COMMISSION DECISION

of 16 December 2003

on the State aid which Italy (Sicily) is planning to implement for the agricultural sector

(notified under document number C(2003) 4474)

(Only the Italian text is authentic)

(2004/342/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 Article cited above [1] and having regard to their comments,

Whereas:

I. PROCEDURE

(1) By letter dated 2 May 1996, registered on 8 May 1996, Italy notified the Commission of the aids provided for by Regional Law No 33/1996 of the Region of Sicily of 18 May 1996.

(2) Scrutiny of the notification was divided into four parts: aid No N 340/A/96, involving all sectors other than agriculture and fisheries, aid No N 340/B/96, involving agricultural products listed in Annex I to the EC Treaty, aid No N 340/C/96, involving fishery products and aid No 340/D/96, involving transport. This Decision relates only to the aid for Annex I agricultural products.

(3) By letter dated 3 June 1996, registered on 12 June 1996, Italy submitted information sheets on the aid measures provided for by Articles 10, 17 and 18 of Regional Law No 33/1996.

(4) By letter dated 3 July 1996, registered on 11 July 1996, Italy submitted the text of Regional Law No 33/1996 as published in the Regional Official Journal of Sicily (No 26 of 21 May 1996).

(5) In telexes No VI/027617 of 9 July 1996 and No VI/46886 of 5 December 1996, the Commission sought further information from the Italian authorities. By letter dated 19 December 1996, registered on 31 December 1996, Italy submitted additional information on Articles 9, 13, 14, 15, 16, 17 and 18 of Regional Law No 33/1996.

(6) By letter dated 21 March 1997 (SG(97) D/2243), the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid measures provided for by Articles 1, 9, 10, 13(2) and (3), 17, 18 and 19 of Regional Law No 33/96.

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

(8) The Commission received comments from Italy by letters dated 2 September 1997, registered on 4 September 1997, and 7 November 1997, registered on 17 November 1997.

(9) By letter dated 28 January 1998 Italy informed the Commission that the aid measure provided for by Article 18 of Law No 33/1996 could no longer be implemented due to the lack of financial resources allocated to it and undertook to renotify the aid measure under Article 88(3) of the Treaty should it be re-proposed in the future.

(10) To finalise its examination of the file, in telex AGR 029182 of 20 November 2000 the Commission asked the Italian autorities for clarifications about the aid in question. In that same telex the Commission also said that if the Italian authorities had taken steps to stop the grant of aid to the agricultural products listed in Annex I to the Treaty in accordance with the provisions in the Commmision Decision to initiate the formal scrutiny

[1] OJ C 201, 1.7.1997, p. 10.

[2] See footnote 1.

procedure, and if they had committed themselves to repealing those provisions in so far as they applied to the agricultural sector, then the competent authorities could consider withdrawing the notice.

(11) By letter dated 12 June 2001 Italy informed the Commission of the withdrawal of the notification of the aid measure provided for by Article 9 of Regional Law No 33/1996, as the measure concerned had not been applied and had been replaced by new aid measures which were notified and/or in the course of notification to the Commission under Article 88(3) of the Treaty ([3]).

(12) By letter dated 28 June 2001, registered on 2 July 2001, Italy sent further information regarding Article 10.

(13) In the light of the above, this decision concerns only the State aid provided for by Articles 1, 10, 13(2) and (3), 17 and 19 of Regional Law No 33/1996. As the notification of Articles 9 and 18 of Law No 33/96 was withdrawn by Italy by the letters of 28 January 1998 and 12 June 2001 there is no reason to assess the aid measures provided for by those two Articles.

(14) According to Article 63 of Regional Law No 33/96, implementation of the State aid measures provided for in the Law itself is conditional upon their approval by the Commission.

II. DETAILED DESCRIPTION OF THE AIDS

Article 1 of Regional Law No 33/96

(15) Article 1 provides for aid for the extra costs incurred by the undertakings operating in Sicily for the transport outside the Region of the goods produced and/or processed there. The reason for the aid is the distance of the undertakings from the main national and European markets. The aid applies to undertakings in all productive sectors (except for the mining and hydroelectric industries which are obliged to operate in the Region) that use rail, road, maritime and air transport, or combined transport. The aid applies to the period 1997 and 1998. It is calculated on the basis of the kilometres travelled and the transported weight in relation to the transport of the goods within Italy. The calculation of the extra costs is fixed annually by decree of the President of the Regional Government, on the basis of the most economical means of transport and the most direct connection between the place of production or processing and the commercial outlets. The aid for extra costs cannot exceed the real costs incurred.

(16) In its decision to initiate the procedure against this aid, the Commission noted that, in the case of the agricultural sector, the measure was in essence an amendment of the aid provided for by Article 90 of Regional Law No 25/93 of 1 September 1993 ([4]). This aid had been the subject of a negative decision under case C 30/95, with a view to cancelling the measure and recovering any amounts paid out ([5]). The reasons which had led the Commission to take that decision remain, in substance, valid ([6]).

(17) In particular, the Commission decided that this aid was operating aid, incompatible with the common market. This type of aid, which relieves the recipients of a part of their operating costs, has no durable and structural effect on the sectors concerned and it gives an advantage only to products which are produced in the region and marketed outside it, over products which do not benefit from a comparable measure, in Italy or in other Member States.

(18) Consequently, none of the exemptions referred to in paragraphs 2 and 3 of Article 87 of the Treaty were applicable. The Commission accordingly decided to initiate the procedure provided for in Article 88(2) of the Treaty against the aid provided for in Article 1 of Regional Law No 33/96 in respect of the production, processing and/or marketing of agricultural products.

([3]) See Article 6 of Regional Law No 22/99 (aid N 795/99) and Article 131 of Regional Law No 32/2000.

([4]) Article 1(8) of Regional Law No 33/1996 repeals Article 90 of Regional Law No 25/1993.

([5]) See Commission Decision C(96) 2249 of 17 July 1996, notified to the Italian government by letter SG(96) D/6819 of 26 July 1996.

([6]) The Commission considered that the aid provided for in Article 90 of Regional Law No 25/93, was, in addition, incompatible with Articles 30 and 52 of the Treaty owing to certain specific forms of application that were not reproduced in Article 1 of Regional Law No 33/96.

Article 10 of Regional Law No 33/96

(19) This Article extends the provisions of Articles 51, 52, 53 and 54 of Regional Law No 3/86 to consortia made up of agricultural, craft and commercial undertakings which are active in the production, processing and marketing of plants and flowers. According to the information provided by the competent authorities by letter of 3 June 1996, the aid measures concerned have unlimited duration.

(20) The aid on which the Commission had decided to open the procedure is the one provided for in Article 10, in so far as it refers back to Article 53(c) of Regional Law No 3/86). This aid, which concerns the creation of common structures, can be granted at a rate of 80 % to subsidise the following eligible expenditure: land purchase, construction of the necessary buildings, purchase and renovation of existing buildings and the acquisition of any other essential fixed structure that the cooperatives need in order to operate.

(21) In its assessment the Commission concluded that the above investments, which benefited from the regional subsidy, remained the property of the consortium and were to be used for the carrying out of its activities in the processing and marketing of agricultural products.

(22) In this sector, the provisions which were applicable at the time ([7]), required national aid to conform with the sectoral limits referred to in the second and third indents of point 1.2 of the Annex to Commission Decision 94/173/EEC and the intensity of aid could not exceed, in Objective 1 regions such as Sicily, 75 % of the cost of investment.

(23) The rate planned for the regional measure under examination was 80 % and no information was provided enabling compliance with the applicable sectoral limits to be checked. In view of these considerations, the grant of the aid provided for in Article 53(c) of Regional Law No 3/86 to the consortia referred to in Article 10 of Regional Law No 33/96 could not benefit from any of the exemptions referred to in Article 87(2) or (3) of the EC Treaty.

