II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 25 October 2000

concerning the aid scheme introduced by the region of Sardinia (Italy) to promote and add value to organic farming

(notified under document number C(2000) 3153)

(Only the Italian text is authentic)

(2001/105/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 above provision,

Whereas:

I. **Procedure**

(1) By letter of 3 March 1994, recorded as received on 17 March 1994, the Italian Permanent Representation to the European Union notified, pursuant to Article 93(3) (now Article 88(3)) of the Treaty, Sardinian Regional Law No 9/94 (hereinafter 'the Regional Laws') laying down rules to promote and add value to organic farming. The case was entered in the register under Aid No N 167/94.

(2) By letters of 25 April 1994 and 23 August 1994 the Commission asked for further information on this Law. The Italian authorities replied by letters of 14 July and 17 October 1994 and by fax of 14 February 1995.

(3) The information provided by the Italian authorities showed that the aid provided for in the Regional Law had already been introduced before that Law was notified.

(4) Accordingly, the aid covered by the Regional Law, to which the number N 167/94 had been assigned, was withdrawn from the register of notified aids and entered in that of non-notified aids under the number NN 139/94.

(5) By letter of 27 July 1995, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid provided for in Articles 9 and 12(1) of the Regional Law.

(6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* [1]. The Commission invited interested parties to submit their comments.

(7) The Commission received no comments from interested parties.

II. **Description**

(8) Article 9(1) of the Regional Law provides for grants equal to 60 % of eligible expenditure to be made for land improvement operations relating to organic farming.

(9) The aid provided for in Article 9(1) also covers organic processing systems and technologies for agricultural products.

(10) Article 9(2) of the Regional Law provides for loans for the investments referred to in Article 9(1) at a reduced interest rate which may be cumulated with the aid granted under Article 9(1) up to a limit of 75 % of the eligible expenditure.

(11) The beneficiaries of the aid provided for in Article 9(1) and (2) of the Regional Law are agricultural enterprises which have been assigned the mark provided for by Article 5 of that Law.

[1] OJ C 294, 9.11.1995, p. 19.

(12) Article 5 of the Regional Law provides for a collective regional mark denoting both the origin and the quality of products to distinguish products obtained using organic production and processing methods.

(13) Article 12(1) of the Regional Law provides for the use of the financial resources referred to in paragraph 6(6) of Regional Law No 39/73 for a promotional campaign for organic products.

(14) The budgets provided for in the Regional Law are as follows:

— in the case of the aid referred to in Article 9, part of an allocation amounting to ITL 1 650 billion (around EUR 852 000) per year; this allocation is also to finance the aids provided for in Articles 10 and 11 of the Law, to which the Commission has not raised any objection,

— in the case of the aid referred to in Article 12(1), part of an allocation amounting to ITL 410 million (around EUR 211 750) in 1994, and ITL 210 million (approximately EUR 108 450) in the following years; this allocation is also to finance the aid provided for in Articles 2(6)(c), 8 and 12(2) of the Regional Law, to which the Commission has not raised any objection.

(15) The Commission initiated the procedure provided for in Article 88(2) of the Treaty because it had doubts as to the compatibility of the aid scheme with the common market. These centred on the following points:

Article 9

(16) Aid was granted under Article 9(1) and (2) for land improvement operations on the one hand and investment in the processing of organic products on the other.

(17) The aid for land improvement operations (primary production sector) fell within the scope of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures [1], as amended by Regulation (EC) No 409/97 [2], and had to be examined separately on the basis of that Regulation.

(18) Since neither the provisions of Article 9 nor the information provided by the Italian authorities confirmed that agricultural enterprises granted aid under Article 9 had to satisfy the terms of Article 5 of Regulation (EEC) No 2328/91, this aid could fall within the scope of either Article 12(1) or (2) of that Regulation. In the former case it had to be examined under Articles 92 and 93 (now Articles 87 and 88) of the Treaty. (In the latter case Articles 92 and 93 of the Treaty did not apply since under Article 35(2) of the above Regulation 'the provisions of Articles 92, 93 and 94 of the Treaty, with the exception of Article 92(2), shall not apply to the aid measures governed by Articles 12(2), (3) and (4)...').

