II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 7 May 2004

on State Aid which Italy (Sicily) is planning for the agricultural sector

(notified under document number C(2004) 1633)

(Only the Italian version is authentic)

(2006/620/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on interested parties to submit their comments pursuant to the provision cited above ([1]) and having regard to their comments,

Whereas:

I. PROCEDURE

(1) In accordance with Article 88(3) of the EC Treaty, Italy notified the Commission, by letter dated 2 March 2001, recorded as received on 5 March 2001, of the aids provided in Sicilian Regional Law No 27/2000 on Urgent Measures to compensate farmers for the harm caused by the strike of road hauliers (hereinafter Regional Law No 27/2000).

(2) In response to Commission telexes Nos AGR 009603 of 20 April 2001 and AGR 034235 of 18 December 2001, Italy sent supplementary information by letter of 7 November 2001, recorded as received on 13 November 2001, and by letter of 31 July 2002, recorded as received on 5 August 2002.

(3) By telex AGR 022152 of 20 September 2002 the Commission asked for additional clarification and information.

(4) Having received no reply, the Commission sent the Italian authorities telex AGR 30656 of 20 December 2002, asking them to reply within one month.

(5) After failing to receive a reply, the Commission informed the competent authorities by telex AGR 07156 of 7 March 2003 that the notification had to be considered withdrawn in accordance with Article 5(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ([2]).

(6) On the same day the Commission departments concerned received from Italy a letter dated 5 March 2003, recorded as received on 6 March 2003, which, in accordance with Article 5(3) of Regulation (EC) No 659/1999, informed the Commission that the notification was to be regarded as complete because the information requested was not available and asked the Commission to adopt a decision pursuant to Article 4(5) of Regulation (EC) No 659/1999 on the basis of the information already provided.

(7) By telex AGRI 09066 of 27 March 2003 the Commission departments concerned informed the competent authorities that they would accede to their request and that, in the light of the information available, they would probably propose that the Commission initiate the procedure provided for in Article 88(2) of the Treaty.

(8) By letter dated 25 April 2003 (SG(2003)D/229510), 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 in Regional Law No 27/2000.

([1]) OJ C 127, 29.5.2003.

([2]) OJ L 83, 27.3.1999, p. 1; Regulation amended by Act of Accession of 2003.

(9) The Commission decision to initiate proceedings was published in the *Official Journal of the European Union* ([3]). The Commission called on interested parties to submit their comments.

(10) The Commission received comments from Italy by letter dated 13 August 2003, recorded as received on 18 August 2003.

II. DETAILED DESCRIPTION OF THE AIDS

(11) The notified aid is provided for in Article 1 of Regional Law No 27/2000 and is aimed at compensating individual undertakings and/or groups thereof operating in the production, processing and marketing of agricultural products listed in Annex I of the Treaty for harm suffered as a result of a road hauliers' strike and roadblocks which took place from 30 September to 8 October 2000 (at 3am) in Sicily.

(12) According to the information provided, the strike and roadblocks made it impossible to find vehicles for the transport of agricultural produce and caused economic harm to the operators concerned. In particular it was impossible to deliver the products which were ready for transport or which had been collected and stored in warehouses, or to collect ripe produce, which as a consequence became overripe and could no longer be marketed normally.

(13) Within the limit of the resources available, the envisaged compensation would cover the total harm suffered by the beneficiaries in the form of a reduction in income. The aids would be granted to any farmers and undertakings operating in Sicily whose annual turnover has demonstrably fallen as a result of the event concerned.

(14) According to the information supplied, the detailed rules governing the calculation of the losses and specifying the documentation to be submitted by the beneficiaries were laid down by the Regional Minister for Agriculture. The compensation would concern in particular easily perishable goods, such as fruit and vegetables, flowers, milk and milk products the time of collection and/or delivery of which corresponds to the period concerned by the strike and roadblocks. The aid would be granted only for the products which had to be delivered or collected between 30 September and 8 October 2000 and for which no alternative form of preservation was possible or could be implemented by the undertaking concerned. The documents produced to the administration must make reference to the period concerned. Priority in the compensation would be given to the undertakings that could not deliver produce already collected or harvested.

