outside subnational geographical areas. Therefore, to consider any sales outside the region but within the national boundaries as 'exports' and the undertakings concerned as 'export-oriented' goes beyond any interpretation of the provision and beyond the most restrictive interpretation of the Treaty;

(b) The aid is not directly linked to the quantities exported. For the sole purpose of limiting the amount of aid, Article 6(3) lays down that the subsidised loan cannot ever exceed 50% of the average turnover, meaning the undertaking's turnover from all activities. The reference to the 'maximum unit values fixed annually pursuant to Article 18 of Regional Law No 13/86' meets the need to provide objective criteria which, in the case in point, have been taken over from pre-existing legislation. This reference relates to specific parameters concerning 'advances and management expenses related to the processing and marketing of products contributed by the members of agricultural cooperatives'. No reference is made to the volume of exports;

(c) The agricultural operators had no interest in aid for the buyers (traders) who, at the time they purchased the goods, could not have reasonably expected a relief proposed under a subsequent law. The national authorities note that Regional Law No 68/95 was approved when the first two farm years covered by it (1993/1994, 1994/1995) had already ended while the third one had already begun (1995/1996). Furthermore, this provision, which would not be proposed in future, could not affect the volumes and prices of the goods already sold (or gone rotten in the storehouses) in the years from 1991 to 1996. Even assuming that to sell the produce of Messina in Reggio Calabria might constitute an 'export', this does not explain how an aid measure introduced at the end of 1995 could have caused the traders to go into debt in 1993, 1994 and early 1995, so affecting quantities and prices, with a view to an aid which they could not even foresee. The national authorities further noted that the Commission could have commented in this vein when it examined Article 48 of Regional Law No 32/91, which contained the same provision, for future application. The Commission did not make any comment on that

occasion, even though the same Treaty and the same rules on short-term operating loans applied;

(d) It is clear from the text of the provision under examination that the reference to volume of sales was introduced because the regional legislator wanted to identify a marketing sector which, by virtue of its turnover, was more exposed than other sectors to traumatic falls in employment. This is why Article 6(4) of Regional Law No 69/95 provides for the cancellation and recovery of the aid if the beneficiaries do not meet their obligation to maintain employment levels. In the light of this observation the competent authorities asked the Commission to reconsider the aid in question and to evaluate it under the rules applicable to State aid in the form of 'subsidised short-term loans' by analogy with Article 48 of Regional Law No 32/91.

In support of their request that the aid provided for in Article 6 be reconsidered and evaluated under the rules applicable to such subsidised short-term loans, the national authorities pointed out in their letter of 19 November 1998 that:

(a) By letter SG(92) D/17980 dated 14 December 1992, the Commission communicated its unconditional decision not to raise any objections to the aid provided for in Article 48 of Regional Law No 32/91 'in the form of subsidised short-term loans', and only reserved the right to review its position under the then Article 93(1) of the EC Treaty. This right was not exercised; the Commission instead approved the subsequent refinancing of that provision (Article 7 of Regional Law No 81/95 and Article 20 of Regional Law No 33/96) based on the reasoning used to approve the original provision. These considerations influenced the regional legislator when preparing the 1995 Law and gave rise to legitimate expectations on the part of the beneficiaries;

(b) The appropriation provided for in Article 6 of Regional Law No 68/95, even if added to the refinancing of Regional Law No 32/91, does not exceed the original appropriation provided for by that Law, which amounted to ITL 30 000 million;

(c) The reference to the 1993/1994, 1994/1995 and 1995/1996 marketing years was made exclusively because of the need to take account of prevailing situations of indebtedness, which had significantly increased because insufficient use was made of the assistance provided for in Article 48 of Regional Law No 32/91.

Lastly, the competent authorities said that unless a decision were taken within the year, the budgetary appropriation for the measure would be definitively removed from the regional budget.

(38) As regards Article 7 of Regional Law No 68/95, the national authorities noted that the aid in question should be considered compatible with the criteria applied by the Commission. They pointed out that the undertakings' difficulties were caused not only by intrinsic factors such as their establishment in the main by young unemployed people, but also by external factors, such as the amendments to Regional Law No 37/78 and the need to adapt the facilities to the new sectoral legislation, which caused long delays in completing the projects. As a result, many cooperatives set up by young people were required to pay instalments on fifteen-year loans before starting up production and went bankrupt because they were unable to pay the loan instalments that fell due even before they could test their facilities. Other cooperatives, which barely managed to complete their facilities testing, were unable to collect the subsidised operating loan because they were already behind in repaying their fifteen-year loans from the credit institution (IRCAC). Moreover, the national authorities noted that, should the Commission authorise the measure, the IRCAC would grant aid solely to those cooperatives, including agricultural ones, able to guarantee viability. If aid were provided to undertakings in difficulty, or even at risk of bankruptcy, the whole point of the provision itself would be frustrated.

In reply to the observations made by the Commission in its decision to initiate the procedure, the national authorities also specified in regard to this measure that the intended beneficiaries of the aid provided for in the said Article 7 were 'undertakings' qualifying for rescue aid because they were in serious financial difficulty even before commencing production. In order to prove this, the national authorities specified that: (a) the aid in question would be a contribution to the loan interest at a rate of 4%, equal to the rate applied by the IRCAC to the loans for cooperatives; (b) the measure provided for an operating loan allowing cooperatives run by young people to start up or continue the activity for which the project financed by Regional Law No 37/78 was carried out; (c) the aid in question, which was at least equivalent to the debt owing and was paid in a single tranche or as one-off aid, was granted to resolve a situation of indebtedness preventing the cooperative from dealing successfully with the start-up or initial management costs of the activity, so allowing the cooperative to pay the loan instalments as they became due; (d) the aid was granted to a sector in serious difficulties and characterised by high regional unemployment. Lastly, the national authorities, citing the attached letter from the IRCAC dated 5 May 1998, specified that none of the

cooperatives in receipt of financing for an agricultural project involving primary production had applied for the aid in question, although an application could still be submitted.

IV. **ASSESSMENT OF THE AID**

(39) According to Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. The Commission is of the opinion that, in the case in point, all the measures in question satisfy the conditions for the application of Article 87(1). The Commission also notes that this view has not been contested by the Italian authorities.

(40) Article 1 of Regional Law No 68/95 sets up two guarantee funds (one for industrial undertakings, the other for commercial undertakings) intended to cover the risks of financial restructuring operations implemented under the aid schemes provided for in other Laws to which reference is made; Article 3 amends the conditions for applying the aid introduced by one of the schemes referred to in Article 1, on rescheduling the debts of trading undertakings; Article 5 provides for aid in the form of reduced interest rates on loans to reschedule the debts of small businesses; Article 6 provides for aid in the form of reduced interest rates on loans for a period not exceeding one year granted to traders in Sicily at least 70% of whose turnover is accounted for by the sale of fruit and vegetables, including citrus fruits, outside the region; Article 7 authorises the IRCAC to grant cooperatives of young people operating loans at a reduced rate of interest as working capital to set up undertakings.

