COMMISSION

COMMISSION DECISION

of 20 September 2000

on the aid scheme which Italy is planning to implement pursuant to Article 14 of the Sardinia Region Law of 4 February 1998 laying down rules for speeding up expenditure of EAGGF Guidance Section funds and on urgent measures for agriculture

(notified under document number C(2000) 2753)

(Only the Italian text is authentic)

(2001/95/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 that Article and having regard to their comments [1],

Whereas:

I

Procedure

(1) By letter of 18 March 1998 Italy notified the Commission of the aid measures which it planned to grant pursuant to the Sardinia Regional Law of 4 February 1998 laying down rules for speeding up expenditure of EAGGF Guidance Section funds and on urgent measures for agriculture (hereinafter referred to as the Regional Law). By letters of 11 August and December 1998 and 4 March 1999 Italy forwarded further information to the Commission.

(2) By letter SG (99) D/3464 of 17 May 1999 the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid measures provided for in Article 14 of the Regional Law. By the same letter the Commission took formal note of the Italian authorities' undertaking to repeal Articles 10 to 13 and 15, 17, 19 and 21 of the Regional Law and it informed Italy that it had no objections to the measures provided for in Articles 6, 16, 18, 20, 22 and 23.

(3) The Commission's 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 scheme concerned.

(4) The Commission received no comments from interested parties. Italy submitted its comments by letter of 22 June 1999.

[1] OJ C 220, 31.7.1999, p. 4.
[2] See footnote 1.

II

Description

(5) Under Article 14 of the Regional Law, by way of compensation for losses caused in the past by adverse climatic events and animal and plant diseases the Sardinia Region may grant direct aid of up to 100 % of the loss incurred. The Regional Law expressly provides that such aid may be paid to complement aid which has already been granted in respect of such occurrences. Where the funds do not suffice for all, priority is given to those who have or who are in the process of obtaining consolidation loans, i.e. loans to consolidate past instalments and arrears on interest, which they were not able to pay because of production losses caused by the disaster concerned.

(6) In their correspondence the Italian authorities state that the measure is intended to provide compensation for damage resulting from 24 climatic events that have occurred in Sardinia since 1988, as summarised in the table below, and to compensate for damage caused by outbreaks of animal disease that occurred between 1990 and 1997. The Italian authorities emphasise that the applications for compensation in respect of all the losses meet the conditions usually applied by the Commission to such aid and that they were submitted with suitable supporting documents at the time, but that aid could not be paid owing to a lack of budget resources.

Event	Legal Basis Law No 590, of 15 October 1981; Law No 185, of 14 February 1992; Law No 198 of 13 May 1985; Regional Law No 11 of 20 March 1989 (Aid measure No 91/89 approved by Commission) Regional Law No 12 of 10 June 1974; Regional Law No 28, of 10 April 1978
1. Drought — 1988/1989 (Sardinia)	Departmental Decree 2820/89
2. Drought — 1989/1990 (Sardinia)	Departmental Decree 48/91 — 378/91
3. Torrential rains — November 1989 (Cagliari)	Departmental Decree 1658/90
4. Violent winds — February 1990 (Cagliari)	Departmental Decree 1682/91
5. Violents winds — March 1990 (Nuoro)	Departmental Decree 1659/90
6. Hailstorm — August 1990 (Cagliari)	Departmental Decree 78/SI/91
7. Torrential rains — October 1990 (Cagliari)	Departmental Decree 81/SI/91
8. Hailstorm — October 1990 (Cagliari)	Departmental Decree 49/SI/91
9. Persistent rains — December 1990 (Sassari)	Departmental Decree 82/SI/91
10. Winds — April 1991 (Oristano)	Departmental Decree 115/SI/92
11. Frosts — April 1991 (Cagliari)	Departmental Decree 116/SI/92
12. Hailstorms — April and May 1991 (Cagliari)	Departmental Decree 114/SI/92
13. Torrential rains — November 1991 (Sassari)	Departmental Decree 19/SI/93
14. Violents winds — December 1991 (Oristano)	Departmental Decree 18/SI/93
15. Violent winds — December 1991 (Sassari)	Departmental Decree 20/SI/93
16. Frosts — December 1991/January 1992 (Cagliari)	Departmental Decree 17/SI/93
17. Freezing wind — February/March 1993 (Sassari)	Departmental Decree 161/SI/93
18. Violent winds — March 1993 (Cagliari)	Departmental Decree 160/SI/93

