COMMISSION

COMMISSION DECISION
of 3 April 2002
concerning the aid provided for by Article 4 of Law No 290 of 17 August 1999

(notified under document number C(2002) 1188)

(Only the Italian version is authentic)

(2002/597/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 aforementioned provisions [1], and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter dated 6 August 1998, registered as received on 12 August 1998, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the EC Treaty, of a draft law extending time limits in the agricultural sector. The aid was registered under number N 490/98.

(2) By letters dated 1 October 1998 and 28 January 1999, the Commission asked the Italian authorities for further information. By letter dated 30 November 1998, registered as received on 4 December 1998, the Italian authorities replied to the Commission's letter of 1 October 1998.

(3) By letter of 13 September 1999, the Commission asked the Italian authorities to provide the information requested in its letter of 28 January 1999, which it had not yet received. In the same letter the Commission invited the Italian authorities to confirm press reports that the draft law had been enacted by the Parliament as Law No 290 of 17 August 1999, published in the Official Gazette of the Italian Republic No 195 of 20 August 1999.

(4) By letter dated 25 October 1999, registered as received on 5 November 1999, the Italian authorities confirmed that the draft law had been adopted as Law No 290 of 17 August 1999. The same letter attached the text of the law as adopted and also supplied some of the information sought by the Commission in its letter of 28 January 1999.

(5) Based on this information, the aid scheme was transferred onto the register of non-notified aid under number NN 155/99.

(6) By letter dated 24 February 2000, SG(2000) D/101808, the Commission informed Italy of its decision to initiate the procedure laid down in Article 88(2) EC in respect of Articles 4 and 5 of Law No 290 of 17 August 1999 as well as of Article 15(16) of Law No 67 of 11 March 1988 (the 1988 Finance Act) and Law No 252 of 8 August 1991, which constituted the legal basis for the granting of the subsidies cited in Article 5 of Law 290/99. In the same letter the Commission also informed Italy that it raised no objections to the other Articles (Articles 1, 2, 3, 6, 7 and 8) of Law No 290 of 17 August 1999 in that they did not constitute aid within the meaning of Article 87(1) EC.

[1] OJ C 148, 27.5.2000, p. 2.

(7) By the same letter, the Commission enjoined Italy to provide, pursuant to Article 10(2) and (3) of Council Regulation (EC) No 659/1999 [1], within one month of receipt of that letter, all documents, information and data needed for assessment of the compatibility of the measures in question.

(8) 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.

(9) By letter dated 23 March 2000, the Italian authorities asked for a 30-day extension of the deadline set by the Commission for the submission of the information requested in its opening of procedure.

(10) By letter dated 18 May 2000, the Italian authorities submitted to the Commission their comments with respect to the opening of the procedure.

(11) By letter dated 17 July 2000, the Commission asked for further information with respect to the comments transmitted by the Italian authorities in their letter of 18 May 2000.

(12) By letter dated 13 October 2000, the Italian authorities transmitted the information requested by the Commission in its letter of 17 July 2000.

(13) By letter dated 13 December 2000, the Commission asked for additional information.

(14) By letter dated 31 January 2001, the Italian authorities asked for an extension of the deadline set by the Commission for the presentation of the information requested in its letter of 13 December 2000.

(15) By letter dated 12 July 2001, the Italian authorities transmitted the information requested.

(16) The Commission also received comments from interested third parties by letter dated 30 June 2000. It forwarded them to Italy, which was given the opportunity to express its views. No specific comments with respect to this letter were sent by the Italian authorities.

(17) On 12 March 2002, on the grounds of the different and unrelated nature of the aid measures provided for by Article 4 of Law 290/99 on the one hand and of those provided for by Article 5 of that law and by Article 15(16) of Law 67/88 and Law 252/91, the Commission decided to split the case into two different parts, namely case C/7A/2000 concerning Article 4 of Law 290/99 and C/7B/2000 concerning Article 5 of Law 290/99, Article 15(16) of Law 67/88 and Law 252/91. This decision concerns only the aid measures provided for by Article 4 of Law 290 of 17 August 1999. However, it does not concern, nor extend its effects to, the very farming, operating and improvement loans due on 31 March 1998 for which an extension is provided for by Article 4 of Law No 290 of 17 August 1999. Likewise, this decision does not concern Article 5 of Law 290/99 nor Article 15(16) of Law No 67 of 11 March 1988 (the 1988 Finance Act) and Law No 252 of 8 August 1991 which constituted the legal basis for the granting of the subsidies cited in Article 5 of Law 290/99 which will continue to be assessed within the framework of State aid No C/7B/2000 and will be dealt with in a separate decision.