(15) In order to prove the existence and extent of the harm the beneficiary undertakings must produce the contract of supply (requiring delivery of a certain quantity of produce within a certain date), the transport document (indicating the producer, the transporter, the produce to be transported and the date of delivery) and, where the produce has already been delivered, the invoice. Compensation would be paid to the undertakings which demonstrate the non-performance of the contract terms envisaged in their contracts of supply (time, quantity, quality and price). If the price was not established in the contract the competent authorities would use as a reference the price indicated in the lists of the Chambers of Commerce.

(16) There also appears to be provision for compensation for farmers who, as a result of the strike and the roadblocks, could not collect their produce at all and therefore lost it. In this respect the competent authorities explained that the harm suffered by the farmers would be calculated on the basis of 'expert reports drafted by qualified agronomist and concerning the value of the production on the plants/trees' which the beneficiaries must produce together with the relevant contracts.

(17) If the beneficiary delivers the produce to cooperatives or other groups (*organismi associativi*), the compensation can be paid either to the individual producer belonging to the group or to the group itself. According to the clarification provided, the loss and the compensation would in any case be determined for the producer concerned.

(18) Overcompensation and cumulation with other aid measures have been excluded. Possible payments made under insurance policies and revenue deriving from an alternative use/sale of the agricultural products concerned would be taken into consideration in the calculation of the aid. In order to avoid any duplication of the compensation, due to contractual harm or penalties paid to them by the striking transporters, the beneficiaries will have to declare that they have not initiated proceedings against the road hauliers concerned.

(19) The budget for the aid measure amounts to ITL 1 300 million (about €671 394) for the financial years 2000 and 2001. Compensation would be in the form of a one-off payment.

(20) Article 2 of the law providing for the aid measure contains a suspensory clause which makes the implementation of the aid conditional upon its approval by the Commission.

(21) In its decision to initiate proceedings in respect of the measure under scrutiny, the Commission noted that at that stage of the procedure the derogations set out in paragraph (2)(a) and (c) and in paragraph (3) (a), (b), (c), (d) and (e) of Article 87 did not appear to be applicable in view of the features of the aid and the circumstance that the notification was not intended to meet the conditions for the application of those derogations.

(22) The Commission also noted that the Italian authorities had indicated in their notification that the strike and the roadblock concerned should be regarded as an exceptional occurrence, as referred to in Article 87(2)(b), and that the aid measure should therefore be assessed in accordance with that provision.

([3]) Cf. footnote [1].

(23) The Commission recalled in the decision to initiate a procedure that according to its practice, because they constitute exceptions to the general principle of the incompatibility of State aid with the common market enshrined in Article 87(1) of the Treaty, the Commission has consistently held that 'natural disaster' and 'exceptional occurrence', as referred to in Article 87(2)(b), must be interpreted restrictively. 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 ([4]). 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 harm. Compensation should normally be calculated at the level of the individual beneficiary, and in order to avoid over-compensation, any payments due, for example under insurance policies, should be deducted from the amount of aid. The Commission will also allow aid to compensate farmers for loss of income resulting from the destruction of the means of agricultural production, provided that there is no over-compensation.

(24) In its decision to initiate the procedure the Commission noted that the information available did not make it possible to conclude that the event concerned by the case under examination constituted an 'exceptional occurrence' within the meaning of Article 87(2)(b).

(25) In their notification the Italian authorities had indicated that the strike and the roadblocks concerned were to be considered an exceptional occurrence such as referred to in Article 87(2)(b) of the Treaty, as an event of similar proportion and with similar consequential harm to the local economy had never previously taken place in Sicily.

(26) In order to prove the exceptional nature of the event under examination the competent authorities had submitted some newspaper cuttings and a copy of a report from the Office of the Prefect for Palermo. According to the said report, on 29 September 2000 the road hauliers gave the police authorities one day's notice of the demonstration they planned to hold at the points of access to Palermo. According to the information provided in the report, the demonstration should have featured the distribution of leaflets aimed at raising the public's awareness of the road hauliers' problems and the road hauliers had expressly undertaken not to block the traffic at access points to the port of Palermo or the Palermo-Catania and Palermo-Trapani motorways. However the next day (30 September 2000) a demonstration of an entirely different nature was said to have taken place, with roads being blocked in Palermo and in other Provinces.