Article 13(2) and (3) of Regional Law No 33/96

(24) Article 13(2) of Regional Law No 33/96 provides that, following the damages to agricultural production caused by the adverse weather events that occurred between December 1995 and March 1996, the Regional Government may decide to suspend payment of the contributions due by their members to the Consorzi di bonifica which were located in areas that had been included in the territories affected by the natural disasters in accordance with National Law No 185/92 (a law providing for national compensation for damages to agricultural production once the areas affected by the natural disaster have been demarcated by Ministerial Decree). Under Article 13(3) the Region may reimburse the Consorzi di bonifica up to ITL 5 000 million for the unpaid contributions.

Article 17 of Regional Law No 33/96

(25) Article 17 of Regional Law No 33/96 allows the Region to advance the amounts due from the State as assistance from the national solidarity Fund to compensate for the damage caused by a natural disaster (National Law No 185/92). The aid measure provided for by Article 17 is limited to 1996, for which expenditure of ITL 20 000 million was planned (see letter of 3 June 1996). The aid consists of subsidies to enable farmers to restore their working capital (capitale di conduzione) and subsidies for the restoration of farming structures which were damaged by the natural events concerned. The beneficiaries are independent farmers who have suffered damage to more than 35 % of their gross saleable production due to temperature fluctuations and subsequent flooding in 1996.

(26) The aid provided for in Article 13(2) and (3) and that provided for in Article 17 can be cumulated within the limits allowed by National Law No 185/92.

(27) In its decision to open the procedure against Article 13(2) and (3) and Article 17, the Commission noted that the measures had to be examined in the light of the criteria that it applied at that time to national aidto

([7]) Guidelines for State aid in connection with investments in the processing and marketing of agricultural products (OJ C 29, 2.2.1996, p. 4) and the Annex to Commission Decision 94/173/EEC of 22 March 1994 on the selection criteria to be adopted for investments for improving the processing and marketing conditions for agriculture and forestry products and repealing Decision 90/342/EEC (OJ L 79, 23.3.1994, p. 29).

compensate for the damage caused by natural disasters ([8]). Under those criteria, the two following conditions had to be met:

(a) the losses suffered by the recipient of aid had to reach 30 % of normal production (20 % in the less-favoured areas within the meaning of Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in less favoured areas ([9])) calculated on the basis of production in the three previous years.

(b) any possibility of over-compensating the losses incurred had to be excluded.

(28) The Commission noted in its Decision that, in the case under examination, the information available did not make it possible to conclude that both conditions in question were met. Indeed, with regard to Article 17, which transposes and incorporates national legislation on natural disasters and adverse weather conditions, the regional texts as submitted restricted themselves to referring National Law No 185/92 and its implementing provisions, including a letter from the Ministry of Agriculture (A1659 of 2 July 1996) which indicated that the aid could not be more than 100 % of the damage. When the procedure on the aids under examination was opened, the national law in question was also the subject of a decision to open the procedure under Article 88(2) of the Treaty, by virtue of the fact that it was impossible to check compliance with the conditions mentioned in 27(a) and (b) ([10]).

(29) Consequently, in the absence of specific assurances regarding regional compliance with the above conditions, the Commission noted that the same conclusions held in the case under examination.

(30) In particular, the Commission had pointed out, firstly, that neither the regional law under examination nor the information transmitted indicated how 'normal' production was calculated as the reference for fixing the threshold that triggered compensation. Secondly, doubts remained as regards the condition of no over-compensation.

([8]) Working document VI/5934/86, 10.11.1986, Rev 2. Rules governing the grant of national aids in the event of damage to agricultural production or the means of agricultural production and national aids involving the defraying of a proportion of the insurance premiums covering such risks

([9]) OJ L 128, 19.5.1975, p. 1.

([10]) Aid C12/95, (OJ C 295, 10.11.1995, p. 5).

(31) In their letter dated 19 December 1996, the Italian authorities stated that, in the case of Article 17 of Regional Law No 33/96, the Ministry of Agriculture's letter of 2 July 1996 required aid not to exceed 100 % of the losses incurred. However, the Commission said that the aid referred to in Article 17 of Regional Law No 33/96 seemed to be cumulable with other aids, in particular those under Article 13(2) of that law. No assurances that over-compensation did not occur in the event of cumulation had been provided.

(32) In view of the preceding considerations, the Commission was not in a position to check for compliance with the conditions set out in point 27(a) and (b). Consequently, none of the exemptions referred to in Article 87(2) and (3) of the Treaty were applicable.

Article 19 of Regional Law No 33/96

(33) This Article provides for subsidies up to 80 % for the construction on farms of facilities for the production of electric, thermal or mechanical energy from renewable resources. In particular it provides for an increase in the aid intensity laid down in Article 12(1) of National Law No 308/82 of 29 May 1982 and in Article 13(1) of National Law No 10/91 of 9 January 1991, which set the maximum intensity at 55 % (65 % for cooperatives). The subsidy can be cumulated with a subsidised loan covering the investment costs not covered by the subsidy. The budget for the measure amounted to ITL 2 500 million.

(34) The Commission noted in its decision to open the procedure that at that time it had already had the opportunity of examining a similar regional legislative text and had communicated to the Italian government its position concerning the problems of cumulation in the agricultural sector by its letter No SG(94) D/11946 of 16 August 1994 (aid No E 1/94). In that communication the Commission had specified, inter alia, that the maximum aid rates provided for in the national law (i.e. 55 %, or 65 % for farming cooperatives) had to be coordinated with the rates in force for national investment aid for the production, processing and marketing of agricultural products. At the time that the procedure was initiated, the rules applying to these kinds of aid required compliance with the following conditions:

(a) the applicable maximum rates in the agricultural sector (any aid, subsidy and/or cumulated interest rebate) had to be complied with. These were respectively:

(i) in the primary production sector (investments falling within Article 12(5) of Council Regulation (EEC) No 2328/91 on improving the efficiency of agricultural structures ([11])): 35 %, or 45 % in the less-favoured areas within the meaning of Directive 75/268/EEC;

(ii) processing industry and marketing: 55 % (75 % in the Objective 1 regions).

(b) in both cases, the sectoral limits laid down in Regulation (EEC) No 2328/91 or in the Community Guidelines on national aid for investments in the processing and marketing of agricultural products had to be complied with ([12]).

(35) No assurances as regards compliance with the above conditions were provided by the Italian authorities.

(36) Consequently, the aid referred to in Article 19 of Regional Law No 33/96 could not benefit from any of the exemptions provided for by Article 87(2) and (3) of the EC Treaty.

III. **COMMENTS FROM INTERESTED PARTIES**

(37) No comments from interested parties were received.

IV. **COMMENTS FROM ITALY**

(38) The Commission received comments from Italy, on behalf of the Region of Sicily, by letters dated 2 September 1997, registered on 4 September 1997, and 7 November 1997, registered on 17 November 1997. Additional information was subsequently sent by letter dated 28 June 2001, in reply to Commission telex AGR 029182 of 20 November 2000.

(39) In its letter of 2 September 1997 Italy submitted comments regarding Articles 1, 13 and 17 of Law No 33/96.

(40) With regard to Article 1 Italy submitted a copy of the comments which it had already submitted in the context of the procedure regarding the aid provided for in Article 90 of Regional Law No 25/93. The aid provided for by this Article had been the object, within the framework of procedure C 30/95, of a final negative decision requiring the repeal of the measure and the recovery of any aid paid out. In their comments the Italian authorities stated that the aid was intended to promote alternative ways of transporting agricultural goods with the coordinated use of vehicles in compliance with Article 77 of the Treaty. The competent authorities indicated that transport in Sicily was based mainly on road transport (67 %). The transport of agricultural products was often unorganised, involving the irrational and imbalanced use of different transport systems: road, rail and maritime transport. The situation was made more difficult by the fact that transport was often carried out by small, non-specialised, often family-run, road haulage companies ('padroncini'). Their organisation mirrored the fragmentation of the regional agricultural trade, with the result that the transport system was not very open to innovation, organisation or the use of combined forms of transport. This situation had repercussions not only on the economy (the cost of transport per unit was higher and there was a risk that the vehicle would return from its destination entirely or partially empty), but also on the environment and on road safety. The regional aid was therefore intended to develop intermodal transport and to encourage the grouping of transport operators by favouring the demand for transport. The aid would be temporary and aimed at the development of an intermodal organised system of transport, so favouring a transfer from road transport to combined road-rail and road-maritime transport and a reduction in the number of vehicles used for the transport of agricultural products. In accordance with paragraph 4 of that Article, the aid could be a flat-rate payment based on the type of transport, without a direct link to the quantity or value of the products transported. The competent authorities ended their comments by saying that, for the reasons set out above, they considered the aid to be compatible with Article 77 (now 73) and with Article 92(3)(b) and (c) (now 87(3)(b) and (c)) of the Treaty.