(41) In the absence of information from the Italian authorities to prove the opposite, the Commission feels it is correct to state that at least some of the beneficiaries of the aid measures in question operate in sectors where there is a great deal of intra-Community trade. In 1996 imports of agricultural products into Italy from other Member States amounted to a total of ITL 28 734 billion, while exports from Italy to the other Member States totalled ITL 17 821 billion [3]. In the case of citrus fruits and other fruit and vegetables in particular, to which Article 6 relates, imports of these products into Italy in 1995, when the measure was notified, amounted to a total of ECU 302 093 000 for fruit (including ECU 75 909 000 for citrus fruits) and to ECU 138 525 000 for vegetables, while Italian exports to other Member States amounted to ECU 964 153 000 for fruit (including ECU 60 652 000 for citrus fruits) and ECU 460 791 000 for vegetables. It should be noted that the region of Sicily is a typical producer of such products.

(42) The prohibition on State aid contained in Article 87(1) of the Treaty is not unconditional. In the case in point, however, the exceptions allowed for under Article 87(2) of the Treaty manifestly do not apply and so have not been invoked by the Italian authorities. By the same token, the aid is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State within the meaning of Article 87(3)(b), nor is it intended to promote culture and heritage conservation under Article 87(3)(d), nor have the Italian authorities invoked such derogations. It is therefore necessary to see whether the proposed measures might qualify for a derogation under Article 87(3)(a) or (c) of the Treaty.

(43) As a preliminary observation, the Commission notes that, based on the reply from the competent authorities (see recital 29), the notified Law under examination can apply to all the products listed in Annex I to the EC Treaty; the purpose of this assessment and its scope relate therefore to agricultural and fisheries products. For the sake of convenience, where reference is subsequently made to 'agriculture' and/or 'agricultural products' it shall be taken to include 'fisheries' and the products derived from it.

(44) Article 1 of Regional Law No 68/95 establishes two guarantee funds (one for industrial undertakings and one for commercial undertakings) intended to cover the risks of financial restructuring operations implemented under other provisions (Article 34 of Regional Law No 15/93; Article 43 of Regional Law No 25/93, as amended by Article 3 of Regional Law No 68/95; Article 44 of Regional Law No 25/93).

(45) To the compatible with the rules on State aid applying to the sectors covered by this decision (to which the Commission notice on the *de minimis* rule for State aid [4] does not apply), the financial restructuring operations must be carried out in accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty [5], which apply to the agricultural

[3] *Source*: Ministry for Agricultural Policies: data communicated in the context of State aid C 36/98 (decision not yet published).

[4] OJ C 68, 6.3.1996, p. 9.

[5] OJ C 283, 19.9.1997, p. 2; see point 4.4 (Operation and review of the guidelines).

sector from 1 January 1998. Before these guidelines entered into force, Commission practice under certain conditions also allowed for State aid measures in the agricultural sector where they were designed to reduce the financial cost of investments already carried out ([6]). To facilitate the assessment of the aid measures provided for in Regional Law No 68/95, these rules are summarised below.

(a) The current Community guidelines in force require restructuring aid to satisfy the following general conditions: (i) the restructuring plan must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions; (ii) measures should be taken to avoid as far as possible the adverse effects on competitors; (iii) the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be commensurate with the benefits anticipated from the Community's point of view; (iv) the company must fully implement the restructuring plan accepted by the Commission and must discharge all obligations laid down by the Commission; (v) the grant of restructuring aid must be monitored at regular intervals through detailed annual reports on the implementation, progress and success of the restructuring plan.

(b) In the case of rescue aid, the rules in point 3.1 of the current Community guidelines on State aid for rescuing and restructuring firms in difficulty state that, to be authorised by the Commission, the rescue aids (…) must: — consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates; — be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies); — be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; — be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial and agricultural situations in other Member States. A further condition is that, in principle, the rescue should be a one-off operation. A series of rescue operations which effectively maintain the status quo, postpone the inevitable and in the meantime transfer the attendant industrial, agricultural and social problems to other more efficient producers and other Member States is clearly unacceptable.

(c) The rules governing Commission practice before the above guidelines came into force for assessing aids to reduce the financial costs of loans taken out to finance investments already carried out, state that ([7]): 'The cumulated grant equivalent of the aid granted when the loans were taken out and the aid in question may not exceed the rate generally allowed by the Commission for investment aid (for the production and the processing and marketing of Annex II (now Annex I) products); any applicable sectoral ceilings must be complied with. The aid in question must follow adjustments in the rate of interest on new loans to take account of changes in the price of money (the aid must be less than or equal to the change in the rate for new loans) or must be for agricultural undertakings presenting guarantees of viability, particularly where the financial charges resulting from existing loans are such that there is a risk that the undertakings could be placed in danger or could fail. The difficulties of the undertakings must be the result of external rather than internal factors.'

(46) Article 1 of Regional Law No 68/95 under examination sets up two guarantee funds (one for industrial undertakings, the other for commercial undertakings) intended to cover the risks of financial restructuring operations implemented under Article 44 of Regional Law No 25/93, among other provisions.

Article 44 of Regional Law No 25/93 provides for aid in the form of reduced interest rates on loans for the consolidation of the debts of undertakings trading in fruit (in particular citrus fruits) and vegetables. In its Decision 97/106/EC of 17 July 1996 on aid measures provided for in Sicilian Regional Law No 25/93 ([8]), the Commission decided that the aid was incompatible with the common market as it did not meet the requirements for aids for rescuing and restructuring companies in difficulty.

([6]) The rules were set out in a Commission working document of 6 March 1989: 'Aids intended to reduce the loan burden of investments already carried out; criteria applied to this kind of aid.' For recent precedents on their application see the Commission's final decision on State aid C 65/97 (Portugal: consolidation of the debts of intensive livestock units and the relaunch of pig farming, currently being published) and Commission Decision 1999/484/EC (Spain, aid for the Hamsa company) (OJ L 193, 26.7.1999, p. 1).

([7]) For these rules see footnote 6.

([8]) OJ L 37, 7.2.1997, p. 11.