II. DESCRIPTION OF THE AID

(18) Law No 290 of 17 August 1999, published in the Official Gazette of the Italian Republic No 195 of 20 August 1999, provides for an extension of the time limits for various operations in the agricultural sector. The Law comprises eight articles. In its decision of 24 February 2000, the Commission decided not to raise objections against Articles 1, 2, 3, 6, 7 and 8 of the Law in that they did not constitute aid within the meaning of Article 87(1) of the EC Treaty. The decision to initiate the proceedings provided for by Article 88(2) concerned on the other hand Articles 4 and 5 of that law as well as Article 15(16) of Law No 67 of 11 March 1988 (the 1988 Finance Act) and Law No 252 of 8 August 1991 which constituted the legal basis for the granting of the subsidies cited in Article 5 of Law 290/99.

(19) As already stated in recital 17 above, this decision concerns only the aid provided for by Article 4 of Law No 290 of 17 August 1999, which has been assessed as State aid C/7A/2000.

Article 4 of Law No 290 of 17 August 1999

(20) Article 4 of Law 290 of 17 August 1999 provides for measures to facilitate agricultural credit operations. In particular, it extends for twelve months the repayment period for operating, improvement and agricultural loans due on 31 March 1998. The beneficiaries are agricultural holdings primarily engaged in olive production in Apulia, Calabria and Sicily, run by owner-occupiers or full-time farmers or olive-growing cooperatives who have been hit by the serious crisis on the market for olives and olive oil. Agricultural holdings and olive-growing cooperatives in other olive-growing regions can also qualify for these measures under the same rules and procedures if similarly affected by the crisis on the market for olives and olive oil. The Article defines an agricultural holding or an olive-growing cooperative primarily engaged in olive growing as an entity that derives at least 50 % of its gross commercial production from olives.

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 148, 27.5.2000, p. 2.

(21) The extended repayment schedule is supported by a public contribution to the interest payments pursuant to the Decree of the President of the Council of Ministers of 9 November 1985 laying down the rules for establishing the minimum annual subsidised rates to be used for agricultural credit operations. An appropriation of ITL 10 billion in public funding has been provided for 1999 from the 'National Solidarity Fund'.

(22) The Italian authorities initially justified the measures provided for by the said Article 4 by stating that 'these provisions are needed to help olive growers in Calabria, Apulia and Sicily who have had serious and unsustainable difficulties in marketing their products in the 1997 to 1998 marketing year because of adverse weather conditions, significant imports of olive oil from non-Community countries in the Mediterranean basin and the sudden fall in the price processors pay for olives, with serious income and operating consequences for the enterprises concerned'. In the same letter, the Italian authorities added that, for those reasons, 'olive-growing holdings found themselves in such serious financial difficulties that they were unable to make the repayments on the agricultural, operating or improvement loans due on 31 March 1998. To assist individual and grouped olive-growing holdings unable to repay the debt contracted with a view to olive production, the authorities therefore decided to extend by 12 months the expiry date of 31 March 1998, the normal date on which loans for measures in the olive oil year fell due'. The letter of 30 November 1998 also stated that the credit assistance was similar to that provided for in Article 4 of Law No 185 of 14 February 1992 [1], which could be activated where farm holdings suffered financial loss as result of catastrophic events that made usual harvesting difficult. According to the Italian authorities, 'this would therefore be a one-off aid measure, relating solely to the 1997 and 1998 marketing years and limited to the three regions of Apulia, Calabria and Sicily'.

(23) Based on these comments, the Italian authorities asserted in their letter of 30 November 1998 that the aid measure qualified under Article 87(2)(b) of the EC Treaty as 'aid to make good the damage caused by natural disasters or exceptional occurrences'.