([4]) Point 11.2 of the Community Guidelines for State aid in the agriculture sector (OJ C 232 of 12.8.2000, p. 19).

(27) After scrutinising the said report, the Commission departments concerned asked the competent authorities to reply to a number of specific questions in order to evaluate the possible exceptional nature of the event in question. Since these questions did not receive a reply, the Commission departments concerned expressed doubts as to whether the event concerned could constitute an 'exceptional occurrence' within the meaning of Article 87(2)(b), for the following reasons:

a) *Advance notice in Palermo*. In the case at hand the road hauliers had given the police authorities one day's notice of the demonstration in Palermo. If a day's notice is sufficient under national law, it follows that the competent authorities were informed of the demonstration in good time and could have taken the necessary measures to keep it under control. In the absence of a reply from the competent authorities the Commission was unable to evaluate the extraordinary nature of the demonstration.

b) *Possible advance notice in other provinces*. From the information provided it would appear that the demonstration took place not only in Palermo, but also in other Provinces. In the absence of a reply from the competent authorities the Commission cannot exclude that the road hauliers also gave advance notice of demonstrations to the authorities in Provinces other than Palermo and that therefore those were informed in advance of the events and were in a position to foresee their likely extent.

c) *Possible application of the Law on strikes to the events concerned*. In order to evaluate the possible exceptional nature of the events concerned, the Commission had asked the Italian authorities to provide information as to the possible application of the Italian Law on strikes (Law No 146 of 12 June 1990, as amended by Law No 83 of 11 April 2000) to the case at hand. In the absence of a clear reply from the competent authorities, the Commission was unable to rule out that, had the Law been applied/or applicable, the adverse effects of the strike and the roadblocks would or could have been eliminated or reduced to a minimum (e.g. essential services could have been provided, the advance notice required would have given the farmers sufficient time to seek alternative means of transport or storage, and if the situation had become so serious as to affect rights guaranteed under the Constitution, the competent authorities could have ordered the transporters to interrupt the strike, etc.). In order to assess the extraordinary nature of the strike and roadblocks, the Commission also asked for information on the types of offences allegedly linked to them, information which has not been provided.

d) *Reasons for the demonstration*. The report from the Office of the Prefect of Palermo indicated that the strike did not end until 8 October (at 3am), an agreement having been reached the day before between the representatives of the association of Sicilian road hauliers, the regional government and the then Minister of Transport. In order better to understand the reasons for the strike and the roadblocks, the competent authorities were asked to indicate the content of the agreement and to state whether demonstrations by road hauliers had taken place for the same reasons in other regions, or at national level, or whether the demonstration concerned only Sicily. In the absence of a reply from the competent authorities the Commission expressed doubts regarding the reasons for the events concerned and whether the latter constituted an 'exceptional occurrence'.

e) *Size and extent of the demonstration, strike and roadblocks*. From the information provided, it would appear that the demonstration also took place also in other Provinces. The competent authorities did not clarify in which other Provinces the demonstration, strike and roadblocks took place, did not indicate their extent and consequences, and, apart from some newspaper cuttings, did not provide any official documentary evidence of such events in other areas of Sicily (e.g. the report from the Office of the Prefect of Palermo). The Commission therefore expressed doubts regarding the geographical spread and extent of the demonstrations, strike and roadblocks in the rest of Sicily.

f) *Number of participants*. The notice of the demonstration submitted by the association of road hauliers, a copy of which was annexed to the report of the Office of the Prefect of Palermo, appeared to indicate that around 50 hauliers would take part in the demonstration in Palermo. In the absence of a reply from the competent authorities indicating, with supporting evidence, how many road hauliers were operating in Sicily and roughly how many of them actually took part in the demonstration in Palermo and in the rest of Sicily, the Commission has doubts regarding the number of people involved in the events concerned.

(28) In addition to the doubts as to whether the notified event qualified as an 'exceptional occurrence' the Commission also expressed, in its decision to initiate the procedure, its doubts regarding other aspects of the aid, namely: (a) the beneficiaries of the aid, (b) certain detailed rules for calculating the harm suffered, (c) the products covered by the aid and (d) the possibility that the measure might constitute indirect aid to the striking transporters. The reasons for these doubts are set out below.