(41) With regard to the aid provided for by Article 13(2) and (3) and by Article 17, the Italian authorities indicated that for the calculation of the 'normal' production used to determine the 35 % loss required by National Law No 185/92, they had analysed the data sent by the provincial inspection offices to the National Statistics Institute (ISTAT) over the previous 10 years. In order to establish correct reference averages for each Province, the only production data considered were those for years when no adverse weather events had occurred. To ensure there was no overcompensation, the competent authorities stressed that under the Ministry's note A/1659 of 2 July 1996 the aid could not exceed 100 % of the damage suffered by the beneficiary. The Italian authorities confirmed that the aid provided for by Article 13(2) of the Law could be cumulated with the aids provided for by Articles 17 and 18 of that same Law. However, in compliance with the above mentioned Ministerial instructions, the aid could never exceed the

([11]) OJ L 218, 6.8.1991, p. 1.
([12]) See footnote 7.

amount of the losses suffered by the beneficiary. Moreover the Italian authorities stressed that the aid provided for by Article 13(2), i.e. the suspension of the collection of the contributions to the Consorzi di bonifica, was granted to all owners of immovable property located within the area covered by the Consorzio di bonifica who had benefited from the land reclamation works (and so not just to farmers).

(42) In its letter of 7 November 1997 Italy submitted comments regarding Articles 1 and 10 of Law No 33/1996.

(43) As regards Article 1 the Italian authorities said that the rules on transport were consistent with Council Directive 92/106 of 7 December 1992 on the establishment of common rules for certain types of combined transport of goods between Member States ([13]). They also referred to some comments from the Regional Assembly of Sicily. Some of the Regional Assembly's comments had been made direct to the Commission during a meeting held on 25 September 1997. According to these comments, Article 1 of Law No 33/96 was a regional aid within the meaning of Article 87(3)(a) of the Treaty and should be examined in the light of point 2.6 of the Commission Communication 94/C 364/06 of 20 December 1994 ([14]).

(44) As regards Article 10 the competent authorities indicated that the aids concerned could not be cumulated with other national or regional aids and could be granted at the rate of 80 % of the documented expenditure up to a maximum of ITL 1 000 million (ITL 1 200 million for the structures of second-degree consortia). Moreover, according to the competent authorities the method for calculating the 80 % rate differed from that used by the Commission as the region measure referred to a maximum volume of documented expenditure, whereas the 75 % rate applied by the Commission related to the cost of the investment. By letter dated 28 June 2001, the competent authorities indicated that the aid rate laid down in Article 33(1)(c) of Regional Law No 3/86 had been reduced by Article 51 of Regional Law No 32/2000 to 50 % on a maximum volume of expenditure of ITL 1 000 million (1 200 million for the structures of second-degree consortia). They also said that the aid was granted for the production, processing and marketing of plants and flowers, and that admissible expenditure covered the purchase of land and the cost of building immovable property, the cost of buying of existing buildings, their conversion and adaptation.

V. **ASSESSMENT OF THE AID**

(45) Article 87(1) of the Treaty 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 is, in so far as it affects trade between Member States, incompatible with the common market.

A measure that is not State aid

(46) In the light of the above and the information provided by the competent authorities, one of the notified measures under examination is not to be considered a State aid within the meaning of Article 87(1) of the Treaty. This applies to Article 13(2) and (3), since, based on the information provided by the competent authorities, the suspension of the payment of the contributions due by their members to the Consorzi di bonifica applies equally to all owners of immovable property in the area covered by the Consorzi di Bonifica which were affected by adverse weather conditions between December 1995 and March 1996 and not just to the farmers located therein.

(47) The Consorzi di bonifica are public bodies tasked with carrying out public infrastructure works ([15]). They are regulated by national and regional law. These works may include: the planning, execution, maintenance and management of 'bonifica works' (land reclamation and also making land suitable for human occupation, since most of the land needing to be reclaimed was originally swampy and malaria-ridden), the implementation of protective measures to contain and prevent floods, the management of water resources with a view to rational economic and social development, etc. The land reclamation works belong to the State and Regions.

([13]) OJ L 368, 17.12.1992, p. 38. As corrected in OJ L 72, 25.3.1993, p. 36.

([14]) Changes to the method for the application of Article 92(3)(c) of the Treaty to regional aid. Communication from the Commission to the Member States and interested third parties on changes to the method for the application of Article 92(3)(c) of the EC Treaty to regional aid (OJ C 364, 20.12.1994, p. 8).

([15]) See aid Nos N 718/97, N 130/2000, N 412/2001 and N 53/2003, Venice Lagoon.

(48) The law gives the Consorzi di bonifica the power to impose contributions on their members which are compulsory and collected through the direct taxation system ([16]).

(49) The members of the Consortium are all the owners of immovable property (land and buildings) which is located within the area covered by the Consortium. The contribution under examination is therefore akin to a tax and it is imposed on all the members of the Consortium (usually including the State, the regions, the provinces and the municipalities for the assests belonging to them) who benefit from the land reclamation works, on the basis of their ownership of immovable property located within the area covered by the Consortium, and independently of the activity carried out by the owner of the property. The contribution is normally calculated on the basis of the 'cadastral rent' of the real estate ('rendita catastale' for buildings and 'reddito dominicale' for land) as resulting from public land registers, and on the basis of 'hydraulic indexes of benefit' ('indici idraulici di beneficio') relating to the specific areas where the property is located.

(50) In the case under examination the Region pays the Consortia for the loss of income resulting from the suspension of the collection of the contributions from all their members, not only from those members who may exercise an economic activity. Although many of the property owners in the area concerned might be farmers (which may explain the reference to the demarcation of the affected areas under National Law No 185/92), the measure under examination cannot be considered to favour certain undertakings or the production of certain goods within the meaning of Article 87(1) of the Treaty, since, according to the information provided, it is not aimed specifically at subjects exercising an economic activity and is applicable, without discrimination, to all property owners whose real estate is located within the area covered by the Consorzio di bonifica and who benefit from the land reclamation works. The measure does not therefore constitute a State aid within the meaning of Article 87(1) of the Treaty.

State aid measures

(51) Articles 1, 10, 17 and 19 of Regional Law No 33/96 provide for the grant of aid from public funds to specific agricultural undertakings which will undeniably be granted an undue economic and financial advantage to the detriment of other undertakings not receiving the same contribution. The Court of Justice has held that an 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 ([17]).

(52) The measures affect trade between Member States in that there is substantial intra-Community trade in agricultural products as indicated by the table ([18]) below, which lists the overall value of agricultural imports and exports between Italy and the European Union over the 1997 to 2001 period ([19]). Within Italy, Sicily is a significant producer of agricultural products.

Total agricultural sector

	ECU-EUR million	ECU-EUR million
	Exports	Imports
1997	9 459	15 370
1998	9 997	15 645
1999	10 666	15 938
2000	10 939	16 804
2001	11 467	16 681

(53) It should however be recalled that the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member

([16]) Article 21 of Royal Decree No 215/1933, Article 864 of the Civil Code and Article 103 of DPR (Decree of the President of the Republic) No 603/73.

([17]) Court Judgment in Case C-730/79, *Philip Morris Holland BV* v *Commission*, ECR [1980] 2671, grounds 11 and 12.

([18]) *Source:* Eurostat.