In the context of the procedure initiated against Article 1 of Regional Law No 68/95 the national authorities have failed to provide any information that might allow the Commission to change its original evaluation and to consider the original aid provided for by Article 44 of Regional Law No 25/93 compatible with the rules on aids for rescuing and restructuring companies in difficulty or with other State aid rules applicable to the sectors concerned by this Decision. In particular, no evidence that the measure complies with the current rules on State aid for rescuing and restructuring companies in difficulty or with the rules previously applied by Commission practice for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out (see recital 45) has been either provided or is apparent from the information supplied by the national authorities.

Since the Commission in Decision 97/106/EC declared the aid in the form of subsidised loans for debt consolidation operations under Article 44 of Regional Act 25/93 to be incompatible with the rules on State aid and the information provided in the context of this procedure does not allow the Commission to change its view and to establish the said operations' compatibility with the rules for rescuing or restructuring companies in difficulty or with any other State aid rules applicable to the sectors concerned by this Decision, the Commission must consider any additional aid provided for by Article 1 of Regional Law No 68/95 in the form of a collateral guarantee for the same debt consolidation operations (provided for in Article 44 of Regional Law 25/93) to be aid which does not meet the conditions required by the Community rules on rescue and restructuring aids described at recital 45, without needing to analyse the other rules applicable to State aids granted in the form of guarantees ([9]).

Therefore, since the information provided is insufficient to establish the aid's compatibility with the rules for rescuing and restructuring companies in difficulty or with any other State aid rules applicable to the sectors concerned, in accordance with Article 7(6) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([10]) the Commission must take a negative decision on the aid provided for in Article 1 of Regional Law No 68/95, in so far as it relates to the aid provided for in Article 44 of Regional Law No 25/93.

(47) Article 1 of Regional Law No 68/95 under examination sets up two guarantee funds (one for industrial undertakings, the other for commercial undertakings) intended to cover the risks of financial restructuring operations implemented under Article 34 of Regional Law No 15/93, among other provisions.

Article 34 of Regional Law No 15/93 provides for aid in the form of reduced interest rates for the financial restructuring of undertakings in the manufacturing sector. The aid was approved by the Commission as aid N 730/95. Since the aid originally approved was addressed to the manufacturing sector there would appear to be no evidence that the aid has also been applied to the sectors concerned by this Decision.

However, since the national authorities did not reply to the Commission's questions in its decision to initiate the procedure and it cannot be excluded that this aid may apply also to the sectors covered by this Decision, the Commission needs to evaluate its compatibility with the rules applicable to the sectors so covered.

In the context of the procedure initiated against Article 1 of Regional Law No 68/95, the national authorities have failed to provide any information that might allow the Commission to consider the original aid provided for in Article 34 of Regional Law No 15/93 in the form of reduced interest rates for the financial restructuring of undertakings to be compatible with the rules on aid for rescuing and restructuring companies in difficulty or with other State aid rules applicable to the sectors concerned by this Decision. In particular no evidence that the measure complies with the current rules on State aid for rescuing and restructuring companies in difficulty or with the rules previously applied by Commission practice for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out (see recital 45) has been either provided or is apparent from the information supplied by the national authorities.

Since the information provided in the context of the procedure initiated against Article 1 of Regional Law No

([9]) These rules are set out in the Commission communication on the application of Articles 87 and 88 of the EC Treaty to State aid granted in the form of guarantees, adopted by the Commission on 24 November 1999 (not yet published). This communication replaces the Commission letters to the Member States (SG(89) D/4328 of 5 April 1989 and SG(89) D/12772 of 12 October 1989).

([10]) OJ L 83, 27.3.1999, p. 1.

68/95 does not allow the Commission to establish the aid's compatibility with the rules for rescuing or restructuring companies in difficulty or with any other State aid rules applicable to the sectors concerned by this Decision, the Commission must consider any additional aid provided for by Article 1 of Regional Law No 68/95 in the form of collateral guarantees for the same restructuring operations (provided for in Article 34 of Regional Law No 15/93) to be aid which does not meet the conditions required by the Community rules on rescue and restructuring aid described at recital 45, without needing to analyse the other rules applicable to State aid granted in form of guarantees ([11]).

Therefore, since the information provided is insufficient to establish the aid's compatibility with the rules for rescuing and restructuring companies in difficulty or with any other State aid rules applicable to the sectors concerned, in accordance with Article 7(6) of Regulation (EC) No 659/1999 the Commission must take a negative decision on the aid provided for in Article 1 of Regional Law No 68/95, in so far as it relates to the aid provided for in Article 34 of Regional Law No 15/93.

As regards the aid provided for in Article 34 of Regional Law No 15/93, which was approved by the Commission for the manufacturing sector under aid N 730/95, the Commission reserves the right to initiate the procedure laid down in Article 88(2) of the Treaty, in accordance with Article 16 of Regulation (EC) No 659/1999, with a view to investigating any possible misuse of the aid authorised by the Commission for non-Annex I products, where this aid has also been provided, without authorisation, to the sectors covering products listed in Annex I to the EC Treaty.

(48) Article 1 of Regional Law No 68/95 sets up two guarantee funds (one for industrial undertakings, the other for commercial undertakings) intended to cover the risks of financial restructuring operations implemented under Article 43 of Regional Law No 25/93, among other provisions.

Article 43 of Regional Law No 25/93 provides for aid to reschedule the debts of commercial undertakings and was approved as *de minimis* aid under aid N 472/94. The national authorities commented on this measure by referring to the comments made in relation to Article 3 of Regional Law No 68/95 (see recital 34). The national authorities pointed out that whereas the Commission had adopted a negative decision on Article 44 of Regional Law No 25/93 (see recital 46), where Article 43 of that same Law was concerned 'the national authorities felt legitimately entitled to conclude they had "tacit consent" since for some years (three) the relevant Directorate (which was certainly informed, as usual, by the other departments) had made no comment whatsoever on the said Article 43'.

As regards these observations the Commission would firstly point out that no 'tacit consent' to the application of the *de minimis* rule in the agricultural sector could have been inferred by the national authorities, given that this rule is not applied to the agricultural sector. It must be noted in particular that the agricultural and fishery sectors are expressly excluded from the scope of the Commission notice on the *de minimis* rule for State aid ([12]) as currently applied and were also expressly excluded from the scope of the *de minimis* rule originally contained in the Community Guidelines on State aid for small and medium-sized enterprises (SMEs) ([13]).

Secondly, in the light of the observations submitted by the national authorities, the Commission reaffirms its doubts that the aid scheme provided for in Article 43 of Regional Law No 25/93 may be applicable to the sectors concerned by this decision.

Thirdly, the Commission notes that in the context of the present procedure the national authorities have failed to provide any information that might allow the Commission to consider the original aid provided for in Article 43 to cover the debts of commercial undertakings to be compatible with the rules on aid for rescuing and restructuring companies in difficulty or with other State aid rules applicable to the sectors concerned by this decision. In particular no evidence that the measure complies with the current rules on State aid for rescuing and restructuring companies in difficulty or with the rules previously applied by Commission practice for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried cout (described at recital 45) has been either provided or is apparent from the information supplied by the national authorities.