(19) If Article 12(1) of Regulation (EEC) No 2328/91 applied, it would have to be concluded that the maximum limits authorised by the Commission for this type of investment (75 % in less-favoured areas as defined in Directive 75/268/EEC and 35 % in other areas) were only met in the case of investments in less-favoured areas.

(20) Aid granted under Article 9 in the primary production sector could not therefore be considered compatible with the common market in the case of investments outside less-favoured areas.

(21) Aid for investment in processing under Article 9(1) could qualify under the derogation provided for in Article 92(3)(c) (now Article 87(3)(c)) of the Treaty, as facilitating development of the sectors concerned without adversely affecting trading conditions to an extent contrary to the common interest for the following reasons:

1. Such aid could be considered as satisfying the selection criteria laid down in point 2 of the Annex to Commission Decision 90/342/EEC of 7 June 1990 for investments for improving the processing and marketing conditions for agricultural and forestry products [3], applicable by analogy in the event of the application of the competition rules, in view of the assurances provided by the Italian authorities that they would observe the sectoral limits laid down in point 2 of the Annex to Commission Decision 90/342/EEC;

2. The levels of aid were lower than the maximum limits generally authorised by the Commission for aid of this type in Objective 1 regions.

(22) However, only agricultural enterprises assigned the mark provided for by Article 5 of the Regional Law could be granted support under Article 9, and the Article 5 mark was a regional one denoting both the origin and the organic character of products. The fact that it was additional to the use of the term 'organic' and not a replacement for it in no way affected its link with the products' origin. This was borne out by Article 5(6) imposing a penalty if the mark was used for products not obtained organically or containing or obtained from raw materials not coming from Sardinia.

[1] OJ L 218, 6.8.1991, p. 1.
[2] OJ L 62, 4.3.1997, p. 4.
[3] OJ L 163, 29.6.1990, p. 71.

(23) Article 5 of the Regional Law, by according favourable treatment to regional products, could, given the Court of Justice's invariable ruling in similar cases, constitute an infringement of Article 30 (now Article 28) of the Treaty as being equivalent to quantitative restrictions, without being justifed under Article 36 (now Article 30). It also infringed Article 12 of Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs [1], as last amended by Regulation (EC) No 2020/2000 [2], which stipulates that 'Member States may not, on grounds relating to the method of production, to labelling or to the presentation of that method, prohibit or restrict the marketing of products'.

(24) Given the above arguments, none of the derogations provided for in Article 92(2) and (3) (now Article 87(2) and (3)) were applicable. The aid appeared therefore liable to distort competition and affect trade between the Member States.

Article 12(1)

(25) On the matter of aid for the promotion of organic products, the Italian authorities guaranteed compliance with the criteria in the Framework for national aids for the advertising of agricultural products and certain products not listed in Annex II to the EC Treaty, excluding fishery products [3].

(26) However, this affirmation clashed with another statement by the Italian authorities that the promotional measures would cover the products of certain specific enterprises (consorzi di cooperative). Point 2.2 of the Community Framework specifically states that 'the common interest can in no circumstances be advanced as a justification for aids for advertising relating directly to the products of one or more specific firms; these would be nothing more than operating aids, as such incompatible with the common market'.

(27) Since the Italian authorities provided no information on the particulars of the promotional campaign envisaged the Commission had no grounds for concluding that the campaign would not be restricted to products for which the mark introduced by Article 5 of the Regional Law had been used. Moreover, in the Light of the considerations set out in regard to the provisions applicable to the mark (see recital 22), none of the derogations provided for in Article 92(2) or (3) of the Treaty (now Article 87(2) and (3)) was applicable in this case.