([19]) Consistent case law holds that the condition of the effect on trade is met when the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that the aid strengthens the position of this company in relation to other competing companies in intra-Community trade makes it possible to consider that trade was affected. As regards State aid to the agricultural sector, settled case law holds that, regardless of the relatively small amount of total aid involved and its distribution among many farmers, there is an impact on intra-Community trade and competition (see Case C 113/2000, [2002] ECR 7301, grounds 30 to 36 and 54 to 56 and Case C 114/2000, *Kingdom of Spain* v *Commission*, [2002] ECR I-7657, grounds 46 to 52, 68 and 69.

States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition ([20]).

(54) The Commission therefore concludes that the measures are caught by the prohibition in Article 87(1) of the Treaty.

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

(56) The exemptions listed in Article 87(2)(a),(b) and (c) are manifestly inapplicable given the nature of the aid measures in question and their objectives. Indeed, Italy has not submitted that Article 87(2)(a), (b) or (c) is applicable.

(57) Article 87(3)(a) is also inapplicable since the aids are not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(58) The Commission must however consider that in their written comments submitted in a meeting the Sicilian authorities said that Article 1 of Law No 33/96 was a regional aid within the meaning of Article 87(3)(a) of the Treaty and should be examined in the light of point 2.6 of the Commission Communication 94/C 364/08.

(59) In this respect reference is made to point 3.7 of the guidelines applicable to State aid to agriculture ([21]) which states that, because the very specific conditions of agricultural production must be taken into account during the assessment of aid which is intended to favour the less-favoured regions, the Commission's guidelines on national regional aid ([22]) do not apply to the agricultural sector. Where they are relevant to the agricultural sector, regional policy considerations have been incorporated into the Community guidelines for State aid to the agriculture sector.

(60) In the light of the above, in so far as Article 1 of Regional Law No 33/96 provides for aid to undertakings operating in the production, processing and marketing of Annex I agricultural products, by reducing their normal transport costs, as in this case, the measure must be evaluated on the basis of State aid rules applicable to agriculture.

(61) Moreover the measure which, in the case under examination, provides for aid to reduce transport costs of Annex I agricultural products outside Sicily does not manifestly appear intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment, nor have the Sicilian authorities provided any demonstration in this respect or shown the link between the aids that they intend to grant and the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(62) Furthermore the last indent of point 2.6 of Commission Communication 94/C 364/08 states that it does not apply to Annex I agricultural products but instead concerns particular European regions. This Communication is therefore manifestly inapplicable to the aid for the transport of agricultural products outside Sicily, as are the guidelines on national regional aids in which the rules on aids to compensate for extra transport costs in specific regions ([23]) have been later incorporated.

(63) It follows that the derogation provided for by Article 87(3)(a) of the Treaty is therefore inapplicable to the measures under examination.

(64) Article 87(3)(b) is equally inapplicable as the aids in question are not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.

([20]) Case 102/87 *French Republic* v *Commission* ECR [1988] I-4067.

([21]) OJ C 28, 1.2.2000, p. 2. As corrected in OJ C 232, 12.8.2000, p. 17.

([22]) OJ C 74, 10.3.1998, p. 9.

([23]) See Amendments to the guidelines on national regional aid (OJ C 258, 9.9.2000, p. 5). Point 4.16.1 states 'In the outermost regions qualifying for exemption under Article 87(3)(a) and (c) of the Treaty, and in the regions of low population density qualifying for exemption either under Article 87(3)(a) or under 87(3)(c) on the basis of the population density test referred to at point 3.10.4, aid which is not both progressively reduced and limited in time and is intended to offset in part additional transport costs may be authorised under special conditions. It is the task of the Member State to prove that such additional costs exist and to determine their amount'.

(65) The Commission must however consider that the Italian authorities have also invoked Article 87(3)(b) to claim that Article 1 of Regional Law No 33/96 is compatible with the Treaty. In this respect the Commission notes that the Italian authorities have failed to indicate which important project of common European interest the aid would promote or which serious disturbance in Italy's economy the aid would remedy.

(66) The competent authorities have vaguely indicated that the aid is aimed at promoting intermodal transport in compliance with Community Directive 92/106/EEC; this cannot be considered an important project of common European interest within the meaning of Article 87(3)(b) of the Treaty, however. Moreover the aid provided for in Article 1 is granted to the beneficiaries for any type of transport they intend to use and the Italian authorities have not demonstrated the link between the aid that they intend to grant and the execution of any important project of common European interest.

(67) This aid is not intended to achieve or suitable for achieving the objectives referred to in Article 87(3)(d).

(68) Considering the nature of the aid under examination and its objectives, the only exemption which may be applicable is the one provided for by Article 87(3)(c) of the Treaty.

Applicable provisions

(69) The applicability of the derogation referred to in Article 87(3)(c) of the Treaty must be assessed in the light of the provisions applicable to the grant of State aid in the agriculture sector, namely the Community guidelines for State aid in the agriculture sector ([24]) (hereinafter 'the guidelines').

(70) Under point 23.3 of the guidelines, the Commission will apply them with effect from 1 January 2000 to new notifications of State aid and to notifications which are pending on that date. Unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the Treaty ([25]) will be assessed in accordance with the rules and guidelines in force at the time the aid is granted.

(71) On the basis of the information available, Regional Law No 33/96 was notified to the Commission and its Article 63 provides for a suspensory clause which makes the implementation of the State aid measures contained in the Law conditional upon their approval by the Commission ([26]).

(72) By means of telex AGR 029182 of 20 November 2000, the Commission asked the competent authorities to state whether aid had already been granted to Annex I agricultural products based on provisions in respect of which the Commission had decided to open a formal investigation. The Commission also indicated that, if the Italian authorities could state that they had not granted the aid to the agricultural sector on the basis of the abovementioned provisions and had committed themselves to repealing the relevant legal provisions in so far as they applied to the agricultural sector, they were invited to consider the option of withdrawing the notification under examination.

(73) The Italian authorities have not replied to this question. Without any information to the contrary the Commission is therefore entitled to assume that the aid concerned has not yet been put into effect. Their examination therefore falls within the scope of the new Guidelines ([27]).

Article 1 of Regional Law No 33/96

(74) Article 1 provides for aid for the extra costs incurred by undertakings operating in Sicily for the transport outside the Region of the goods produced and/or

([24]) See footnote 21.

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

([26]) Article 63 (EC control procedure) reads: '1. The assistance provided for in this law shall be subject to the applicable Community rules on State aid, and to the conclusion of the procedures laid down in Article 93(2) and (3) of the Treaty. 2. Any suspension of a provision as a result of the procedure laid down in Article 93 of the Treaty shall not prejudice the implementation of the other provisions of this law that are not subject to comment or that have been favourably assessed by the Commission of the European Communities.'

([27]) See footnote 21.

processed in Sicily. The reason for the aid is the distance of the undertakings from the main national and European markets. The aid applies to undertakings in all productive sectors (except for the mining and hydroelectric industries which are obliged to operate in the Region) which use rail, road, maritime and air transport, or combined transport, and so to the transport of agricultural goods. The aid relates to the period 1997 and 1998. The aid is calculated on the basis of the kilometres travelled and transported weight, based on the transport of the goods within Italy. The calculation of the extra costs is fixed annually by Decree of the President of the Regional Government, on the basis of the most economical means of transport and the most direct connection between the place of production or processing and the commercial outlets. The aid for extra costs cannot exceed the real costs incurred.

(75) In its decision to open the procedure with regard to this aid, the Commission noted that with regard to the agricultural sector, the aid was in essence an amended form of the aid provided for in Article 90 of Regional Law No 25/1993 which was the object, under procedure C 30/95, of a final negative decision requiring the repeal of the measure and the recovery of any aid paid out ([28]). The reasons which had led the Commission to take that decision remain, in substance, valid ([29]).

(76) In particular the Commission noted that it regarded this type of aid as being operating aid which is not compatible with the common market. This type of aid, which relieves the recipients of a part of their operating costs, has no durable or structural effect on the sectors concerned and it only gives an advantage to Sicilian products which are marketed outside the region over products which do not benefit from a comparable measure, in Italy or in other Member States.