Since the information provided in the context of the procedure initiated against Article 1 of Regional Law No 68/95 does not allow the Commission to establish the compatibility of the operations under Article 43 of Regional Law No 25/93 with the rules for rescuing or restructuring companies in difficulty or with any other State aid rules applicable to the sectors concerned by this Decision, the Commission considers any additional aid

([11]) See footnote 9.

([12]) See footnote 4.

([13]) OJ C 213, 19.8.1992, p. 2, points 3.2 and 1.6.

provided under Article 1 of Regional Law No 68/95 in the form of collateral guarantees for the same restructuring operations (laid down in Article 43 of Regional Law No 25/93 and implemented under the *de minimis* rule in the agricultural and fishery sectors) to be aid which does not meet the conditions required by the Community rules on rescue and restructuring aids described at recital 45, without needing to analyse the other rules applicable to State aid granted in the form of guarantees ([14]).

Therefore, as the information provided cannot establish the compatibility of the aid with the rules for rescuing and restructuring of companies in difficulty as described above or with any other State aid rules applicable to the sectors concerned, in accordance with Article 7(6) of Regulation (EC) No 659/1999 the Commission must take a negative decision on the aid provided for in Article 1 of Regional Law No 68/95, in so far as it relates to the aid provided for in Article 43 of Regional Law No 25/93.

As regards the *de minimis* aid provided for in Article 43 of Regional Law No 25/93 and approved by the Commission as part of aid N 472/94, the Commission reserves the right to initiate the procedure laid down in Article 88(2) of the Treaty, in accordance with Article 16 of Regulation (EC) No 659/1999, with a view to investigating any possible misuse of aid authorised by the Commission in respect of products not listed in Annex I to the EC Treaty, where such aid is also granted, without authorisation, to the sectors concerning products listed in Annex I.

(49) Article 3 of Regional Law No 68/95 amends the conditions for applying the aid introduced by the scheme pursuant to Article 43 of Regional Law No 25/93 to reschedule the debts of trading undertakings (which was approved as *de minimis* aid as part of aid N 472/94) (see recital 48). The Commission notes that paragraph 4 of Article 3 establishes that the aid provided for in Article 3 is granted to the undertakings within the limits laid down for *de minimis* aid, which does not apply to the sectors concerned by this Decision. However, the Commission must also consider: (a) the doubts that it expressed when initiating the procedure; (b) the national authorities' comments as reported above (see recitals 34 and 48) as regards Article 43 of Regional Law No 25/93; (c) the fact that in the light of these comments the content of Article 3 of Regional Law No 68/95, which makes reference to Article 43 of Regional Law No 25/93, may be applicable also to the sectors concerned by this Decision; (d) the fact that the said Article 43 concerns aid to reschedule the debts of commercial undertakings which were approved under the *de minimis* rule; and, finally, (e) the fact that the national authorities have not provided any information which would enable the Commission to assess in this context the possible compatibility of the aid with State aid rules for agriculture and fisheries (in particular the rules for rescuing and restructuring companies in difficulty). Therefore, for the reasons already given (recital 48), as the information provided is insufficient to establish the aid's compatibility with the rules for rescuing or restructuring companies in difficulty (see recital 45) or with any other State aid rules applicable to the sectors concerned, in accordance with Article 7(6) of Council Regulation (EC) No 659/1999, the Commission must take a negative decision on the aid provided for in Article 3 of Regional Law No 68/95, to the extent that it refers to the aid provided for in Article 43 of Regional Law No 25/93 and that it may apply to the sectors concerned by this decision.

As regards the aid provided for in Article 43 of Regional Law No 25/93 and approved as *de minimis* aid by the Commission as part of aid N 472/94, the Commission reserves the right to initiate the procedure laid down in Article 88(2) of the Treaty, in accordance with Article 16 of Regulation (EC) No 659/1999, with a view to investigating any possible misuse of aid authorised by the Commission in respect of products not listed in Annex I to the EC Treaty, where such aid is also granted, without authorisation, to the sectors concerning products listed in Annex I.

(50) Article 5 of Regional Law No 68/95 concerns aid in the form of reduced interest rates on loans to reschedule the debts of small businesses, approved as *de minimis* aid as part of aid N 750/A/95. The national authorities made no comment on this during the procedure. Since the aid originally approved was for the small business sector there is no evidence that the aid may also apply to the sectors concerned by this Decision. However, as the national authorities have not provided any information, although requested to do so, and it cannot be excluded that this aid may also apply to the sectors concerned by this Decision where the *de minimis* rule does not apply, the Commission must assess its compatibility with the rules applicable to these sectors.

In the context of the present procedure the national authorities have failed to provide any information which might allow the Commission to consider the aid provided for by Article 5 of Regional Law No 68/95 in the form of reduced interest rates on loans to cover the

([14]) See footnote 9.

debts of undertakings to be compatible with the rules on aid for rescuing and restructuring companies in difficulty or with other State aid rules applicable to the sectors covered by this decision. In particular no evidence that the measure complies with the current rules on State aid for rescuing and restructuring companies in difficulty or with the rules previously applied by Commission practice for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out (described at recital 45) has been either provided or is apparent from the information supplied by the national authorities.

Therefore, since the information provided is insufficient to establish the compatibility of the aid under Article 5 of Regional Law No 68/95 (in the form of reduced interest rates on loans to cover the debts of undertakings) with the rules for rescuing and restructuring companies in difficulty or with any other State aid rules applicable to the sector concerned, in accordance with Article 7(6) of Regulation (EC) No 659/1999 the Commission must take a negative decision on the aid provided for in Article 5 of Regional Law No 68/95, in so far as it applies to the sectors covered by this Decision.

(51) Article 6 of Regional Law No 68/95 provides for aid in the form of reduced interest rates on loans for a period not exceeding 12 months granted to traders in Sicily at least 70% of whose turnover is accounted for by the sale of fruit and vegetables, including citrus fruits, outside the region. The national authorities maintain in their comments that the measure constitutes a refinancing of a measure already approved by the Commission (Article 48 of Regional Law No 32/91) and that it constitutes a subsidised short-term loan to be examined in the light of the criteria applied to this type of measure before the entry into force of the Communication on State aid: subsidised short-term loans in agriculture (crédits de gestion) ([15]). For the reasons set out below the national authorities' arguments cannot be accepted.