(24) The Commission replied by letter of 28 January 1999, reminding the Italian authorities of its policy on national aid where agricultural production or the means of production have been harmed, specifying that an increase in the volume of imports from third countries could certainly not be invoked by Member States as an 'exceptional occurrence' since difficult market conditions due to competitive pressure from other countries are just part of the normal play of market forces.

(25) In the following letter of 25 October 1999, the Italian authorities specified that 'the aid was not based on market difficulties, which are a normal part of an open market, but on riots and public disorder resulting in road and rail blockades, as set out in the reports submitted by the Prefects of the affected Provinces. The unrest became widespread with the simultaneous landings on the Apulian coast of illegal Albanian immigrants, causing fears of economic collapse and increasing social unease'. For the Italian authorities, it was obvious that they 'could not respond to this explosive situation with public order measures alone, and the measure in question, adopted out of a sense of need and urgency, has to be seen in that context'. The Italian authorities accordingly concluded that it was 'an exceptional measure to tackle a serious, unforeseen and unforeseeable situation easily qualifying as an "exceptional occurrence" under Article 87(2)(b) of the Treaty which, as the Commission itself correctly concludes, also covers situations of public disorder or strikes. In essence, the measure should not be seen as aid per se, but as a measure to reduce social disorder and prevent more serious disorder'.

(26) No further information on this specific measure was added by Italian authorities in the letters which followed the opening of procedure. In the first letter following the opening [2] they simply stated that the aid measure provided for by Article 4 of Law 290 had not been implemented and the relevant aid not been granted.

III. **COMMENTS FROM INTERESTED PARTIES**

(27) The Commission received only one letter from interested parties. The letter, dated 30 June 2000, was sent by Conazo — *Consorzio Zootecnico Nazionale Sarl* (National Zootechnic Consortium) writing in its capacity as leader of a group of companies which benefited from the funds granted by the Italian authorities on the basis of Laws No 252/91 and 67/88 which were the subject of the Commission's opening of proceedings. In its letter, Conazo made comments exclusively on Article 5 of Law 290 of 17 August 1999 and Laws 252/91 and 67/88, which are not covered by this decision.

[1] The law is currently being examined within the framework of State aid No C 12/95.

[2] Letter of 18 May 2000.

IV. **ASSESSMENT**

(28) Article 87(1) EC provides that 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, insofar as it affects trade between Member States, be incompatible with the common market.

(29) Articles 87 and 88 of the Treaty apply to the production and trade in the products in favour of which the Italian authorities decided to grant aid. Indeed, Article 33 of Council Regulation No 136/66/EEC of 22 September 1966 on the establishment of a common organisation of the market in oils and fats [1] lays down that, save as otherwise provided in the Regulation, Articles 92, 93 and 94 of the Treaty shall apply to the production of and trade in olives and olive oil.

Existence of aid

(30) Article 4 of the Law in question extends the time limits for repaying loans of various types taken out by particular agricultural holdings in Apulia, Calabria and Sicily primarily engaged in olive growing. The Article extends this benefit under the same terms to all olive-growing holdings and cooperatives in other olive-growing regions which share with holdings in the above three regions the same serious crisis on the olives and olive oil market. The extended repayment schedule is supported by a public contribution to the interest payments which, for the year 1999, has been set at ITL 10 billion. The extension in the terms of the repayment gives the beneficiary agricultural undertakings a financial respite which they would otherwise not be able to enjoy. This advantage is compounded by the public contribution to the interest payments, which will relieve the same undertakings of the burden associated with the payment of the full interest rate applicable to their loans. In this respect the two elements above favour the beneficiary undertakings vis-à-vis other agricultural undertakings which, in the same situation, would have to rely solely on their own financial resources by paying the instalments immediately they fall due and at the full interest rate applicable to them. According to the case-law of the Court of Justice, improvement in the competitive position of an undertaking as a result of State financial aid leads to possible distortion of competition compared with other competing undertakings not receiving such assistance [2].