Event	Legal Basis Law No 590, of 15 October 1981; Law No 185, of 14 February 1992; Law No 198 of 13 May 1985; Regional Law No 11 of 20 March 1989 (Aid measure No 91/89 approved by Commission) Regional Law No 12 of 10 June 1974; Regional Law No 28, of 10 April 1978
19. Hailstorm — March 1993 (Cagliari)	Departmental Decree 165/SI/93
20. Torrential rains — October/November 1993 (Cagliari — Nuoro)	Departmental Decree 129/SI/94
21. Drought — 1994/1995 (Sardinia)	Departmental Decree 18/SI/96
22. Violent winds — April 1994 (Sassari)	Departmental Decree 191/SI/94
23. Violent winds — May 1995 (Sassari — Nuoro)	Departmental Decree 237/SI/95
24. Hailstorm — June 1996 (Cagliari)	Departmental Decree 306/SI/96

(7) Although neither Article 87(2)(b) of the Treaty nor the Commission's constant practice in respect of the payment of aid to compensate for adverse climatic events that are treated as natural disasters provide for precise time limits for paying the aid, in its decision to initiate the procedure the Commission took the view that it was implicit in those provisions that the aid should be paid within a reasonable period of time after the occurrence of the event concerned. In the Commission's view, where aid is paid several years (in the case in point up to 10 years) after the event concerned, there is a real risk that the aid will distort the conditions of competition. Where the producers concerned have managed to absorb the losses resulting from the adverse event, the belated payment of compensation will produce economic effects that are similar to the payment of operating aid. However, where the producers concerned have been unable to absorb the losses and they continue to endure financial difficulties, the Commission considered that vigilance must be exercised to avoid any risk of aid being granted in contravention of the strict conditions laid down in the Commission's Guidelines on State aid for rescue and restructuring firms in difficulty [3]. In this connection the Commission noted that in the case in point, if the appropriations available were not sufficient to cover all the losses, priority was to be given not to those who suffered the greatest losses but to those who had outstanding loans. In the Commission's opinion, in the light of this provision one could legitimately wonder whether the primary objective of the measure was not in fact to support producers in financial difficulty.

(8) Furthermore, in the case of direct aid paid to compensate producers for damage suffered as a result of animal diseases, it is constant Commission practice to make payment of aid subject to compliance with certain conditions. There should in particular be Community or national provisions allowing the competent authorities to take suitable measures to control the disease in question, either by taking steps to eradicate it, in particular by means of binding measures giving rise to compensation, or initially by setting up a monitoring and warning system. Accordingly, only outbreaks of infections of public concern and not cases where the farmers must reasonably take responsibility for themselves may trigger aid measures. In its decision to initiate the procedure the Commission took the view that the Italian authorities had not provided the information necessary to verify compliance with these conditions.

(9) The Commission decided to raise no objections to the application of Article 14 to compensate producers of table tomatoes for losses caused by the tomato yellow leaf curl virus in 1994/95, 1995/96 and 1996/97 on the grounds that such aid qualified under the derogation provided for in Article 87(3)(c) of the Treaty. However, in view of the general scope of Article 14 of the regional Law, the Commission emphasised that any other aid to compensate for losses caused by plant diseases should be notified separately in accordance with Article 88(3) of the Treaty.

[3] OJ C 288, 9.10.1999, p. 2.

III

Comments from Italy

(10) The Italian authorities forwarded their comments by letter of 22 June 1999. These comments were later supplemented by letter of 15 June 2000.

(11) In their letter of 22 June 1999 the Italian authorities welcomed the Commission's decision to raise no objections to the aid to compensate for damage caused by plant disease and declared that they were withdrawing the provisions concerning aid for losses caused by animal diseases. They made the following comments regarding compensation for losses due to adverse weather conditions.

(12) The planned assistance involves aid that is to be paid on top of compensation already paid for damage due to adverse climatic events where the compensation paid does not exceed the financial loss actually incurred by the farmers. In general terms the aid measure complies with the rules laid down by the Commission, which provide for compensation of up to 100 % for damage suffered ([4]). It is also in accordance with Article 87(2)(b) of the Treaty, which lays down no restrictions of any sort, apart from the implicit limit set by the actual amount of damage. Since it is a provision of the Treaty, its value should be regarded as equal to that of the Constitution within the national legal system and, having regard to the hierarchy of norms, as being even greater. The Sardinia Region therefore takes the view that Community legislation should not prevent a Member State from acting in the spirit of Article 87(2)(b) in so far as aid to make good up to 100 % of damage caused by natural disasters and exceptional events is compatible with the common market.