(52) As regards the argument that the aid would be a 'refinancing of Article 48 of Regional Law No 32/91' and that the Commission's approval of a subsequent refinancing of the provision in question had 'influenced the regional legislator when preparing the 1995 Law and gave rise to legitimate expectations on the part of the beneficiaries', as already stated in the telex dated 10 November 1998, the Commission would point out that:

([15]) OJ C 44, 16.2.1996, p. 2.

(a) The original approval of Article 48 of Regional Law No 32/91 (aid N 377/91) as a subsidised short-term loan concerned the financing of the measure only for 1991, 1992 and 1993, without mentioning the specific farm years for which the measure was intended (the measure only made a 'casual' reference, by providing for an exemption from certain requirements for the 1990/1991 farm year). Although Commission practice for this type of aid was not yet set down in a written text (the criteria applicable to aids in the form of subsidised short-term loans are specified at recital 54), the approval of the measure as a subsidised short-term loan could only be based on the belief that the measure was a real subsidised short-term loan granted for the normal running of an agricultural operator needing to pay in advance expenditure linked to the agricultural production cycle pending receipt of income during that same cycle. In approving the measure the Commission also specified that: 'in the case of aid in the form of operating loans at a reduced rate of interest, the Commission is not opposed to their grant, but it reserves the right to review its position at a later date under Article 93(1) of the Treaty';

(b) A subsequent approval of the 'refinancing' of Article 48 of Regional Law No 32/91 related expressly to the financing, in the financial years 1995 and 1996, of the measure as a subsidised short-term loan for the 1992/1993 farm year. Since this year was included in the original time-frame of Article 48, to which reference was made, the Commission considered the new measures to be a 'refinancing' of measures already approved (aid C 61/96, ex N 408/B/96). In particular the Articles providing for the refinancing were: (i) Article 7 of Regional Law No 81/95 (C 61/96, ex N 408/B/96), which made reference to the 'aims' of Article 48 of Regional Law No 32/91 and authorised the financing, in the 1995 financial year, of the 1992/1993 farm year (ITL 2 000 million); and (ii) Article 20 of Regional Law No 33/96 (C 61/96, ex aid N 408/B/96), which made reference to the 'aims' of Article 48 of Regional Law No 32/91, and to Article 7 of Regional Law No 81/95 and authorised the financing, in the financial year 1996, of the 1992/1993 farm year (ITL 2 000 million);

(c) In the letter authorising the above refinancing of Article 48 of Regional Law No 32/91 for the 1992/1993 farm year (aid C 61/96, ex Aid N 408/B/96) the Commission warned the national authorities that approval of the refinancing was without prejudice to the examination of the new measure notified and examined under Aid N

750/B/95 (Article 6 of Regional Law No 68/95), which constituted a new aid scheme (SG(97) D/455 of 23 January 1997) and, in that context, the authorities were informed that Regional Law No 68/95 would be examined on the basis of the new rules on operating loans, which would come into force after 31 December 1996;

(d) Article 6 of Regional Law No 68/95 (under examination) does not mention Article 48 of Regional Law No 32/91 but reproduces substantially the same content, and authorises the financing, in the three financial years 1995, 1996 and 1997, of the 1993/1994, 1994/1995 and 1995/1996 farm years. However, contrary to Article 48 of Regional Law No 32/91 which appeared to provide for the future, and contrary to Article 7 of Regional Law No 81/95 and to Article 20 of Regional Law No 33/96 which (although providing for a past farm year) identified the year as 1992/1993 (already covered by the approval of the original Article 48 of Regional Law No 32/91), Article 6 of Regional Law No 68/95 clearly provides for aids only for past farm years (1993/1994, 1994/1995 and 1995/1996) which, moreover, are not covered by the original approval of Article 48, relating to financing for the period 1991 to 1993. The provision of aid in the form of subsidised short-term loans for earlier years (see recital 54) runs counter to the philosophy underlying subsidised short-term loans for the agricultural sector, which are exceptionally considered as aid contributing to the development of the agricultural sector in derogation from the prohibition laid down in Article 87 of the Treaty. Furthermore, it is worth pointing out that within two months of the notification of Regional Law No 68/95 (examined under aid N 750/B/95), the Commission warned the competent Italian authorities that (a) the aid for the 1993/1994 and 1994/1995 farm years appeared to be operating aid that was incompatible with the common market and so invited the national authorities to withdraw the measure unless they could prove that the aid satisfied the criteria then applying for restructuring companies in difficulty (on which see recital 45); (b) the aid for 1995/1996 should satisfy the criteria set out in the new draft Communication, a copy of which was attached; (c) in any event, the aid provided for by Article 6, being addressed to undertakings at least 70% of whose turnover came from the sale of citrus fruits, other fruits and vegetables outside the region, appeared to be export aid, incompatible with the common market. The Commission accordingly invited the national authorities to abolish or modify the measure, or to provide the necessary explanations for a refusal to comply with this request; these explanations were never provided (see points 1 to 3 of the letter dated 2 October 1995 (VI/036342)). In its decision to initiate the procedure, the Commission explicitly doubted that the aid in question was, in fact, export aid.

It follows from the above that Article 6 of Regional Law No 68/95, which merely reproduces the content of Article 48 of Regional Law No 32/91 without referring to it and provides for the past rather than for the future, cannot, strictly speaking, be considered a refinancing of the said Article 48.

(53) It is therefore necessary to establish whether the aid provided for in Article 6 of Regional Law No 68/95 can be considered — as the Italian authorities claim — a subsidised short-term loan compatible with Commission practice.

The rules applying to subsidised short-term agricultural loans in force at the time of notification prohibited the grant of a loan for a single product or operation and limited their length to 12 months.

In its letter dated 23 January 1997 (SG(97) D/455) authorising the refinancing of Article 48 of Regional Law No 32/91 for the last time for the 1992/1993 farm year (aid C 61/96, ex N 408/B/96), the Commission pointed out to the Italian authorities that approving this refinancing in no way predetermined the examination of the new measure notified and examined as part of aid N 750/B/95 (i.e. Article 6 of Regional Law No 68/95), which constituted a new aid scheme (SG(97) D/455 of 23 January 1997) and informed them that Regional Law No 68/95 would be examined in the light of the new rules on 'operating loans' in force after 31 December 1996 (Commission communication on short-term agricultural loans).

However, following a prior suspension of the entry into force of the new rules, by letter dated 19 December 1997 (SG(97) D/10801) the Commission informed the Member States that, starting from 30 June 1998, the Commission communication on subsidised short-term loans in agriculture, as interpreted in the Commission letter dated 19 December 1997 (SG(97) D/10801), would enter into force and that the procedure pursuant to Article 88(2) (the then Article 93(2)) of the EC Treaty

would be initiated in respect of any aid coming into or remaining in force after 30 June 1998 that did not comply with the new rules.