(77) The Commisson's assessment of this measure does not change under the guidelines. In particular, point 3.5 of the guidelines establishes that in order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary. Unless exceptions are expressly provided for in Community legislation or in these guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are deemed to be operating aids which are incompatible with the common market. Furthermore, by their very nature, such aids are also likely to interfere with the mechanisms of the common organisations of the market.

(78) The aid under examination does not contain any incentive element and does not require any counterpart on the part of the beneficiary. Neither the guidelines applicable to State aid to agriculture nor any other Community rules provide for State aid of this type and the aid in question is intended merely to improve the financial situation of producers without contributing in any way to the sector's development.

(79) In their comments, the Italian authorities said that the aid was intended to encourage inter-modal transport and to improve the transport sector. However, the aid in question is quite obviously paid to undertakings that use any haulier whatsoever to carry their products to markets located outside Sicily. In the case under examination, these undertakings are involved in the production, processing and marketing of agricultural products listed in Annex I to the EC Treaty. The aid relieves the undertakings of the transport costs for their goods, which they should normally bear. No evidence has been provided that the aid is aimed at encouraging a particular type of transport or that the aid is passed on to the transport sector. All the comments made by the competent authorities in respect of the transport sector and their references to Article 77 (now 73) of the Treaty are therefore inapplicable to this case and devoid of any foundation.

(80) Consequently the aid measure provided for in Article 1 of Regional Law No 33/96 in favour of undertakings involved in the production, processing and/or marketing of agricultural products under Annex I, both under previous Commission practice and under the guidelines which are currently applicable to State aid for agriculture, provides operating aid to relieve the beneficiaries of their transport costs.

(81) Since the aid under examination has no incentive element and does not require any counterpart on the part of the beneficiary, and since Sicily is not an outermost region where operating aid could be allowed

([28]) See footnotes 4 and 5.
([29]) See footnote 6.

under point 16 of the current Community guidelines, no justification can be given under State aid rules applicable to agriculture to the aid under examination, which is simply operating aid intended to relieve the beneficiaries of their transport costs.

(82) As such this aid cannot benefit from a derogation under Article 87(3)(c) of the Treaty. As demonstrated above, the aid cannot even benefit from a derogation under Article 87(3)(a) or (b) or from any other derogation provided for by the Treaty. This aid is therefore to be considered incompatible with the common market and cannot be implemented.

Article 10 of Regional Law No 33/96

(83) This Article extends the provisions of Articles 51, 52, 53 and 54 of Regional Law No 3/86 to consortia made up of agricultural, craft and commercial undertakings which are active in the production, processing and marketing of plants and flowers. According to the information provided by the competent authorities by letter of 3 June 1996, the aid measures concerned are of unlimited duration.

(84) The aid on which the Commission had decided to open the procedure is the one provided for by Article 10, in so far as it refers back to Article 53(c) of Regional Law No 3/86. This aid, which concerns the creation of common structures, can be granted at a rate of 80 % to subsidise the following eligible expenditure: purchase of land, construction of the necessary buildings, purchase and conversion of existing buildings and the acquisition of any other essential fixed structure that the cooperatives need in order to operate.

(85) In the sector concerned, according to the provisions which were applicable at the time ([30]), national aid had to conform to the sectoral limits referred to in the second and third indents of point 1.2 of the Annex to Commission Decision 94/173/EEC and the aid intensity could not exceed 75 % of the investment costs in Objective 1 regions such as Sicily.

(86) The rate planned for the regional measure under examination was 80 % and no information was provided enabling compliance with the applicable sectoral limits to be checked.

(87) In their comments on this measure the Italian authorities indicated firstly that the aids concerned could not be cumulated with other national or regional aids and could be granted at the rate of 80 % of the documented expenditure up to a maximum of ITL 1 000 million (or ITL 1 200 million for the structures of second-degree consortia). Moreover, according to the competent authorities, the way in which the 80 % rate was calculated differed from that used by the Commission in that the regional measure related to documented expenditure on a maximum volume of expenditure, whereas the 75 % maximum applied by the Commission related to the cost of the investment.

(88) By letter dated 28 June 2001, the competent authorities indicated that the aid rate laid down in Article 33(1)(c) of Law No 3/86 had been reduced by Article 51 of Law No 32/2000 to 50 % on a maximum volume of expenditure of ITL 1 000 million (1 200 million for the structures of second-degree consortia). They also said that the aid was granted for the production, processing and marketing of plants and flowers, and that admissible expenditure covered the purchase of land and the cost of building immovable property and the cost of buying of existing buildings, their conversion and adaptation. Since Article 10 of Regional Law 33/96 refers back to Article 53 of Law 3/86 (and not to Article 33 of this law), it is not at all clear that the measures to which the reduction refers are indeed Article 53 of Law 3/86 and Article 10 of Law 33/96.

(89) This information however does not change the assessment made by the Commission in its decision to open the procedure on the aid measure concerned.

(90) For the reasons which are set out below, this measure of unlimited duration cannot be deemed compatible with the State aid rules on investment aid for the production, processing and marketing of Annex I agricultural products which are applicable from 1 January 2000 and which are set out in points 4.1 and 4.2 of the Community guidelines on State aid in the agriculture sector ([31]).

(91) With regard to the aids for processing and marketing, those guidelines stipulate that, as a general rule, aid granted to support investments in connection with the processing and marketing of agricultural products may be granted only to enterprises which can be demonstrated to be economically viable, based on an

([30]) See footnote 7.

([31]) See footnote 21.

assessment of their prospects ([32]), and which comply with minimum standards regarding the environment, hygiene and animal welfare. However, where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene or animal welfare, aid may be granted in order to achieve these new standards. The aid rate may not exceed 50 % of eligible investments in Objective 1 regions and 40 % in the other regions. Eligible expenditure may include the construction, acquisition or improvement of immovable property, new machinery and equipment, including computer software, general costs, such as architects, engineers and consultation fees, feasibility studies and the acquisition of patents and licences, up to 12 % of the expenditure referred to above.

(92) No aid may be granted unless sufficient evidence can be produced that normal market outlets for the products concerned can be found. To this end the products concerned, the types of investment and existing and expected capacities must all be assessed to an appropriate degree. To this end, any restrictions on production or limitations of Community support under the common market organisations must be taken into account. In particular no aid may be granted in contravention of any prohibitions or restrictions laid down in the common organisations of the market.

(93) Although, as is the case for 2000, the aid rate may have been reduced to 50 %, the aid provided for in Article 10 of Regional Law No 33/96 does not comply with any of the other conditions set out in the preceding paragraphs. In particular, there is no evidence that normal market outlets for the products concerned have been found. Moreover the conditions of viability and minimum standards regarding the environment, hygiene and animal welfare are not met. As regards the eligible expenditure, the purchase of land cannot be authorised.

(94) With regard to the aid for primary production governed by point 4.1 of the Guidelines, subject to the exceptions provided for in point 4.1.2, which in the case under examination do not apply, the maximum rate of public support, expressed as a percentage of the volume of eligible investment is limited to a maximum of 40 %, or 50 % in the less-favoured areas, as defined in Article 17 of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ([33]). In the case of investments made by young farmers within five years of setting-up, the maximum rate of aid is increased to 45 %, or 55 % in the less-favoured areas.

(95) Aid for investments may only be granted to agricultural holdings whose economic viability can be demonstrated by an assessment of their prospects ([34]), and where the farmer possesses adequate occupational skill and competence. The holding must comply with minimum Community standards regarding the environment, hygiene and animal welfare. However, where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene or animal welfare, aid may be granted in order to achieve these new standards.

(96) No aid may be granted for investment having as its objective increased production for which normal market outlets cannot be found. The existence of normal market outlets should be assessed appropriately in terms of the products concerned, the types of investment and existing and expected capacities. Any restrictions on production or limitations of Community support under the common market organisations must be taken into account. Where, under a common market organisation, restrictions on production or limitations of Community support exist at the level of individual farmers, holdings or processing plants, no aid may be granted for investment which would increase production beyond these restrictions or limitations.