(31) Moreover, as shown from the two tables below, there is heavy intra-Community trade in olives and olive oil and the measure is therefore capable of distorting competition and affecting trade between the Member States.

Italian trade with the rest of the EU

(EUR '000)

	Imports			Exports		
	1998	1999	2000	1998	1999	2000
Olives, fresh or refrigerated (excluding olives for the production of oil)	3 236	2 910	2 377	470	550	634
Olives, fresh or refrigerated, for the production of oil	593	386	233	482	478	485
Olive oil and its fractions - obtained from fruits of the olive tree, only by mechanical or physical processes, under conditions which do not alter the oil, even if refined, but not chemically modified	644 154	631 850	611 367	187 450	288 404	265 078

[1] OJ 172, 30.9.1966, p. 3025/66.

[2] According to the case-law of the Court of Justice, improvement in the competitive position of an undertaking resulting from State aid generally points to a distortion of competition compared with other competing undertakings not receiving such assistance, Case C-730/79 [1980] ECR 2671, paragraphs 11 and 12.

Total EU trade

(EUR '000)

	Exports		
	1998	1999	2000
Olives, fresh or refrigerated (excluding olives for the production of oil)	16 369	14 409	16 107
Olives, fresh or refrigerated, for the production of oil	10 280	9 370	9 566
Olive oil and its fractions - obtained from fruits of the olive tree, only by mechanical or physical processes, under conditions which do not alter the oil, even if refined, but not chemically modified	1 129 929	1 187 146	1 131 828

(32) The Commission therefore concludes that the measure is caught by the prohibition in Article 87(1) of the EC Treaty.

(33) The prohibition in Article 87(1) is followed by exemptions in Article 87(2) and (3).

(34) Italian authorities have always maintained that the measures to facilitate agricultural credit operations provided for by Article 4 of Law 290 fall under Article 87(2)(b) of the Treaty, which states that aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market.

(35) In order to establish whether the aid at issue can actually benefit from the exception laid down in Article 87(2)(b) of the Treaty, they need to be assessed in the light of point 11(2)(1) of the Community Guidelines for State aid in the agriculture sector [1] (hereinafter the Guidelines) which concerns aid to make good the damage caused by natural disasters or exceptional occurrences. As stated in the abovementioned point, this aid constitutes exceptions from the general principle of the incompatibility of State aid with the common market laid down by Article 87(1) of the Treaty. For this reason, the Commission has consistently held that the notions of 'natural disaster' and 'exceptional occurrence' contained in Article 87(2)(b) must be interpreted restrictively.

(36) Hitherto the Commission has accepted that earthquakes, avalanches, landslides and floods may constitute natural disasters. Exceptional occurrences which have hitherto been accepted by the Commission include war, internal disturbances or strikes and with certain reservations and depending on their extent, major nuclear or industrial accidents and fires which result in widespread loss. However, because of the inherent difficulties in foreseeing such events, the Commission evaluates proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis, having regard to its previous practice in this field. Once the existence of a natural disaster or an exceptional occurrence has been demonstrated, the Commission will permit aid of up to 100 % to compensate for material damage.

(37) With regard to the above, and as already recalled in the opening of procedure, it must first of all be pointed out that Article 4 of Law No 290 speaks in quite general terms of a 'serious crisis on the olives and olive oil market', a wording which could be used to justify supporting the holdings in all kinds of disturbance or difficulty that are not necessarily the exceptional cases referred to by the Italian authorities and required if Article 87(2)(b) of the EC Treaty is to apply.

(38) To explain the crisis, in their letter of 30 November 1998 the Italian authorities initially spoke of 'serious and unsustainable difficulties in marketing their products because of significant imports of olive oil from non-Community countries in the Mediterranean basin and the sudden fall in the price processors pay for olives, with serious income and operating consequences for the enterprises concerned'. The authorities maintained that the occurrence was so serious and exceptional that the Italian Parliament had been compelled to adopt Law No 313 of 3 August 1998, the purpose of which was to protect Italian olive oil and increase its commercial value. They went on to say, however, that the measures to safeguard Italian oil did not resolve the crisis affecting olive-growing holdings in such difficulties that they could not make the repayments on their agricultural, operating and improvement loans due on 31 March 1998.