III. **Comments by Italy and Commission response**

(28) By letter of 23 January 1996, recorded as received on 31 January 1996, the Italian Permanent Representation to the European Union forwarded the reply from the Italian authorities to the Commission's comments in its decision to initiate the procedure.

(29) With regard to the land improvement operations, the Italian authorities indicated that a distinction would be made between less-favoured and other areas in terms of percentages of aid, with 60 % in the case of less-favoured areas and 35 % for other areas.

(30) Concerning the regional mark, the Italian authorities attached a draft Law amending Article 5 of the Regional Law, replacing the regional mark with the list provided for in Article 8(3) of Regulation (EEC) No 2092/91. The draft Law also amends Article 9 of the Regional Law, replacing the reference to the use of the regional mark with a reference to entry in the abovementioned list.

(31) With respect to Article 12(1), the Italian authorities repeated that the criteria laid down by the Community with respect to the advertising of agricultural products would be complied with, and pointed out that, by abandoning the regional mark, they had also removed any possibility of specific enterprises being accorded favourable treatment, since the promotional campaign would benefit all organic production obtained in accordance with the provisions of Regulation (EEC) No 2092/91.

(32) Finally, the Italian authorities stated that the Regional Law had not been implemented.

(33) Having examined this information, the Commission called upon the Italian authorities, by letter dated 22 July 1996 (Reference: 29692), to transmit the definitive text of the draft Law referred to in point 30. It also drew the attention of the Italian authorities to the following:

With respect to the aid granted under Article 9(1) and (2) of the Regional Law, in the primary production sector

1. The Commission, in its letter of 27 July 1995 (see recital 5), pointed out that the information on beneficiaries did not permit it to establish whether, in the case in point, the legal basis for an evaluation had to be assumed to be Article 12(1) or (2) of Regulation (EEC) No 2328/91.

[1] OJ L 198, 22.7.1991, p. 1.
[2] OJ L 241, 26.9.2000, p. 39.
[3] OJ C 302, 12.11.1987, p. 6.

2. It therefore examined the aid under Articles 92 and 93 (now Articles 87 and 88) of the Treaty, assuming that Article 12(1) applied (in other words, that the beneficiaries satisfied the conditions laid down in Articles 5, 6, 7, 8 and 9 of Regulation (EEC) No 2328/91), and concluded that, in this case, the aid was not compatible with the common market since it exceeded the maximum authorised limits.

3. Neither the information provided by the Italian Government in its letter of 23 January 1996 (see recital 28) nor the draft Law amending the Regional Law provided any new details regarding compliance with the conditions which had to be met by the beneficiaries.

4. It was not possible, therefore, to rule out that the aid in question fell within the scope of Article 12(2) of Regulation (EEC) No 2328/91, as a result of which it would have to be reduced to at least one-quarter less than the aid granted pursuant to Article 7 of that Regulation.

With respect to the aid granted under Article 9(1) and (2) of the Regional Law, for the processing of organic products

5. The draft Law notified by the Italian Government does not contain any reference to the sectoral limits applicable to the aid for investment in the processing and marketing of agricultural products; the text of the new Community guidelines for State aid in connection with investments in the processing and marketing of agricultural products, which entered into force on 1 January 1996 ([1]), was sent to the Italian Government by letter dated 20 October 1995.

6. The amended version of the Regional Law should therefore take account of the new Community guidelines.

(34) The Commission did not receive a reply to its letter of 22 July 1996. It does not therefore have a final version of the draft Law referred to in point 30.

(35) By letter dated 23 August 2000, recorded as received on 28 August 2000, the Italian Permanent Representation to the European Union asked the Commission to take a final decision on the basis of the information available to it, in accordance with Article 7(7) 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 ([2]) (now Article 88).

([1]) OJ C 29, 2.2.1996, p. 4.
([2]) OJ L 83, 27.3.1999, p. 1.