(97) Eligible expenditure may include the construction, acquisition or improvement of immovable property, new machinery and equipment ([35]), including computer

([32]) Aid cannot be granted to undertakings in financial difficulties except where such aid satisfies the conditions laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty.

([33]) OJ L 160, 26.6.1999, p. 80.

([34]) See footnote 32.

([35]) The purchase of second-hand equipment can be deemed admissible in duly justified cases if all the following four conditions are also met:
(a) a declaration from the seller stating the precise origin of the equipment and confirming that it has not previously benefited from a national or Community contribution;
(b) the purchase of such equipment must be of particular benefit to the programme or project or be imposed by exceptional circumstances (new equipment not available or only after a long waiting period, so threatening the proper implementation of the project);
(c) it must produce a reduction in the associated costs (and so the amount of aid) relative to the cost of that equipment if bought new, so maintaining a good cost/benefit ratio for the operation;
(d) the technical and/or technological features of the equipment must meet the demands of the project.

software, general costs, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to above, and land purchase, including legal fees, taxes and land registration costs. The maximum eligible expenses may not exceed the limits for total investment set by the Member State in accordance with Article 7 of Regulation (EC) No 1257/1999.

(98) The Commission also applies the rules set out in this section by analogy to investments in primary agricultural production which are not made by farmers, for example where equipment is purchased for shared use by producer associations.

(99) The aid provided for by Article 10 does not satisfy the rules currently applicable to investment aid for primary production. Although, as it would appear, the aid rate may have been reduced in 2000 to 50 %, this does not mean that aid is not granted for investment having as its objective increased production for which normal market outlets cannot be found. Moreover, the conditions of viability, adequate occupational skills and competence and compliance with minimum Community standards regarding the environment, hygiene and animal welfare are not met.

(100) In the light of the above assessment, the grant of aid provided for by Article 10 of Regional Law No 33/96 in so far as it refers back to Article 53(c) of Regional Law No 3/86 does not comply with the State aid rules for investments in the production, processing and marketing of Annex I agricultural products. As such this aid cannot benefit from the derogation provided by Article 87(3)(c) of the Treaty. This aid is therefore to be considered incompatible with the common market and cannot be implemented.

Article 19 of Regional Law No 33/96

(101) This Article provides for subsidies up to 80 % for the construction on farms of facilities for the production of electric, thermal or mechanical energy from renewable resources. In particular it provides for an increase in the aid rate laid down in Article 12(1) of National Law No 308/82 and in Article 13(1) of National Law No 10/91, for which the maximum limit is 55 % (65 % for cooperatives). The capital subsidy can be cumulated with a subsidised loan covering the investment costs not covered by the subsidy. The budget for the measure amounted to ITL 2 500 million. As stated in paragraph (2) above, this Decision covers only the aid measures in favour of Annex I agricultural products.

(102) The Commission noted in its decision to open the procedure that the maximum aid rates provided for in the national law (55 %, 65 % for farming cooperatives) had to be coordinated with the aid rates and the rules in force for investment aid for the production or processing and marketing of agricultural products.

(103) At the time of the opening of the procedure, as set out in the letter to Italy, the rules applicable to this type of aid required:

(a) compliance with the applicable maximum rates in the agricultural sector (cumulating any aid, subsidy and/or interest rebate). These were respectively:

(i) in the primary production sector (investments falling within Article 12(5) of Regulation (EEC) No 2328/91): 35 %, or 45 % in the less-favoured areas within the meaning of Directive 75/268/EEC;

(ii) in the processing and marketing sector: 55 % (75 % in the Objective 1 regions).

(b) in both cases, compliance with the sectoral limits laid down in Regulation (EEC) No 2328/91 for primary production and in the Community guidelines on State aid for investments in the processing and marketing of agricultural products as referred in to the Annex to Commission Decision 94/173/EEC.

(104) The Italian authorities offered no assurances as regards compliance with the above conditions. The measure under examination does not therefore satisfy any of the rules which were applicable to investment aid for the production, processing and/or marketing of Annex I agricultural products.

(105) The measure does not even satisfy the rules which currently apply to investment aid for the production, processing and/or marketing of Annex I agricultural products, as set out at points 4.1 and 4.2 of the guidelines.

(106) Although the measure introduces aid to construct on-farm facilities for the production of electric, thermal or mechanical energy from renewable resources, and is therefore an aid within the meaning of point 4.1 of the guidelines (and to which point 4.3 refers), it will also be assessed, as was done at the time of the opening of the procedure, on the basis of the rules which are currently applicable to the processing and marketing of Annex I agricultural products.

(107) The rules applicable to investment aid for processing and marketing were outlined above in the context of the assessment of the aid provided for by Article 10 of Regional Law No 33/96. Like the aid provided for by Article 10, the aid provided for by Article 19 does not satisfy these rules either. In particular, there is no evidence of normal market outlets for the products concerned. The aid rate of up to 80 % well exceeds the 50 % aid rate allowed by the guidelines. Since the aid is not granted within the framework of a regional aid scheme which has previously been approved by the Commission in accordance with the Community guidelines on national regional aid, the aid cannot even be granted up to a possibly higher rate which was approved under that scheme. Moreover the conditions of viability and minimum standards regarding the environment, hygiene and animal welfare are not met.

(108) According to the rules set out at point 4.1 of the guidelines which apply to investment aid for primary production and for diversification at farm level, subject to the exceptions provided for in point 4.1.2, the maximum rate of public support, expressed as a volume of eligible investment, is limited to a maximum of 40 %, or 50 % in the less-favoured areas as defined in Article 17 of Regulation (EC) No 1257/1999. However, in the case of investments made by young farmers within five years of setting-up, the maximum aid rate is increased to 45 %, or 55 % in the less-favoured areas. Under point 4.1.2, where investments result in extra costs relating to the protection and improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals, the maximum aid rates of 40 %, or 50 % under point 4.1.1.2 may be increased by 20 or 25 percentage points respectively. This increase may be granted only for investments which go beyond the minimum Community requirements in force. The increase must be strictly confined to the extra eligible costs necessary to meet the objective in question and does not apply to investments which increase production capacity.

(109) Aid for investment may be granted only to agricultural holdings whose economic viability can be demonstrated by an assessment of their prospects ([36]), and where the farmer possesses adequate occupational skill and competence. The holding must comply with minimum Community standards regarding the environment, hygiene and animal welfare. However, where investments are made in order to comply with newly introduced minimum standards regarding the environment, hygiene or animal welfare, aid may be granted in order to achieve these new standards.

(110) No aid may be granted for investments having as their objective increased production for which normal market outlets cannot be found. The existence of normal market outlets should be assessed appropriately in terms of the products concerned, the types of investment and existing and expected capacities. Any restrictions on production or limitations of Community support under the common market organisations must be taken into account. Where, under a common market organisation, restrictions on production or limitations of Community support exist at the level of individual farmers, holdings or processing plants, no aid may be granted for investment which would increase production beyond these restrictions or limitations.

(111) Eligible expenditure may include the construction, acquisition or improvement of immovable property, new machinery and equipment ([37]), including computer software, general costs, such as architects', engineers' and consultants' fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to above, and land purchase, including legal fees, taxes and land registration costs. The maximum eligible expenses may not exceed the limits for total investment set by the Member State in accordance with Article 7 of Regulation (EC) No 1257/1999.

(112) The Commission also applies the rules set out in this section by analogy to investments in primary agricultural production which are not made by farmers, for example where equipment is purchased for shared use by producer groups.

([36]) See footnote 32.
([37]) See footnote 35.