(13) Neither Article 87(2)(b) of the Treaty nor the Commission's practice to date provides for time limits on the payment of aid to compensate for damage caused by exceptional climatic events. The Italian authorities consider that any such limit should be set beforehand so as to put all the Member States on the same footing and to ensure legal certainty for all. Furthermore, the concept of a 'reasonable period' proposed by the Commission is subjective: it does not provide any legal certainty, may result in unequal treatment and entails a real risk that the Member States will act in different ways. This is shown by the fact that in the part of the same letter dealing with compensation for plant diseases, the Commission describes the period between the occurrence of the damage and the payment of the aid as 'not unreasonable'. The damage occurred in 1994/1995, 1995/1996 and 1996/1997. A measure concerning events that occurred from 1994 onwards is thus regarded by the Commission as 'reasonable'. Naturally the Italian authorities agree with the Commission's assessment of the compensation for damage caused by tomato yellow leaf curl. However, in all logic and also for the sake of equality of treatment, the Sardinia Region would have expected the supplementary aid granted for disasters occurring from 1994 to be declared compatible.

(14) The Italian authorities note, moreover, that Article 15 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 ([5]) stipulates that the Commission's powers to recover unlawful aid are subject to a limitation period of 10 years, i.e. they lapse after 10 years. If it is felt that farms should suffer retrospectively the effects of unlawful aid for 10 years, there is no reason for them not to enjoy the positive effects of compatible aid for a similar period. The Region accordingly concludes that, in the light of the Commission's own evaluation, a recovery period of 10 years should be regarded as reasonable and that at all events such reasonableness cannot be impugned as regards the period from 1994 onwards.

(15) As regards the Commission's concerns about the effects of the belated payment of aid, the Italian authorities consider that the arguments used by the Commission would make it almost impossible to grant aid to cover natural disasters and would make Article 87(2)(b) completely superfluous. The problem arises with effect from the marketing year after the one in which the event occurred, i.e. when a judgment has to be made as to whether or not the losses have been absorbed. In neither

([4]) Working Paper for the Working Group on Conditions of Competition in Agriculture on rules governing the grant of national aids in the event of damage to agricultural production or the means of production (Doc. VI/5934/86 Rev. 2).
([5]) Now Article 88 (OJ L 83, 27.3.1999, p. 1).

case, however, could aid be granted to cover natural disasters since such aid would constitute either operating aid or aid to firms in difficulty. Moreover, from a practical point of view, the Italian authorities consider that accepting the Commission's interpretation would create major obstacles to the implementation of Article 87(2)(b) of the Treaty and would lead to an intolerable increase in the red tape involved. Except in cases where the aid is paid in the same production year as the damage is sustained, detailed checks would be required on each occasion to see whether or not the losses have been absorbed.

(16) Furthermore, the Italian authorities point out that aid in connection with bad weather tends to be paid some considerable time after the event causing the damage. Immediately after the event, which in some cases can be protracted, the agricultural experts of the 'Ente Regionale di Assistenza' (Ersat) evaluate the percentage damage in the geographical area affected and the percentage loss suffered by producers in terms of gross saleable agricultural production compared with normal levels in the three preceding years. The experts then draw up a report, which is sent to the Regional Department of Agriculture for evaluation. Where the legal requirements for recognising the climatic event as exceptional are felt to have been satisfied, within 60 days of the end of the event the Regional Department submits a proposal to the Regional Executive for a decision specifying the aid to be granted. The decision is then forwarded to the Ministry for Agricultural Policies, which, if it agrees with the proposal, adopts a decree for publication in the *Gazzetta Ufficiale della Repubblica Italiana*. At this point the Regional Department of Agriculture issues a further decree defining the recipients, the type of aid to be granted and the time limit for submitting applications, which is normally 60 days after publication of the decree in the Region's *Bollettino Ufficiale*. Once the deadline for submitting applications has expired the latter are assessed individually to determine whether they satisfy the subjective and objective requirements for entitlement to the aid and what the amount of aid should be. The departments processing the applications tend to be understaffed and are often called upon to deal with other agricultural aid measures. Where there are many applications to be processed (there may be several thousand following a widespread disaster) it may even take years to process them all. There is also the fact that disasters may overlap, that delays may occur in committing and allocating public funds, and that the proper documents are not always attached. Paying out aid may accordingly take years.

(17) On this point the Italian authorities conclude that in this particular case, while there may be doubts regarding operating aid and aid to firms in difficulty, the fact remains that the farms have suffered damage and have not been fully compensated.