As the aid introduced by Article 6 of Regional Law No 68/95 would apply to the 1993/1994, 1994/1995 and 1995/1996 farm years, and the new Commission Communication on subsidised short-term loans in agriculture would apply in respect of aids coming into or remaining in force after 30 June 1998, it appears that the aid for short-term loans for the 1993/1994, 1994/1995 and 1995/1996 farm years may still be examined under the criteria applicable to subsidised short-term loans before the entry into force of the new communication (30 June 1998).

(54) The criteria in question were as follows: the loans must be 'seasonal credits' to cover general overheads (purchase of input, the payment of workers, etc.), the loan must not be granted for a single product or linked to a single operation, the duration of the loan must not exceed 12 months. It is worth pointing out that the new rules for this type of aid set out in the Commission communication on subsidised short-term loans in agriculture also include the same criteria, together with other stricter requirements, compliance with which was not an issue addressed by the national authorities in their observations.

In the present case the above criteria for subsidised short-term loans do not seem to be satisfied for the following reasons:

(a) Firstly Article 6 of Regional Law No 68/95 concerns only trading undertakings in Sicily at least 70% of whose turnover is accounted for by the sale of fruit and vegetables, including citrus fruits, outside the region. The aid would therefore appear to be granted exclusively for two specific categories of products and linked, mainly, to a single operation (export from Sicily);

(b) Secondly, given the national authorities' vague comments (see recitals 31 and 32), it cannot be excluded that the loans in question might be for longer than 12 months (the national authorities stated that: 'Furthermore, Community rules do not lay down aid intensity limits and allow for annual renewals of the loan … Moreover, the possibility of annual renewals of the loans, allowed under the Community rules and regulations cited, would diminish, where necessary, the effect of the provision in the regional legislation on the redemption of the debts over 36 months. The national authorities claimed that the length of the redemption period should be stressed because the loan amount would start to diminish from the first month in which it was granted, so that its average duration would be much less than 36 months.');

(c) Thirdly, even assuming that the subsidised loan were not granted for a single product (but for two categories of products) or linked to a single operation (but mainly to one type of operation, export), and that the duration of the loan did not exceed 12 months (which is doubtful), since the national authorities stated that 'the agricultural operators had no interest in an aid for the buyers (traders) who, at the time they purchased the goods, could not have reasonably expected a relief proposed under a subsequent law' and that 'Regional Law No 68/95 was approved when the first two farm years covered by it (1993/1994 and 1994/1995) had already ended while the third one had already begun (1995/1996)' the aid does not appear to match the philosophy underlying 'seasonal credits' which is to allow the agricultural operator to cover in advance expenditure linked to the agricultural production cycle pending receipt of income during that same cycle.

This is also confirmed by the following statements of the competent authorities reported at recital 32: '… the case in point does not involve loans for the undertakings' short-term needs, but a rescheduling of their debts resulting from short-term bank loans taken out at high interest rates which have affected the competitiveness of the island's undertakings relative to the rest of Italy and the European Community. (…) The Italian authorities believe that if the undertakings had been able to borrow short-term at an interest rate equivalent to the subsidised rate, which is roughly identical to the rate applied outside Sicily, they would not now have their current debt burden.'

The fact that the 'subsidised loans' concerned do not satisfy the essential requirements for being termed 'subsidised short-term loans' within the meaning of Commission practice seems also to be confirmed by the national authorities when stating that 'it appears that the reference to the volume of sales was introduced because the regional legislator wanted to identify a marketing sector which, by virtue of its turnover, was more at risk than other sectors to traumatic falls in employment. This is why Article 6(4) of Regional Law No 69/95 provides for the cancellation and recovery of the aid, plus interest,

if the beneficiaries do not meet their obligation to maintain employment levels'.

It follows from the above that the aid measures provided for in Article 6 of Regional Law No 68/95, which provide for the past rather than for the future, address exclusively two specific categories of products, are linked mainly to a single operation (export from the region), appear to last more than 12 months, do not appear to correspond to the normal 'philosophy' underlying this type of aid and therefore cannot be considered as 'subsidised short-term loans' compatible with the rules applied by the Commission to this type of aid, both before and after the entry into force of the Commission communication on subsidised short-term loans in agriculture.

(55) In their comments, the national authorities have contested any description of the aid as export aid by stressing in particular that 'sales outside the region' does not necessarily and exclusively mean export out of Italy. The Commission agrees that 'sales outside the region' need not necessarily and exclusively mean export out of Italy, and so it will no longer pursue this line in its examination of the aid under this Decision. Nevertheless, as the Commission noted when initiating the procedure, since the method for calculating the aid (see recital 23) seems to correspond to the method for calculating an export aid and given that the national authorities have based their comments on a literal interpretation of Article 6 of Regional Law No 68/95, without supplying documentary evidence on, for instance, exports from the region to elsewhere in Italy and out of Italy, the Commission cannot rule out the fact that the aid may be a de facto export aid.

(56) In their observations, the national authorities have not referred to the possibility that the aid provided for in Article 6 of Regional Law No 68/95 may satisfy the requirements for rescuing or restructuring companies in difficulty. In accordance with the relevant Community guidelines ([16]) rescue aids must: consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates; be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies); be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial and agricultural situations in other Member States. A further condition is that, in principle, the rescue should be a one-off operation. In accordance with the same guidelines, restructuring aids must satisfy all the following general conditions: (a) they must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions; (b) measures must be taken to offset as far as possible adverse effects on competitors; (c) the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view; (d) the company must fully implement the restructuring plan that was submitted to and accepted by the Commission and must discharge any other obligations laid down by the Commission decision; (e) the implementation, progress and success of the restructuring plan must be monitored by requiring the submission of detailed annual reports to the Commission. No evidence that the notified measure complies with the above criteria has been either provided by the Italian authorities or is apparent from the information supplied.

(57) In their comments the national authorities have not referred to the possibility that the aid provided for in Article 6 of Regional Law No 68/95 may satisfy the requirements set by the rules previously applied by the Commission for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out. No evidence that the notified measure complies with the requirements set out in recital 45 has either been provided or is apparent from the information supplied by the national authorities.

(58) In their observations, the national authorities have vaguely referred to a connection between the measure and the maintenance of employment. However the national authorities have offered no evidence that the aid observes the spirit and the letter of the Community guidelines on employment ([17]). In the view of the national authorities (see recital 37): 'it is clear from the text of the provision under examination that the reference to the volume of sales was introduced because the regional legislator wanted to identify a marketing sector which, by virtue of its turnover, was more exposed than other sectors to traumatic falls in employment. This is why Article 4(4) of Regional Law No 69/95 provides for the cancellation and recovery of the aid if the beneficiaries do not meet their obligation to maintain employment levels.'