(a) *The beneficiaries of the aid measure*. According to Article 1 of the notified Law and the standard form, the beneficiaries of the aid are: 'individual or associated enterprises engaged in the production, processing and marketing of agricultural products'. However the explanations provided by the competent authorities regarding the detailed rules for calculating the harm suffered and the compensation appear to refer only to harm suffered by individual primary producers of agricultural products. In the absence of clarification from the competent authorities, the Commission has doubts as to who the beneficiaries of the aid measure are and, if the aid is granted also to operators engaged in processing and marketing, as to the type of harm suffered by each of these two categories of operators and the detailed rules for calculating and evaluating it.

(b) *Certain detailed rules for calculating harm suffered*. The competent authorities provided examples of how the harm suffered by farmers would be calculated where products were delivered which were inferior, in quality or quantity, to those originally agreed in the contract. In these cases the harm suffered is the difference between the agreed price for the agreed merchandise, as established in the contract, and the price actually paid to the farmer after goods were delivered which were of lower quantity and/or quality (owing to overripeness). The competent authorities intend, however, to compensate also farmers who, as a result of the strike and the roadblocks, could not collect/harvest their produce and whose production was therefore lost. In this case the harm suffered by the farmers will be calculated on the basis of 'expert reports by qualified agronomists concerning the value of the production on the plants/trees' which were to accompany the contracts. In the absence of clarification from the competent authorities, the Commission expressed doubts regarding the detailed rules for calculating the harm suffered and the aid applicable in this specific case, and why the detailed rules applicable to this case would differ from those applicable in other cases mentioned above. Moreover the Commission expressed doubts regarding the nature and purpose of the expert reports, when and how they would be drafted, and the type of products in respect of which the said expert reports would be used to evaluate the harm suffered.

(c) *The products covered by the aid measure*. The competent authorities had indicated that the aid would concern products that, because of their nature (perishability, harvesting period, etc), needed to be delivered or collected/harvested rapidly over the period concerned (30 September to 8 October 2000) and for which no alternative form of storage (freezing for example) could be envisaged. In order to evaluate this aspect the Commission departments concerned asked the competent authorities to provide a list of the products. The competent authorities did not provide such a list, but

undertook to supply one at a later stage, before the payment of the aid. Since such a list was deemed necessary for the possible purpose of authorising the aid measure, the Commission expressed doubts regarding the nature of the products for which the competent authorities intend to grant aid.

(d) *The possibility that the measure might constitute indirect aid to the striking transporters.* Since the aid measure aims to make good the harm suffered by agricultural undertakings because of the road hauliers' demonstration, strike and roadblocks, the Commission could not exclude that, should the road hauliers be required under national law to pay compensation to agricultural undertakings for (contractual and non contractual) harm caused by their demonstration, the aid measure could be regarded as an indirect operating aid to the striking road hauliers. Since in order to avoid any duplication of compensation due to contractual harm or penalties paid to them by the striking transporters, the beneficiaries would have to declare that they have not initiated proceedings against the road hauliers concerned, and since the explanation provided by the competent authorities — i.e. that the road hauliers would be liable as private individuals and not as undertakings — did not appear convincing and did not appear to exclude that under national law the striking road hauliers might indeed be liable for harm to the farmers, the Commission expressed doubts regarding the nature of the actual recipients of the aid, which could therefore also be seen as operating aid to the road hauliers themselves or to some of them.

(29) Having regard to the rules applicable to State aids, the Commission expresses, in its decision to initiate the procedure, doubts both on the qualification of the notified event as an 'exceptional occurrence', to which the derogation provided for in Article 87(2)(b) of the Treaty would apply, and on some of the features of the aid measure, doubts which did not allow the Commission to conclude that the proposed measure was indeed intended to compensate the harm suffered because of the event and did not simply constitute operating aid.

(30) Accordingly, the aid referred to in Article 1 of Regional Law No 27/2000 did not appear to be eligible for exemption under Article 87(2) or (3) of the Treaty.

III. COMMENTS FROM INTERESTED PART IES

(31) No comments from interested parties were received.

IV. COMMENTS FROM ITALY

(32) The Commission received comments from Italy, on behalf of Regione Siciliana, by letter dated 13 August 2003, recorded as received on 18 August 2003.