(113) The aids provided for by Article 19 do not satisfy the rules currently applicable to investment aid for primary production and for diversification at farm level. In particular, there are no guarantees that aid is not granted for investments having as their objective increased production for which normal market outlets cannot be found. The aid rate, which can unconditionally reach 80 %, exceeds the maximum rates allowed by the Guidelines, i.e. 40 % (or 50 % in the less-favoured areas as defined by Article 17 of Regulation (EC) No 1257/1999); or 45 % (55 % in the less favoured areas) if the investments are carried out by young farmers within five years of setting-up; or 60 % (75 % in less-favoured areas) if the investments include extra costs attributed to the protection or improvement of the environment, the improvement of hygiene conditions of livestock enterprises or the welfare of farm animals, in accordance with the conditions laid down in point 4.1.2.4 of the guidelines. Moreover, the conditions of viability, adequate vocational skills and competence and compliance with the minimum standards regarding the environment, hygiene and animal welfare are not met.

(114) In the light of the above assessment, the grant of aid provided for by Article 19 of Regional Law No 33/96 does not comply with the State aid rules for the production, processing and marketing of Annex I agricultural products. As such this aid cannot benefit from the derogation provided by Article 87(3)(c) of the Treaty. This aid is therefore to be considered incompatible with the common market and cannot be implemented.

Article 17 of Regional Law No 33/96

(115) Article 17 of Regional Law No 33/96 allows the Region to advance the amounts due from the State as assistance from the national solidarity Fund to compensate for the damage caused by a natural disaster (National Law No 185/92). The aid measure provided for by Article 17 is limited to 1996, for which an appropriation of ITL 20 000 million is earmarked (see letter of 3 June 1996). The aid consists of subsidies to enable farmers to restore their working capital (capitale di conduzione) and subsidies for the restoration of structures on the holdings which were damaged by the natural events concerned. The beneficiaries are independent farmers who suffered damage to more than 35 % of their gross saleable production due to the temperature fluctuations and flooding that occurred in 1996.

(116) The aid provided for in Article 17 can be cumulated within the limits allowed by National Law No 185/92.

(117) In its decision to open the formal procedure against the aid provided for by Article 17, the Commission noted that the above assistance had to be examined in the light of the criteria applied by the Commission at the time to national aid to compensate for the damage caused by natural disasters ([38]). According to these criteria, the following two conditions had to be met:

(a) the losses suffered by the aid recipients had to reach 30 % of their normal production (or 20 % in the less-favoured areas within the meaning of Directive 75/268/EEC) calculated on the basis of production in the preceding three years;

(b) any possibility of over-compensating the losses incurred had to be excluded.

(118) The Commission noted in its Decision that, in the case under examination, the information abialable made it impossible to conclude that both these conditions were met. With regard to Article 17, which transposes and incorporates national legislation on natural disasters, the regional texts submitted restricted themselves to referring to the provisions of National Law No 185/92 and its implementing arrangements, including a letter from the Ministry of Agriculture (A1659 of 2 July 1996) which indicated that the aid could not exceed 100 % of the damage. At the time the procedure on the aid under examination was opened, National Law No 185/92 was also the subject of a decision to initiate the procedure provided for in Article 88(2) of the Treaty, by virtue of the fact that it was impossible to check compliance with the conditions referred to in point 117(a) and (b) above ([39]). Consequently, in the absence of specific assurances regarding compliance at the regional level with those conditions, the Commission noted that the same conclusions were also inevitable in the case under examination.

(119) In particular, the Commission had pointed out, firstly, that neither the regional law nor the information submitted in respect of this case file indicated how 'normal' production used as the reference for fixing the minimum compensation threshold was calculated. Secondly, doubts remained as regards the condition regarding excess compensation.

([38]) See footnote 8.
([39]) Aid C 12/95 (OJ C 295, 10.11.1995, p. 5).

(120) In their comments on Article 17, which they submitted after the opening of the procedure, the Italian authorities indicated that, to calculate the 'normal' production which they used to determine the 35 % loss required by National Law No 185/92, they had analysed the data sent by the provincial inspection offices to the National Statistics Institute (ISTAT) over the last 10 years. In order to establish correct reference averages for each province, the production data considered were only those for years when no adverse weather events had occurred. As regards non-overcompensation, the competent authorities stressed that, under the Ministry's note A/1659 of 2 July 1996, the aid could not exceed 100 % of the damage suffered by the beneficiary. Although the aid provided for by Article 17 could be cumulated with that provided for by Article 13(2) of Law 33/96, in compliance with the above mentioned Ministerial instructions, the total aid could therefore never exceed the amount of the losses suffered by the beneficiary.

(121) At the time of the notification of the aid and of the decision to open the procedure, these types of aid were assessed on the basis of the Rules governing the grant of national aids in the event of damage to agricultural production or the means of agricultural production and national aids involving the defraying of a proportion of the insurance premiums covering such risks ([40]). In accordance with these rules and constant Commission practice, weather events such as ice, hail, frost, rain or drought could be deemed natural disasters within the meaning of the Treaty if the damage suffered by an individual aid beneficiary reached a particular threshold, set at 30 % of normal production (20 % in the less-favoured areas) based on the total gross quantity of production affected by the event in question on an individual holding applying for an allowance to compensate for losses suffered and on the corresponding normal gross annual production. That rate had to be determined by comparing average normal production recorded objectively for each holding concerned during a reference period of three years preceding that of the event in question, disregarding, where appropriate, a previous year which also gave rise to compensation on the same grounds, against the reduced or destroyed production under consideration.

(122) The rules which are currently applicable to make good the damages caused by these weather events are contained in point 11.3 of the guidelines. According to these rules the Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b) of the Treaty. However, because of the damage that such events may cause to agricultural production or the means of agricultural production, the Commission has accepted that such events may be likened to natural disasters once the level of damage reaches a certain threshold, which has been fixed at 20 % of normal production in the less-favoured areas and 30 % in other areas. Because of the inherent variability of agricultural production, the maintenance of such a threshold also appears necessary to ensure that weather conditions may not be used as a pretext for the payment of operating aid. In order to enable the Commission to assess such aid schemes, notifications of aid measures to compensate for damage caused by adverse weather conditions should include appropriate supporting meteorological information.

(123) Where damage occurs to annual crops the relevant loss threshold of 20 % or 30 % should be determined on the basis of the gross production of the relevant crop in the year in question compared with the gross annual production in a normal year. In principle the gross production in a normal year should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions. The Commission will however accept alternative methods of calculation of normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields. Once the volume of lost production has been determined, the amount of aid payable should be calculated. In order to avoid over-compensation, the amount of aid payable should not exceed the average level of production during the normal period multiplied by the average price in the same period, minus actual production in the year the event took place, multiplied by the average price for that year. The amount of aid should also be reduced by the amount of any direct aid payments.

(124) As a general rule, the calculation of loss should be made for each individual holding. This is particularly the case where aid is paid to compensate for damage caused by localised events. However, where the adverse weather conditions have affected a wide area in the same way, the Commission will accept that aid payments are based on average losses, provided that these are representative and will not result in significant overcompensation of any beneficiary.

(125) In the case of damage to the means of production the effects of which are felt over several years (for example

([40]) See footnote 8.

the partial destruction of orchard crops by frost), for the first harvest following the adverse event the percentage real loss in comparison with a normal year, determined in accordance with the principles set out in the previous paragraphs, must exceed 10 % and the percentage real loss multiplied by the number of years in which production is lost must exceed 20 % in the less-favoured areas and 30 % in other areas.

(126) The Commission applies the principles set out above by analogy in the case of aids to compensate for losses to livestock caused by adverse weather conditions.

(127) In order to avoid over-compensation, the amount of aid paid should be reduced by any amount received under insurance schemes. Furthermore, normal costs not incurred by the farmer, for example because of the non-harvesting of the crop, should also be taken into account. However, where such costs are increased as a result of the adverse weather conditions, additional aid may be granted to cover these costs.

(128) Aid to compensate farmers for damage to buildings and equipment caused by adverse weather events (for example damage to glasshouses caused by hail) will be accepted up to 100 % of actual costs, without any minimum threshold being applied. As a general rule, only farmers, or the producers' association of which they are members, are entitled to the aid described in this section. The aid must not exceed in this case the farmer's actual loss.