(18) According to the Italian authorities it is against this background that one must gauge the risk of distortion of competition referred to by the Commission. After a disaster, farms that have not suffered any damage are, in objective terms, at an advantage and the conditions of competition improve in their favour. This involuntary distortion of competition will in theory be completely eliminated if there is full compensation for the damage. In cases of late compensation, farms that have not suffered any damage would, throughout the delay, enjoy a competitive advantage in relation to the situation at the outset. Where, on the other hand, compensation is only partial, farms that have not suffered any damage would, if only partially, consolidate their advantage. According to the Italian authorities, therefore, late payment of the aid, even after several years, can only be regarded as the late restoration of a balance that existed at the outset. If, since then, there has been a change in the conditions of competition, it can have been only at the expense of the farms hit by the disaster. To prevent compensation from taking place under the proposed measure would be tantamount to consolidating an unfairly acquired advantage. A time limit can of course be laid down; as mentioned above, the Italian authorities regard a period of 10 years as reasonable.

(19) The Italian authorities further argue that by its very nature, compensation pursuant to Article 87(2)(b) has nothing whatsoever to do with the economic and financial situation of the individual farmers. It is payable simply by virtue of the disaster that has occurred. The same rule must therefore apply to supplementary compensation schemes such as the one planned. According to the Italian authorities this also answers the points put forward by the Commission regarding the priority given to farmers taking part in consolidation operations at the regular rate where the appropriations

concerned are inadequate. This is a twofold problem: from an operational point of view there is no doubt that among what are likely to be thousands of applications, some will be processed at once and some several years later, depending on the workload of the staff concerned, on the time required to carry out checks and on whether or not the documentation is complete. On the question of the financial resources needed it is not known at this stage what funds the regional legislative body will be able to earmark as aid. It is likely, however, that a number of appropriations will be needed at different times in view of the current state of public finances. It is easy to see how, if the planned measure is funded in instalments, payment of the aid will be interrupted as soon as the first instalment runs out.

(20) The Italian authorities also observe that under the national legislation concerned, a whole swathe of farms is ineligible for compensation for damage resulting from exceptionally bad weather. In Italy the threshold for compensation is set at 35 % of the annual gross saleable production, i.e. of normal production. This requirement must first of all be satisfied throughout the geographical area concerned; it means that farms can suffer major damage and still not be entitled to compensation if the average damage in the area is less than 35 %. Secondly, farms may be located in the areas affected and have suffered damage to their production but in some cases their losses may not amount to the minimum of 35 % of gross saleable production because their production is diversified. Thirdly, compensation payments are invariably partial, both in the case of damage to capital stock (it is either 50 % or 100 %) and in the case of damage to production, which in the majority of cases may not exceed the low figure of ITL 3 million. Part of the damage, in some cases a substantial part, must accordingly be borne by the farmer.

(21) In view of all this it was decided to give priority to farmers taking part in consolidation operations at the regular rate. This approach was felt to be in line with the sort of bad weather and natural disasters that repeatedly hit Sardinia. Thus one possible solution for farms repeatedly facing natural disasters and late, partial compensation lay in access to medium- and long-term financing aimed at alleviating annual accounts by means of compatible financing. The fact that exceptionally bad weather is not being used as a pretext for granting aid is demonstrated by Sardinia's long history of such events, and in particular the seasonal or annual droughts and the resulting poor harvests the island has experienced. Moreover, apart from limited events, the poor and irregular rainfall invariably puts Sardinia at a constant disadvantage compared with more fortunate regions in Italy and in northern and central Europe. The existence of consolidation operations is thus a sign of the adverse effects of repeated bad weather. The Italian authorities therefore conclude that the issue of priority has no bearing on the matter. There are two possibilities: either the planned measure is compatible with the Treaty, in which case it is hard to see why priorities should be ruled out, or it is not, in which case the priorities must be ruled out. In the opinion of the Sardinia Region it is certainly not logical to make compatibility depend on whether or not there are priorities.

(22) The Italian authorities also say why at least part of the supplementary aid could not be paid in the years immediately after the damage occurred. They first recall that Italian provisions on natural disasters are much stricter than the corresponding Community provisions both as regards the qualifying thresholds and as regards the maximum compensation for damage to crops, which is in most cases ITL 3 million, rising to ITL 10 million in the case of protected crops. Compensation for damage to capital stock is, depending on the case, 50 % or 80 % of the eligible expenditure necessary for reconstituting the losses. In Sardinia these ceilings were raised for some crops by a regional Law in connection with the 1994/95 drought. The existing legal limits therefore need to be lifted, something which can be done by a legislative act only, hence the planned measure set out in Article 14. Unless that Article is approved by the Commission the compensation already granted cannot be paid as in the past.