IV. **Assessment**

(36) The Italian authorities did not reply to the Commission's letter of 22 July 1996, but have asked the Commission to take a decision on the basis of the information available to it. After the letter was dispatched the Commission did not receive any new information to resolve the doubts it had expressed when initiating the procedure which the draft Law sent by the Italian authorities on 23 January 1996 did not dispel. Article 7(7) of Regulation (EC) No 659/1999 requires the Commission to take a negative decision if the information provided is not sufficient to establish compatibility. In the case under consideration, on the basis of the information available to it, the Commission finds as follows:

1. With regard to the aid provided for in Article 9(1) and (2) of the Regional Law for the primary production sector, it is still not possible to determine whether the legal basis applicable is Article 12(1) or (2) of Regulation (EEC) No 2328/91.

2. If Article 12(1) applies, which is the scenario the Commission adopted when examining the aid, the rate of 60 % provided for in the original Regional Law could be accepted for less-favoured areas when the aid is examined under Articles 92 and 93 of the Treaty (since the maximum level permitted by the Commission in that case for the investments in question is 75 %) but would be excessive in the case of other areas, for which the maximum rate accepted by the Commission for the investments concerned is 35 %. In their letter of 23 January 1996 the Italian authorities said that they would reduce the rate of aid in areas outside less-favoured areas to 35 %. However, the draft amending Law attached to their letter contains no reference to these rates. The Commission is unable to determine therefore whether the adjustment has in fact been made, particularly as the Italian authorities have not forwarded the final version of the amending Law.

3. Furthermore, in their letter of 23 January 1996 the Italian authorities did not provide any information concerning compliance with Articles 5, 6, 7, 8 and 9 of Regulation (EEC) No 2328/91, which are to be observed if Article 12(1) is to apply.

4. In view of the foregoing, it is still not possible to rule out the need for the aid to be examined in the light of Article 12(2) of Regulation (EEC) No 2328/91. Even though, under Article 35(2) of that Regulation, Articles 92 and 93 of the Treaty do not apply to aid measures governed by Article 12(2), it should be emphasised that, where that Article applies, the rate of aid must be at least a quarter lower than aid granted under Article 7 of that Regulation, in other words below the level indicated in the undertakings given by the Italian authorities.

5. The Commission is unable, therefore, to establish the compatibility with the common market of the aid provided for in Article 9(1) and (2) of the Regional Law for the primary production sector, where Article 12(1) of Regulation (EEC) No 2328/91 applies, and cannot rule on the aid measures in this Decision where Article 12(2) applies since Article 35(2) of that Regulation provides that 'the provisions of Articles 92, 93 and 94 of the Treaty, with the exception of Article 92(2), shall not apply to the aid measures governed by Articles 12(2), (3) and (4) …'.

6. On the matter of the aid granted under Article 9(1) and (2) of the Regional Law for the organic processing of agricultural products, the Commission expressed doubts concerning its compatibility with the common market because the aid was reserved for holdings which had been assigned a mark that appeared to be in breach of Article 28 of the Treaty on the grounds that it accorded favourable treatment to regional products only and could, given the Court of Justice's invariable ruling in similar cases, constitute an infringement of Article 30 (now Article 28) of the Treaty as being equivalent to a quantitative restriction, without being justified under Article 36 (now Article 30) (see recitals 22, 23 and 24).

7. The draft Law amending the Regional Law replaced the mark with the list referred to in Article 8(3) of Regulation (EEC) No 2092/91 and amended Article 9 of the Regional Law by replacing the reference to the use of the regional mark with a reference to entry in the above list.

8. However, in the absence of a response from the Italian authorities to the Commission's letter of 22 July 1996, it is not possible to determine whether the draft amendment to the Regional Law had been published and what its final contents are. As a result, it is not possible either to establish whether all references to the mark concerned have indeed been removed from the Regional Law and consequently whether the aid did not continue to be reserved for holdings producing products obtained from raw materials coming from Sardinia only (see recital 22).