(129) In their notification and in the comments subsequently submitted, the competent authorities indicated that the beneficiaries are independent farmers who have incurred damage to more than 35 % of their gross saleable production due to the temperature fluctuations and flooding that occurred in 1996. According to the notification, Article 17 of Regional Law No 33/96 allows the Region to advance the amounts due from the State as assistance from the national solidarity Fund to compensate for the damage caused by a natural disaster (National Law No 185/92). The aid consists of subsidies to enable farmers to restore their working capital (capitale di conduzione) and subsidies for the restoration of structures in the holdings which were damaged by the natural events concerned. The aid measure provided for by Article 17 was limited to 1996, for which an appropriation of ITL 20 000 million was planned.

(130) The Commission has recently concluded its examination of the compensatory aids granted by Italy on the basis of National Law No 185/92 until 31 December 1999 to make good the damage caused by natural disasters and adverse weather conditions (Aid C 12/A/95). In this decision, following a detailed assessment, the Commission found these aids to be compatible with the common market. In particular the Commission concluded that the method for calculating the losses proposed by the competent authorities was acceptable, that the weather events for which the Law provided compensation following a loss of 35 % of the gross saleable production were compatible with Community rules and that no overcompensation could arise from the cumulation of the different types of aids to make good the damage caused by natural disasters and comparable weather events.

(131) Although that Decision regarding National Law No 185/92 covers only the aid granted up to 31 December 1999, and was adopted on the basis of the State aid rules for aid to make good the damage caused by natural disasters and comparable weather events which were applicable until that date ([41]), the Commission expressed a favourable opinion both on the criteria used to establish that certain exceptional weather events were comparable to natural disasters and on the method for calculating the losses suffered by the beneficiaries which were applied by the Italian authorities when the adverse weather events governed by Article 17 took place (1996). Since Article 17 merely anticipates financially the aid provided for by National Law No 185/92 and the competent authorities expressly referred to the provisions of that law and its implementing rules for the grant of the aids under examination, there is no reason to reach a different conclusion in this case. Moreover, regarding the risk of overcompensation, the competent authorities in their comments have provided sufficient assurances that, even when cumulated with other public aid, the aid could never exceed the amount of the losses suffered by the beneficiary.

(132) Furthermore, it must be considered that, regarding the application of National Law No 185/92 from 1 January 2000, i.e. from the entry into force of the new State aid rules applicable to compensation to farmers for damages caused by natural disasters and adverse weather events, the Italian authorities, in the context of another dossier (aid C 12/B/95), by letters of 20 November 2000 and

([41]) See footnote 8.

21 November 2003, registered on 24 November 2003 (and as supplemented by the fax of 25 November 2003), supplied detailed information that demonstrates that the aid granted by them under National Law No 185/92 continues to satisfy State aid rules as they are now reproduced in point 11 of the Community guidelines on State aid to the Agriculture sector and as they were reported above.

(133) In particular, in their letters of 20 November 2000 and 21 November 2003 the Italian authorities gave assurances that:

(a) the aid is granted only after a Decree declaring the exceptionality of the weather event concerned is issued by the Ministry of Agriculture following the verification of the data contained in the technical reports made by the provincial public inspection services competent for agriculture which are submitted to it by the regions. These reports, which are drafted on a case-by-case basis after the event concerned, contain the technical information for evaluating the exceptionality of the weather event (including the relevant meteorological information) and for quantifying the resulting damages ([42]);

(b) the minimum damage threshold for obtaining aid is 35 % (and not 30 % or 20 % as required by the guidelines) of the affected crop and of the holding's gross marketable production. The affected holding's average normal production is calculated on a three-year basis, taking 'normal crop years' as the reference, i.e. years in which there were no disasters or excessively good harvests;

(c) the aid is paid only in relation to the loss suffered by the crop which reported a loss not lower than 35 %; the losses concerning insured crops are excluded from the calculation of the aid and the normal costs not incurred by the farmer, for example because of the non-harvesting of the crop, are also taken into account;

(d) overcompensation from the cumulation of the different types of aids is excluded.

(134) In the light of the above considerations it may therefore be concluded that the aid provided for by Article 17 of Regional Law No 33/96 to make good the damage caused by adverse weather events, which refers back to the conditions contained in National Law No 185/92, is compatible with the common market and may therefore benefit from the derogation set for these types of aids by Article 87(3)(c) of the Treaty.

VI. **CONCLUSIONS**

(135) In view of the above considerations, the aid measures provided for by Article 1 of Regional Law No 33/96 to reduce the transport costs of undertakings involved in the production, processing or marketing of Annex I agricultural products cannot benefit from any of the derogations to Article 87(1) provided for by the Treaty and are therefore incompatible with the common market.

(136) The aid measures provided for by Article 10 (in so far as it refers back to Article 53(c) of Regional Law No 3/86) and by Article 19 of Regional Law No 33/96 to support investments in favour of undertakings involved in the production, processing or marketing of Annex I agricultural products cannot benefit from any of the derogations to Article 87(1) provided for by the Treaty and are therefore incompatible with the common market.

([42]) Article 2 of Law No 185/92 provides that, once the regions have established, on the basis of technical reports made by the provincial public inspection services competent for agriculture, the areas which were hit by the natural disaster or by the comparable exceptional adverse weather event and have assessed the damages, the Ministry of Agriculture, following verification of the effects of the event concerned, issues a Decree which declares the exceptional nature of the event and allows the grant of aid in favour of the affected undertakings which suffered damages equal at least to 35 % of their gross marketable production. According to the information provided by the competent authorities in their letter of November 2003 regarding the aid paid for natural disasters and comparable events since 1 January 2000, the technical information for evaluating the exceptional nature of each weather event concerned (including the relevant meteorological information) and for quantifying the resulting damages are contained in specific technical reports which are drafted by the provincial public inspection services competent for agriculture, on a case-by-case basis, after the event concerned. For each weather event, or group of weather events, which have resulted in damage equal at least to 35 % of the gross marketable production of the affected undertakings, after verification of the above regional inspection reports, the Ministry of Agriculture issues a Decree declaring the exceptional nature of the event concerned. As an example of the procedure described and of the data on the basis of which the exceptionality of a weather event is declared, the national authorities sent a dossier regarding drought in Sicily (Agrigento) in the years 2001/2002. Each Decree issued by the Ministry of Agriculture contains: a description of the exceptional weather event concerned, the period during which the event took place, the affected area and the type of aids provided for by Law No 185/92 which could be granted.

(137) The aid measure provided for by Article 17 of Regional Law No 33/96 concerning the grant of aid for damages caused by adverse weather events similar to natural disasters can be considered compatible with the common market in accordance with Article 87(3)(c) of the Treaty as aid designed to make good the damage caused by events similar to natural disasters.

(138) The aid measure provided for by Article 13(2) and (3) does not constitute State aid within the meaning of Article 87(1) of the Treaty.

(139) Under Article 63 of Regional Law No 33/96, implementation of the State aid measures provided for in the Law itself is conditional upon their approval by the Commission. Without evidence to the contrary, the Commission is therefore entitled to conclude that the aids have not yet been granted and that therefore, where incompatible, they must not be implemented.

HAS ADOPTED THIS DECISION:

Article 1

The State aids which Italy is planning to implement in favour of undertakings involved in the production, processing or marketing of Annex I agricultural products under Article 1 of Regional Law No 33/96 to reduce transport costs are incompatible with the common market.

The State aids which Italy is planning to implement in favour of undertakings involved in the production, processing or marketing of Annex I agricultural products under Article 10 (in so far as it refers back to Article 53(c) of Regional Law No 3/86) and under Article 19 of Regional Law No 33/96 to support investments are incompatible with the common market.

The above aids may accordingly not be implemented.

Article 2

The State aid which Italy is planning to implement in favour of agricultural undertakings under Article 17 of Regional Law No 33/96 to make good the damages caused by adverse weather events similar to natural disasters is compatible with the common market.

Article 3

The aid which Italy is planning to implement under Article 13(2) and (3) of Regional Law No 33/96 does not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 4

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

Article 5

This Decision is addressed to Italy.

Done at Brussels, 16 December 2003.

For the Commission

Franz FISCHLER

Member of the Commission