(23) Secondly, account should be taken of the fact that the central government and regional appropriations available have never been able to meet the requirements of farms generally and of small farms in particular, i.e. those which would have been entitled to the full ITL 3 million. Accordingly the approach chosen for payments in respect of damage to crops has been based not on percentages of the compensation payable but on parameters representing a part of the damage suffered. As a result, the percentage compensation already paid cannot be given for each of the 24 measures where recovery is proposed.

(24) In conclusion, therefore, the Italian authorities ask the Commission to authorise the supplementary aid provided for in Article 14, without prejudice to the commitment of the Sardinia Region to review each individual case and to determine the difference between the amount granted and the damage suffered.

(25) In their letter of 15 June 2000 the Italian authorities proposed to adjust the conditions governing the aid and to limit the aid granted to compensate for production losses connected with the droughts in 1988/1989, 1989/1990 and 1994/1995 (events 1, 2 and 21 in point 6). The Italian authorities consider that in view of their scale and their long-lasting effects, these events meet the conditions in point 11.1.2. of the Community Guidelines for State aid in the agriculture sector ([6]), which they consider applicable to the case in point.

(26) According to the Italian authorities, the droughts affected the whole of Sardinia and had far-reaching effects on the overall value of agricultural production and in particular the productivity and organisation of the farms affected. The recurrent droughts not only greatly reduced the productivity of winter crops but also caused difficulties in the programming of irrigated crops, which normally achieve better results on marketing. Italy adds that the droughts that affected Sardinia caused damage recognised as amounting to ITL 1 178 billion, of which only ITL 433 billion has been compensated for.

IV

Assessment

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

(28) Article 14 of the Regional Law provides for the use of State resources to compensate farmers within the Sardinia Region for losses incurred as a result of adverse climatic events. The aid is granted selectively solely to farmers whose losses exceed 35 % of their gross saleable agricultural production and it therefore favours those farmers over other farmers who do not qualify for the aid. In addition, the scheme distorts competition and affects trade between Member States. It provides a gratuitous advantage for the farmers who are in receipt of the aid over other farmers, and thereby strengthens their commercial position. Moreover, in the absence of information to the contrary from the Italian authorities, the Commission considers that it is entitled to assume that at least some of these farmers are active in sectors where substantial intra-Community trade takes place. In 1996 agri-food products consigned to Italy from the other Member States totalled ITL 28 734 billion, while Italian consignments to the other Member States amounted to ITL 17 821 billion ([7]).

([6]) OJ C 28, 1.2.2000, p. 2.
([7]) Source: Italian Ministry for Agricultural Policies.

(29) However, the prohibition on State aid contained in Article 87(1) is subject to exceptions. In reply to the Commission's letter of 17 May 1999 the Italian authorities stated that they regarded the measure as falling within the scope of the derogation provided for by Article 87(2)(b) of the Treaty. One should therefore begin by examining that argument.

(30) In accordance with Article 87(2)(b) of the Treaty, aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market.

(31) As a derogation from the general prohibition on State aid contained in Article 87(1) of the Treaty, Article 87(2)(b) must be interpreted restrictively. Adverse climatic events such as hail, frost, ice, drought, rain and wind do not of themselves constitute natural disasters within the meaning of Article 87(2)(b). However, it has been constant Commission practice in the agricultural sector, in accordance with the principles set out in Commission Working Paper VI/5934/86, to which the Italian authorities refer in their comments, to treat adverse climatic events of this type as natural disasters once the losses suffered by the beneficiary reach a certain rate. Thus the Commission has permitted aid to be paid under Article 87(2)(b) of the Treaty to compensate for losses caused by adverse climatic conditions such as hail, frost, ice, drought, rain and wind, provided that the losses suffered by the beneficiaries amount in normal regions to 30 % (and in less-favoured areas 20 %) of normal annual production, defined as the average production of the three years preceding that in which the damage occurred. Where productivity of capital stock is lost, the loss must exceed 10 % in the first year and the total loss, spread over several years, must exceed 30 % or 20 % of a normal year's production. The aid must not exceed the individual farmer's losses. This practice has recently been confirmed in the Community Guidelines for State aid in the agriculture sector ([8]).

(32) Initially the Italian authorities stated that Article 14 of the Regional Law was intended to permit aid to be paid to cover losses resulting from 24 instances of drought, rain, wind, hail and frost affecting the Sardinia Region between 1989 and 1996. They subsequently proposed to make compensation payable in respect of three droughts only between 1989 and 1995. They also emphasised that aid is only granted where losses of at least 35 % have occurred in the geographical area concerned and once the individual producer's losses reach at least 35 % of his gross saleable production, which is defined as the total annual production of the holding that can be put up for sale, based on normal production in the three previous years. That percentage loss is above the thresholds set by the Commission of 20 % for less-favoured areas and 30 % for other areas. Furthermore, payments of aid will only cover the amount determined at the time of the natural disaster, excluding interest.