([16]) See footnote 5.

([17]) OJ C 334, 12.12.1995, p. 4.

It should be noted that, while Article 6(4) of Regional Law No 69/95 provides for the cancellation and recovery of the aid if the beneficiaries fail in their obligation to maintain employment levels, the aid provided for in Article 6 does not appear to comply with either the spirit or the letter of the guidelines on employment aid, and with points 16 and 22 of those guidelines in particular (on aid for maintaining employment). It should be noted in particular that: (a) the aid is not adopted or designed specifically as an aid to protect employment; (b) the aid amount does not depend on the number of employees; and (c) its form bears no relationship to the labour costs. So, even if it can indirectly contribute to maintaining employment, as is the case in many other aid categories, the aid provided for in Article 6 of Regional Law 69/95 cannot be deemed employment aid within the meaning of the relevant Community guidelines.

(59) Therefore the aid provided for in Article 6, which is clearly not an aid for investment, does not appear to satisfy either the requirements for subsidised short-term loans, or for rescuing or restructuring companies in difficulty, or for maintaining employment, or any of the requirements for exemption set by some other legal basis, but would instead appear to be pure operating aid granted to reschedule past debts, whose effect disappears when the payment of aid ceases.

(60) In the agriculture and fisheries sectors, which cover the production, processing and marketing of Annex I products, it has been constant Commission policy for many years to prohibit the payment of operating aid in all regions, including regions which fall under Article 87(3)(a) of the Treaty. By their very nature, such aid is likely to interfere with the mechanisms of the common organisation of the market, which takes precedence over the competition rules laid down in the Treaty ([18]). This policy has been confirmed many times ([19]).

(61) Since the Italian authorities' comments confirm that the objective of the measure under examination is to relieve the beneficiaries of their debt burden, and that there is no counterpart on the part of the beneficiaries which might benefit the development of certain economic activities or certain regions, having regard to the principles laid down in the case law ([20]) the Commission is therefore bound to conclude that the measure cannot benefit from the derogations under Article 87(3)(a) and (c) of the Treaty.

(62) Article 7 of Regional Law No 68/95 authorises the IRCAC, under Regional Law No 37/78, to grant cooperatives of young people with indebtedness loans at a reduced rate of interest as working capital. Regional Law No 37/78 (since repealed) provided for an aid scheme for young entrepreneurs permitting the grant of: (a) aid in the form of grants and reduced-rate loans for investments and (b) aid in the form of reduced-rate loans for running undertakings during the first three years after those investments had been made and brought on line. Because of delays in making investments, a number of cooperatives (25 according to the information available) could not begin production before the end of the period of grace (three years) for repaying the loans taken out to make the investments and consequently could not repay them. These cooperatives were therefore ineligible for the operating loan. Article 7 of Regional Law No 68/95 permits, in substance, the grant of one of the aid measures provided for in Regional Law No 37/78 to undertakings which, under that Law, do not fulfil the eligibility criteria for that aid. In particular the Article in question allows those undertakings access to the operating loans provided for in Regional Law No 37/78 provided that the loan granted under the provisions of that Law is equal to or greater than the debt incurred (on financing the investment). The IRCAC sets unpaid debts off against new loans (i.e. part of the new loan is used to pay off the loan taken out to make the investments).

(63) In its decision to open the procedure, the Commission noted that the aid must be examined in the light of the criteria used by the Commission for examining aid intended to reduce the financial cost of loans taken out to finance investments already carried out (criteria applicable to agricultural and fisheries undertakings). In accordance with these criteria: (a) the cumulated grant equivalent of the aid granted when the loans were taken out and the aid in question may not exceed the rate generally allowed by the Commission for investment aid (for the production and the processing and marketing of Annex II (now Annex I) products); (b) any sectoral limits must be respected; (c) the aid in question must follow adjustments in the rate of interest on new loans to take account of changes in the price of money (the aid must be less than or equal to the change in the rate for new

([18]) Judgment of the European Court of Justice in Case 177/78 Pigs and Bacon Commission v McCarren [1979] ECR 2161.

([19]) XXth Report on Competition Policy, 1990, paragraphs 337 and 347; XXIst Report on Competition Policy, 1991, paragraphs 316 and 317; XXIInd Report on Competition Policy, 1992, paragraphs 503 and 504; XXIIIrd Report on Competition Policy, 1993, paragraphs 547 and 548; XXVth Report on Competition Policy, 1995, pp. 238 to 240; XXVIth Report on Competition Policy, 1996, pp. 251 to 255.

([20]) In particular, judgment of the Court of First Instance of 8 June 1995 in Case T-459/93, Siemens v Commission [1995] ECR II-1675, and the case law cited therein.

loans) or must be for agricultural undertakings presenting guarantees of viability, particularly where the financial charges resulting from existing loans are such that there is a risk that the undertakings could be placed in danger or could fail; (d) the difficulties of the undertakings must be the result of external rather than internal factors.

(64) The comments made by the national authorities do not allow the Commission to verify that the above criteria are satisfied and therefore to conclude that the aid can be considered compatible with the common market in the light of those criteria. The national authorities have provided no information enabling the Commission to verify that the criteria indicated at recital 63(a) and (b) have been complied with. As regards the criterion under recital 63(c), although the Italian authorities have given assurances that the aid will be granted only to cooperatives, including agricultural ones, presenting guarantees of viability, they have not specified either on what basis they estimate that these undertakings offer guarantees of viability, or the kind of guarantees offered. Furthermore, not even the requirement mentioned at recital 63(d) would seem to be satisfied, because, on the one hand, it cannot be ruled out that the difficulty of the undertakings in question was caused by internal factors (as the undertakings are mainly established by young unemployed people) and, on the other hand, it is doubtful, without further details, whether external factors such as those mentioned by the national authorities ('the amendments to Regional Law No 38/78 and the need to adapt the plants to the new sectoral legislation, which caused long delays in completing the projects') can cause a difficulty that makes the undertakings qualify for, and require, this type of aid.

(65) The national authorities have also pointed out that the enterprises qualifying for the aid provided for in Article 7 of Regional Law 68/95 might also satisfy the requirements for rescue aid under the Community guidelines for rescuing and restructuring firms in difficulty. Point 3.1 of the rules on rescue, which apply to new State aid in the agricultural sector from 1 January 1998 ([21]) and replace the rules cited in the decision to initiate the procedure, states that, 'to be authorised by the Commission, the rescue aids (…) must: — consist of liquidity help in the form of loan guarantees or loans bearing normal commercial interest rates; — be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies); — be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; — be warranted on the grounds of serious social difficulties and have no undue adverse effects on the industrial and agricultural situations in other Member States. A further condition is that, in principle, the rescue should be a one-off operation. A series of rescue operations which effectively maintain the status quo, postpone the inevitable and in the meantime transfer the attendant industrial, agricultural and social problems to other more efficient producers and other Member States is clearly unacceptable.'