[1] OJ C 232, 12.8.2000, p. 19.

(39) In reply to these comments, the Commission drew the Italian authorities' attention [1] to the fact that an increase in the volume of imports from third countries, with the inevitable drop in prices and marketing difficulties this brings about, cannot be cited by a Member State as an exceptional occurrence warranting the grant of aid of this kind or, in general, aid of any kind, regardless of the seriousness of the problem and its impact on producers. Difficult market conditions arising from competitive pressures from other countries are a normal part of the play of market forces. All producers operating in the market are exposed to these conditions and must adopt appropriate measures to deal with them. The adoption of aid measures in favour of the producers of specific areas of one Member State or of one Member State as a whole would simply shift the market difficulties from the undertakings beneficiary of the aid to those of other Member States, which, though affected by the same crisis, cannot benefit from similar forms of aid and therefore have to cope with the market crisis with their own resources and means. Such an aid would by definition distort competition and affect trade between Member States.

(40) In reply to the Commission's objections, the Italian authorities in their letter of 25 October 1999 corrected their position by stating, as cited in recital 25 above, that the aid was not based on 'market difficulties — which are a normal part of an open market — but on riots and public disorder resulting in road and rail blockades, as set out in the reports submitted by the Prefects of the affected Provinces'. According to the Italian authorities, the situation was further worsened by the 'simultaneous landings on the Apulian coast of illegal Albanian immigrants, causing fears of economic collapse and increasing social unease'. The Italian authorities, therefore, considered this to be an urgent and necessary public order measure which should accordingly be included in the definition of internal disorder or strikes under Article 87(2)(b) of the Treaty.

(41) Aside from the contradiction in the two versions provided by the Italian authorities in their first two letters [2] to the Commission prior to the opening of procedure, the same authorities never provided information in support of the grounds put forward by them in such letters nor have they provided any information justifying their claims after the opening of procedure, despite the Commission's injunction to provide all the information necessary to assess the case.

(42) The doubts expressed by the Commission in its opening of procedure have not been dispelled by the Italian authorities and the Commission therefore doubts that the derogation in Article 87(2)(b) of the Treaty could be applied to the measure provided for in Article 4 of Law 290/99.

(43) Based on previous Commission's practice [3], the riots and public disorder described by the Italian authorities might qualify under the definition of public disorder and strikes pursuant to Article 87(2)(b) of the Treaty and, accordingly, give rise to a reimbursement of up to 100 % for the damage incurred, regardless of its scale. However, if it is true that public disorder and strikes can, under certain circumstances, be considered as 'exceptional occurrences' within the meaning of Article 87(2)(b) of the Treaty, it is also true that, first of all, such disorder must be shown to have occurred and secondly, once demonstrated that they indeed took place, it must also be proved, beyond any reasonable doubt, that there is a direct link between such disorder and the damage incurred by the potential aid beneficiaries.

(44) No evidence in this respect has ever been supplied by the Italian authorities, either before or after the opening of procedure, even though, according to the Italian authorities, the street riots and disorder cited apparently resulted in road and rail blockades described in reports which were sent by the Prefects in the affected provinces. These documents were never sent to the Commission and the Italian authorities sent no other document capable of proving that an effective state of emergency existed as a result of these events. The authorities did not give exact dates for the events or their time frame, nor did they specify the exact locations where they occurred or the circumstances that brought them about.

(45) It is also not clear why these events only selectively affected the olive sector and not the entire agricultural sector or indeed the entire economy of the regions involved. No quantified figures for the damage caused have ever been supplied. No information whatsoever has been supplied to explain how the riots and road blockades at issue could actually result in the severe disruption to olive and olive-oil production claimed by the Italian authorities.

[1] Commission letter of 28 January 1999.
[2] Letters of the Italian authorities to the Commission dated 28 October 1998 and 25 October 1999.
[3] See, for example, Aid C 3/94 — France — Road blocks.