(33) Accordingly, in its letter of 17 May 1999 initiating the procedure provided for in Article 88(2) of the Treaty, the Commission considered that all 24 events listed in point 6 of the table met the criteria it had previously applied when assessing aid to compensate for losses caused by adverse climatic events in accordance with Article 87(2)(b) of the Treaty. The Commission therefore decided to raise no objections to aid paid in the past on the basis of the legislative provisions cited in the second column opposite point 6 of the table.

(34) Article 14 of the Regional Law allows additional aid to be paid to those farmers who have already received compensation under earlier regional legislation. The Italian authorities have provided an assurance, which the Commission has recognised as valid, that the total aid paid under the previous regional legislation and under Article 14 will not exceed the total losses actually incurred by the farmers as determined by the officials of the regional administration at the time of the adverse event concerned.

([8]) See footnote 6.

(35) Nevertheless, the Commission considered it necessary to initiate the procedure laid down in Article 88(2) of the Treaty on account of doubts stemming from the period (of up to 10 years) elapsing since the adverse climatic events concerned had occurred and from the effects of belated payment of compensation on the conditions of competition in the sectors concerned.

(36) In their comments the Italian authorities suggest that the Commission should not take into consideration the time that has elapsed since the climatic events took place. Article 87(2)(b) lays down no such time limit for paying aid. Once it has been established that the farmer has suffered a loss that exceeds the minimum, aid should be payable irrespective of the time that has elapsed since the event. By setting a time limit for paying the aid the Commission is seeking to impose an additional condition not laid down in the Treaty.

(37) The Commission does not accept the validity of this argument. Article 87(2)(b) provides that 'aid to make good the damage caused by natural disasters or exceptional occurrences' is compatible with the common market. Two conditions must therefore be fulfilled before the aid can be authorised. First, the damage must have been caused by a natural disaster. Secondly, the aid must be paid in order to make good the damage it has caused. In the case in point the Commission recognises that the farmers have suffered damage as a result of the adverse climatic events concerned and it also accepts the assurances of the Italian authorities that the aid to be paid will not exceed the losses incurred. However, in its letter of 17 May 1999 the Commission said that checks must be carried out to see whether the aid was in fact paid to make good the damage caused by the adverse climatic events. In this connection the Commission identified two factors that raised doubts, i.e. the time elapsing since the events took place and the fact that farmers in financial difficulty, and not those suffering the greatest losses, were given priority for payment of the aid. By referring to the time elapsing since the events took place, the Commission is not seeking to impose an additional condition on top of those in the Treaty. The Commission accordingly maintains its position that if it is to be regarded as 'making good' damage caused by an exceptional occurrence, the aid must be paid within a reasonable period of time after the event which gave rise to the damage, taking all relevant factors into account.

(38) Italy also argues that the reference to a 'reasonable period of time' is too vague and subjective and that it gives rise to legal uncertainty. Any time limit should be for a defined period and laid down in advance.

(39) The Commission considers that these comments are based on a misunderstanding of its doubts concerning the aid measure. It does not object to the payment of the aid simply because a certain period has elapsed since the adverse climatic events concerned took place. Rather, the passage of time is just one of several factors that leads the Commission to doubt whether the purpose of the measure notified is in fact to make good the damage caused by the adverse climatic events. This factor, along with others, should be assessed in the light of the specific circumstances of the case in order to determine whether the aid falls within the scope of the derogation provided for in Article 87(2)(b).

(40) It was precisely for this reason that the Commission did not seek to define the period of time that may be considered reasonable. In accordance with its responsibility to keep under constant review all aid schemes in the Member States, the Commission states in point 11.1.2 of its new Guidelines for State aid in the agriculture sector that in the absence of a specific justification, resulting for example from the nature and extent of the event, or the delayed or continuing nature of the damage, it will not approve proposals for aid which are submitted more than three years after the occurrence of the event. In principle the Guidelines came into force on 1 January 2000, but for reasons of legal certainty and in order to preserve the right of defence (the Article 88(2) procedure was initiated on the basis of previous Commission practice), the Commission does not consider it appropriate to apply them retrospectively to the present case.