([21]) See footnote 5.

(66) The national authorities noted that the intended beneficiaries of the aid provided for in Article 7 of Regional Law No 68/95 were 'undertakings' in serious financial difficulty even before commencing production and said that: (a) the aid in question would be a contribution to the loan interest at a rate of 4%, equal to the rate applied by the IRCAC to the loans for cooperatives; (b) the measure provided for an operating loan allowing cooperatives run by young people to start up or continue the activity for which the project financed by Regional Law No 37/78 was implemented; (c) the aid in question, which was at least equivalent to the debt owing and was paid in a single tranche or as one-off aid, was granted to resolve a situation of indebtedness preventing the cooperative from dealing successfully with the start-up or initial management costs of the activity, so allowing it to pay the loan instalments as they became due; (d) the aid was granted to a sector in serious difficulties and characterised by high regional unemployment.

(67) The comments made by the national authorities do not enable the Commission to verify that the criteria described in its communication on aid for rescuing companies in difficulty have been complied with. In particular: (a) no assurance has been provided that the loan would bear a normal commercial interest rate (it is worth pointing out that at the time of the notification the loan interest concerned would have been 'a rate of 4%, equal to the rate applied by the IRCAC to the loans for cooperatives', while the reference rate applied by the Commission to Italy was 11,35%, and is currently 4,76%); (b) no assurance has been provided that the aid would be paid only for the time needed (generally not exceeding six months) to devise the necessary and feasible recovery plan; (c) no guarantee has been given that the aid would be restricted to the amount needed to keep a firm in business (for example, covering wage and salary costs and routine supplies); on the contrary, the undertakings concerned were 'in serious financial difficulty even before starting a production activity' and the aid, being at least equivalent to the expired debt, would be paid in order to 'resolve a situation of indebtedness preventing the cooperative from dealing successfully with the start-up or initial management costs of the activity, so allowing it to pay the loan instalments as they became due' (see recital 38); (d) there is no guarantee that the aid would have no undue adverse effects on the industrial and agricultural situations in

other Member States. Moreover, although the national authorities stated that the aid was aimed at a sector in serious difficulty and characterised by high unemployment, and the cooperatives are set up by the young unemployed, it cannot be concluded that the measure per se is rescue aid justified on grounds of serious social difficulties. Furthermore, although the national authorities stated that 'the aid in question, which is at least equivalent to the debt owing and is paid in a single tranche or as one-off aid, is granted to resolve a situation of indebtedness', the fact that the 'undertakings'were in serious financial difficulty even before starting production means that the condition 'that, in principle, the rescue should be a one-off operation', cannot be deemed to be satisfied.

(68) In their comments, the national authorities have not referred to the possibility that the aid provided for by Article 7 of Regional Law No 68/95 may satisfy the requirements for restructuring companies in difficulty. In accordance with the Community guidelines on State aid for rescuing and restructuring firms in difficulty [22] restructuring aids must satisfy all the following general conditions: (a) they must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions; (b) measures must be taken to offset as far as possible adverse effects on competitors; (c) the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken and must be related to the benefits anticipated from the Community's point of view; (d) the company must fully implement the restructuring plan that was submitted to and accepted by the Commission; (e) the implementation, progress and success of the restructuring plan will be monitored by requiring the submission of detailed annual reports to the Commission. No evidence that the notified measure complies with the above criteria has been either provided or is apparent from the information provided.

(69) Since the conditions for rescue or restructuring aids mentioned above are not satisfied, no mention of a 'feasible recovery plan' has been made, no evidence of possible improvements to the financial efficiency of the undertakings concerned has been produced by the national authorities and, from the information provided, it appears that the aid is not linked to new investments and does not satisfy the requirements of any other legal basis allowing for derogation from Article 87 of the Treaty, the aid in question would appear to be pure operating aid to relieve the beneficiary undertakings of their debts whose effect disappears when the payment of aid ceases. Furthermore, in this context, the Commission reserves its position on the compatibility, with the rules on State aid which it currently applies, of the original aid scheme provided for in Regional Law No 37/78, to which Article 7 of Regional Law No 68/95 refers.

(70) In the agriculture and fishering sectors, which cover the production, processing and marketing of Annex I products, it has been constant Commission policy for many years to prohibit the payment of operating aid in all regions, including regions which fall under Article 87(3)(a) of the Treaty. By their very nature, such aid is likely to interfere with the mechanisms of the common organisations of the market, which take precedence over the competition rules laid down in the Treaty [23]. This policy has been confirmed many times [24].

(71) Since the observations of the Italian authorities confirm that the objective of the measure under examination is to relieve the beneficiaries of their debt burden, and that there is no counterpart on the part of the beneficiaries which might be considered to benefit the development of certain economic activities or certain regions, having regard to the principles laid down in the case law [25], the Commission is therefore bound to conclude that the measure cannot benefit from the derogations under Article 87(3)(a) and (c) of the Treaty.

V. **CONCLUSIONS**

(72) In view of the above, it must be concluded that the aid envisaged by the Regional Law under examination, insofar as applicable to the agriculture and fisheries sectors, constitutes State aid within the meaning of Article 87(1) of the Treaty which cannot qualify for any of the derogations provided for in Article 87(2) or (3).

(73) However, in view of the fact that Article 9 of Regional Law No 68/95 under examination expressly makes the aid planned under the Law conditional on the outcome of the procedure laid down in the then Article 93(2) and (3) (now Article 88(2) and (3)) of the Treaty and that the

[22] See footnote 5.

[23] See footnote 18.
[24] See footnote 19.
[25] See footnote 20.

Italian authorities specified that the financing provided for in Articles 1 and 6 of the Regional Law had lapsed in its entirety (see recital 28), it appears that all procedures for the payment of the aid pursuant to the measure under examination have been suspended and that there is therefore no need to provide in this Decision for recovery of the aid introduced by Regional Law No 68/95,

HAS ADOPTED THIS DECISION:

Article 1

The State aid introduced by Articles 1, 3, 5, 6 and 7 of Sicilian Regional Law No 68 of 27 September 1995 for agricultural and fisheries enterprises is incompatible with the common market.

Article 2

Italy shall withdraw the aid schemes referred to in Article 1.

Article 3

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

Article 4

This Decision is addressed to the Italian Republic.

Done at Brussels, 22 December 1999.

For the Commission

Franz FISCHLER

Member of the Commission