(46) Moreover, given that the Italian authorities maintain the geographically limited and temporary nature of the measure, it is not clear why they decided to extend the facilities, at the same conditions, to all olive-growing holdings or cooperatives in other olive-growing regions facing a serious crisis on the olives and olive oil market in addition to holdings located in Calabria, Apulia and Sicily, which were the prime beneficiaries of the aid. The aid was therefore never exclusively restricted to agricultural undertakings in Apulia, Calabria and Sicily which, according to the Italian authorities, were directly affected by the events in question. Extending the measure to all olive-growing holdings or cooperatives located in all Italian olive-growing regions would have been justified only where the events had assumed national importance, something the Italian authorities have failed to demonstrate.

(47) The national coverage of the measure corroborates the Commission's belief that the measure was adopted to help undertakings in difficulty to confront a serious debt crisis arising from factors that had nothing to do with the reasons put forward by the Italian authorities. The aid in question could therefore have been granted to save from bankruptcy the enterprises in question, and as such should be evaluated not on the basis of Article 87(2)(b) of the Treaty but under Article 87(3)(c) in the light of the relevant 'Community guidelines on State aid for the rescuing and restructuring of firms in difficulty' ([1]).

(48) The Commission made inquiries in this regard in its first request for further information to the Italian authorities. The Commission's doubts were based on the fact that in the summary of the Parliamentary proceedings sent along with the original draft law (subsequently approved as Law No 290) the rapporteur pointed out that the Article providing for easy agricultural credit terms (the then Article 5) was the same as an Article already presented in the draft of an earlier law but then deleted in response to the European Commission's comments in a letter sent to Italy on 5 March 1998. In this regard the rapporteur also pointed out that, while the provisions in question might have breached Article 87 of the EC Treaty, specific provisions did exist on State aid for firms in the Commission document 'Community guidelines on State aid for rescuing and restructuring firms in difficulty'. These considerations led the Commission to the view that the Article could be interpreted in this way and also led it to ask the Italian authorities for clarification of this point. This request for clarification was however completely ignored by the Italian authorities who insisted on the applicability of Article 87(2)(b) to the measure at issue.

(49) This doubt was reiterated by the Commission in its opening of procedure. In this case too, despite the information injunction contained therein, no information was given on this aspect and no attempt whatsoever was made by the Italian authorities to justify the measure on the basis of the Community guidelines on State aid for rescuing and restructuring firms in difficulty. In their letter of 18 May 2000, the Italian authorities simply stated that the measure had not been implemented and the relevant aid had not been granted. In their opinion, the non-implementation of the measure put an end to the debate with the Commission on the nature of the measure and on the legal basis on which it should be assessed.

(50) It results from the above that the aid measures provided for by Article 4 of Law No 290 of 17 August 1999 cannot benefit either from the exception provided for by Article 87(3)(c) of the Treaty.

(51) The Commission, therefore, can only conclude that the aid measures provided for by Article 4 of Law No 290 of 17 August 1999 constitute operating aid and, as such, are incompatible with the common market. The present decision concerns only the aid scheme, which is of a general and abstract nature and which, for the abovementioned reasons, does not comply with the applicable requirements. Such a decision is without prejudice of any individual aid given to individual undertakings which might qualify for a derogation and which should be notified to the Commission pursuant to Article 88(3) of the Treaty to be assessed on its own merits. Moreover, this decision does not concern, nor extend its effects to, the farming, operating and improvement loans due on 31 March 1998 for which an extension is provided for by Article 4 of Law No 290 of 17 August 1999 and which are mentioned in that Article.

V. **CONCLUSIONS**

(52) From the abovementioned considerations, it results that the aid measures provided for by Article 4 of Law No 290 of 17 August 1999 are incompatible with the common market and cannot therefore benefit of any of the exceptions to Article 87(1) of the Treaty.

(53) No recovery of the aid is necessary since the aid has not been implemented nor paid,

([1]) OJ C 288, 9.10.1999, p. 2.

HAS ADOPTED THIS DECISION:

Article 1

The aid measures designed to facilitate agricultural credit operations provided for by Article 4 of Law No 290 of 17 August 1999 are incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

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

Article 3

This Decision is addressed to the Republic of Italy.

Done at Brussels, 3 April 2002.

For the Commission

Franz FISCHLER

Member of the Commission