(41) Italy proposes that, by analogy with the 10-year limitation period for the recovery of unlawful aid laid down in Regulation (EC) No 659/1999, any time limit for the payment of aid should be 10 years. It also claims that the Commission is not being consistent in so far as it raised no objections to payment of aid in respect of damage caused by the tomato yellow leaf curl virus from the 1994/1995 marketing year, while some of the climatic events covered by Article 14 occurred after that date. In the Italian authorities' view, the Commission should therefore allow aid to be paid at least in respect of events occurring during or after 1994.

(42) Here too the Italian authorities' comments appear to arise from a misunderstanding of the doubts expressed by the Commission with regard to this measure. At all events the Commission does not accept the analogy drawn by the Italian authorities with the limitation period of 10 years for the recovery of unlawful aid laid down in Article 15 of Regulation (EC) No 659/1999. As recital 14 of the Regulation states, that period is established for reasons of legal certainty. The administrative nature of that time limit is also confirmed by Article 15(2), which provides that any action taken by the Commission with regard to the unlawful aid interrupts the limitation period.

(43) Similarly, the Commission rejects the charge that it has been inconsistent in allowing aid to be paid to compensate for losses caused by a plant disease from the 1994/95 marketing year onwards while expressing doubts about the payment of aid to make good the damage caused by adverse climatic events after that date. In the first instance, it should be remembered that according to the explanations provided by the Italian authorities, Article 14 of the Regional Law was initially intended to allow aid to be paid for a series of 24 adverse climatic events occurring between 1988 and June 1996, only four of which in fact occurred during or after 1994. Since all these events could be covered by the measure notified, the Commission considers that they must be looked at as a whole. Furthermore, if 1994/1995 were the cut-off date, this would disqualify from compensation two of the three droughts listed in the latest Italian proposal. Moreover, if the Commission were to attempt to fix an arbitrary cut-off date for individual events after which aid payments would be admissible, it would in effect be doing precisely what the Italian authorities consider it should not do, namely seeking to lay down an arbitrary time limit for the application of Article 87(2)(b).

(44) It should also be pointed out that the Commission does not generally consider outbreaks of animal and plant diseases as exceptional occurrences within the meaning of Article 87(2)(b) of the Treaty. The Commission therefore considered the aid measures in the light of the derogation provided for in Article 87(3)(c) of the Treaty, and concluded that the aid concerned could not be regarded as facilitating the development of certain economic activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common market. The factors to be taken into consideration in such an assessment are quite different from those for determining whether an aid measure is intended to make good the damage caused by natural disasters or exceptional occurrences.

(45) According to the Italian authorities, problems of potential distortion of competition will arise whenever payment of aid to make good damage caused by adverse climatic events is delayed, even if only by one year, and the question of whether or not the loss has been absorbed by the farmer is not a practical criterion for payment of the aid. However, Italy does not dispute the Commission's view that the more payment of the aid is delayed the greater the potential distortion of competition. Furthermore, the Commission has never claimed that the question of whether or not the farmer is able to make good the losses himself from his own resources or by reducing his income should be a criterion for payment of the aid, so the Italian authorities' comments in this respect are misplaced.

(46) The Commission considers that the Italian authorities' proposal to limit compensation to farmers who have suffered periods of drought (three out of a total of 24 adverse climatic events) does not dispel its reservations regarding the measure's compatibility having regard to Article 87(2)(b). First, two of the three periods of drought date back to 1988/1989 and 1989/1990. Secondly, the Italian proposal introduces a new element of selectivity that could justifiably serve as a criterion for granting

compensation only if the damage caused by the drought could be regarded as of a lasting nature, unlike the effects of the other adverse climatic events. While the Commission agrees that the effects of drought on agricultural production may theoretically last longer than other events (such as torrential rain), it feels that the latter factor depends more on the seriousness of the damage than on its nature. The Italian authorities have simply provided a general description of the impact of the drought on the farms' economic situation without assessing its lasting economic effects, which could last up to 12 years.

(47) The Commission therefore accepts the Italian authorities' observation that it may take some time, possibly years, to process all the applications for aid to make good the damage caused by a natural disaster or an exceptional occurrence. However, as a rule the adoption of the general decision to grant aid and the setting-aside of the initial budget appropriations take place quite soon after the event concerned. Indeed, in the case in point the Commission notes that in 21 of the 24 events referred to by the Italian authorities, the regional measures providing for an initial grant of aid were adopted in the year in which the event took place or in the year that followed. The Commission's concern about the measure in question stems from the fact that up to 10 years after the events took place, a proposal is being made to grant additional aid exceeding the limits laid down by the law at the time the initial compensation was paid.