9. As indicated above, the mark appears to be in breach of Article 28 of the Treaty. The Commission, when examining State aids under the powers conferred on it by Article 88 of the Treaty, cannot authorise Member States to derogate from the provisions of Community law other than those for the application of Article 87(1) of the Treaty [1].

10. In addition, regarding the sectoral limits on investments, the Italian authorities gave assurances that they would observe the sectoral limits laid down in Decision 90/342/EEC (see recital 21) but failed to act on these assurances in the draft amending Law attached to their letter of 23 January 1996.

11. In view of the above, the Commission is still unable to establish the compatibility of the aid granted under Article 9(1) and (2) of the Regional Law for the organic processing of agricultural products.

12. With regard to the aid for the promotion of organic products granted under Article 12(1) of the Regional Law, the Italian authorities affirmed in their letter of 23 January 1996 that the criteria set by the Community for the promotion of agricultural products would be observed and that with the removal of the regional mark the possibility of according favourable treatment to specific enterprises would disappear, since the promotional campaign would benefit all products obtained in accordance with Regulation (EEC) No 2092/91.

13. However, since the Italian authorities did not reply to the letter from the Commission of 22 July 1996, it is not possible to determine whether all references to the mark have been removed from the Regional Law and whether, consequently, the promotional campaign is no longer likely to benefit specific enterprises only. Furthermore, since the Italian authorities simply repeated that the criteria laid down by the Community for the promotion of agricultural products would be observed, without providing further details in spite of the doubts expressed by the Commission in the letter initiating the procedure, it is not possible to determine the rate of aid which the promotional campaign would qualify for and the arrangements for carrying it out.

(37) Under the procedure for examining the aid, the Member State is responsible for providing information to address the doubts expressed by the Commission in its examination of the aid in question. In this case, in view of the comments set out in recital 36, the Commission continues to have serious doubts as to whether the aid is compatible with the common market. If it cannot establish whether the aid is compatible with the common market because it does not have anough information to do so, the Commission cannot authorise the aid in question [2], which, because it is not possible to determine whether it qualifies for one of the derogations in Article 87 of the Treaty, is likely to distort competition and affect trade between Member States.

[1] Judgment of the Court of First Instance in Case T-184/97, *BP Chemicals Ltd* v *Commission of the European Communities*.

[2] See Article 7(7) of Regulation (EC) No 659/1999, cited by the Italian authorities when requesting that the Commission take a final decision on the basis of the information available.

(38) Lastly, in the absence of information, the Commission is unable to rule out the possibility that the aid has been granted since the draft Law referred to in recital 30 was forwarded.

V. **Conclusions**

(39) In view of the foregoing, the Commission finds that:

1. If Article 12(1) of Regulation (EEC) No 2328/91 applies, the aid for the primary production sector provided for in Article 9 of Regional Law No 9/94 does not meet the conditions for any of the derogations provided for in Article 87(2) and (3) of the Treaty.
2. The aid for the processing sector provided for in Article 9 of Regional Law No 9/94 and the aid provided for in Article 12(1) of that Law do not meet the conditions for any of the derogations provided for in Article 87(2) and (3) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

The aid for the primary production sector provided for in Article 9 of Sardinian Regional Law No 9/94 is incompatible with the common market where it is granted under Article 12(1) of Regulation (EEC) No 2328/91.

Article 2

The aid for the processing sector provided for in Article 9 of Sardinian Regional Law No 9/94 and the aid provided for in Article 12(1) of that Law are incompatible with the common market.

Article 3

Italy shall abolish the aid measures referred to in Articles 1 and 2.

Article 4

1. Italy shall take all measures necessary to recover from the recipients any aid as referred to in Articles 1 and 2 that may have been unlawfully granted to them.

2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of this Decision. The aid to be recovered shall include interest from the date on which it was granted to the recipient until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

Article 5

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

Article 6

This Decision is addressed to the Italian Republic.

Done at Brussels, 25 October 2000.

For the Commission

Franz FISCHLER

Member of the Commission