(48) As for the Commission's concern that priority is being given to farmers taking part in debt consolidation operations at the regular rate, the Italian authorities reply in substance that this is irrelevant, once it is established that the farmers concerned have suffered losses as a result of the adverse climatic events concerned. In any case, in view of the large number of beneficiaries and the likely limitations on the funds available, priority must be given to someone, and the regional authorities have taken the view that it should be given to farmers in debt.

(49) For the reasons given above the Commission does not agree that the farmers are entitled to the aid under Article 87(2)(b) simply because they have suffered damage at some time in the past. Furthermore, the Commission does not find the Italian authorities' explanations of the reasons for giving priority to farmers with debt consolidation loans to be entirely convincing. In their correspondence concerning this measure, the Italian authorities emphasised that the farmers submitted properly documented claims for compensation immediately after the adverse climatic events took place and that these were checked by the administration before the initial aid was paid. It would therefore appear to be a relatively straightforward task to verify the amount of losses not compensated for initially and to allocate the funds available on a pro-rata basis.

(50) In their observations the Italian authorities write:

'The fact that exceptionally bad weather is not being used as a pretext for awarding aid is demonstrated by past events in Sardinia, in particular the seasonal or annual droughts and the resulting poor harvests the island has experienced. Moreover, apart from limited events, the poor and irregular rainfall invariably puts Sardinia at a disadvantage compared with more fortunate regions in Italy and in northern and central Europe. The existence of consolidation operations (at the regular rate) is thus seen as a sign of the adverse effects of repeated bad weather.'

The Commission does not understand the link which is being made here between the debt consolidation operations and bad weather conditions, which are of course just one reason why farmers may go into debt. Furthermore, the reference to the general climatic conditions in Sardinia tends to reinforce the concern of the Commission that the measure is intended to help farmers in financial difficulty rather than to make good the damage caused by one-off adverse climatic events.

(51) Lastly, in reply to a question from the Commission the Italian authorities said that the reason why farmers were not fully compensated in the past was due partly to the limited availability of public funds and partly to the ceilings on compensation payable under the law in force at the time and which would be lifted by this measure. In so far as the Commission's policy is to allow aid of up to 100 % of the losses incurred once the relevant thresholds are met, the Commission has no objection to the lifting of the ceiling on compensation for losses in the future. However, the explanations provided by the Italian authorities do not dispel the Commission's doubts concerning the retrospective application of this measure in respect of aid to make good losses caused by adverse climatic events that happened over 10 years previously.

V

Conclusion

(52) For the reasons set out above, the Italian authorities' comments do not dispel the Commission's suspicions that Article 14 of the Regional Law should be considered as a means of providing aid to farmers in financial difficulty without meeting the conditions laid down in the Commission's Guidelines on the rescue and restructuring of firms in difficulty rather than as a measure to make good the damage caused by adverse climatic events, which, in accordance with constant Commission practice, may be treated as natural disasters within the meaning of Article 87(2)(b) of the Treaty. The Commission therefore holds that the measure cannot qualify under the derogation from the prohibition on State aid set out in that provision.

(53) In its written observations Italy has not suggested an alternative legal basis for approving the aid nor has the Commission been able to identify any such basis on its own initiative. The derogations contained in Article 87(2)(a) and (c) are manifestly inapplicable, as are those set out in Article 87(3)(b) and (d). Furthermore, in so far as the measure is sectoral aid designed simply to relieve the beneficiaries of their indebtedness without any *quid pro quo*, in the light of the decisions of the Court of Justice the measure would appear to be straightforward operating aid, which is prohibited in the agricultural sector ([9]). By its very nature, such aid is likely to interfere with the mechanisms of the common organisation of the markets, which take precedence over the competition rules laid down in the Treaty ([10]). In the absence of any evidence that the measure might be regarded as facilitating the development of certain economic activities or of certain economic regions, it cannot qualify under the derogations provided for in Article 87(3)(a) and (c),

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy is planning to implement in accordance with Article 14 of the Sardinia Regional Law of 4 February 1998 laying down rules for speeding up expenditure of EAGGF Guidance Section funds and on urgent measures for agriculture in order to compensate for losses caused by past adverse climatic events is incompatible with the common market.

The aid may accordingly not be implemented.

([9]) Judgment of the Court of First Instance in Case T-459/93 *Siemens* v *Commission* [1995] ECR II-1675 and the case law cited therein.
([10]) Judgment of the Court of Justice in Case 177/78 *Pigs and Bacon Commission* v. *McCarren* [1979] ECR 2161.

Article 2

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

Article 3

This Decision is addressed to the Republic of Italy.

Done at Brussels, 20 September 2000.

For the Commission

Franz FISCHLER

Member of the Commission