(33) In this letter the Italian authorities communicated that they did not have other information besides the information that they had already provided in the notification and confirmed that the aid scheme had not been implemented. The Italian authorities also informed the Commission that they intended to publish its decision to initiate the procedure on the measures concerned by publishing on the Regional Gazette a notice containing a reference to the Official Journal of the European Union No C 127 of 29 May 2003.

V. ASSESSMENT OF THE AID

(34) 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 shall, in so far as it affects trade between Member States, be incompatible with the common market.

(35) The measure under examination provides for the granting of aid, through public regional resources, to specific agricultural undertakings in Sicily which will undeniably derive an undue economic and financial advantage to the detriment of other undertakings not receiving that aid. 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 ([5]).

(36) The measure affects trade between Member States in that there is substantial intra-Community trade in agricultural products as indicated by the table ([6]) below which lists the overall value of agricultural imports and exports between Italy and the EU in 1997-2001 ([7]). It must be considered that within Italy, Sicily is a major producer of agricultural products.

([5]) See Case C-730/79 [1980] ECR 2671, points 11 and 12.

([6]) Source: Eurostat.

([7]) According to consistent case-law, the condition of the effect on the trade is met since the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that aid strengthens the position of this company in relation to other competing companies in intra-Community trade, makes it possible to consider that this trade was affected. With regard to State aids in the agriculture sector it is settled case-law that, even when the overall amount of aid in question is small and it is divided among a large number of farmers, intra-Community trade and competition are affected (see Case C-113/2000 [2002] ECR, 7601, points 30 to 36 and 54 to 56; Case C-114/2000 [2002] ECR 7657, points 46 to 52 and 68 to 69).

Agriculture generally

	EXPORTS ECU/EUR million	IMPORTS ECU/EUR million
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

(37) It should also be recalled that, according to the Court of Justice, 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 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 ([8]).

(38) The Commission therefore concludes that the measure under examination is caught by the prohibition in Article 87 (1) of the EC Treaty. The Italian authorities have never contested this point.

(39) The prohibition in Article 87(1) is followed by derogations in Article 87(2) and (3).

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

(41) Article 87(3)(a) is also inapplicable since the aids are not intended to promote the development of regions where the standard of living is abnormally low or where there is serious underemployment. Moreover Italy has not submitted that Article 87(3)(a) is applicable.

(42) Article 87(3)(b) is also inapplicable as the aids in question are not intended to promote the implementation of an important project of common European interest or to remedy a serious disturbance in Italy's economy. Moreover Italy has not submitted that Article 87(3)(b) is applicable.

([8]) Judgment of the Court of Justice in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

(43) These aids are not intended to achieve or suitable for achieving the objectives of promoting culture and heritage conservation referred to in Article 87(3)(d), nor has Italy submitted that Article 87(3)(d) is applicable.

(44) Since they do not facilitate the development of certain economic activities or of certain economic areas, these aids are not even intended to achieve or suitable for achieving the objectives referred to in Article 87(3)(c), nor has Italy submitted that Article 87(3)(c) is applicable.

(45) Considering the specific reference made by the Italian authorities to Article 87(2)(b) and the nature of the aids under examination which do not fall under any other derogation from Article 87(1) of the Treaty, the only derogation which may be applicable is the one provided for in Article 87(2)(b).

Applicable provisions

(46) The applicability of the above-mentioned derogation must be assessed in the light of the provisions applicable to the granting of State aids in the agriculture sector, namely the Community Guidelines for State aid in the agriculture sector ([9])(hereinafter the 'Guidelines'), which entered into force on 1 January 2000 ([10]).

(47) According to point 23.3 of the Guidelines, the Commission applies the said Guidelines 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 Regulation (EC) No 659/1999 ([11]) is assessed in accordance with the rules and the Guidelines in force at the time the aid is granted.

(48) Regional Law No 27/2000 was notified to the Commission by letter of 2 March 2001, recorded as registered on 5 March 2001. Its Article 2 contains a suspensory clause which makes the implementation of the State aid measures contained in the Law conditional upon their approval by the Commission ([12]). In their observations the Italian authorities confirmed that the aid measures had not been implemented.

([9]) OJ C 232, 12.8.2000, p. 19.

([10]) Since the notification does not specify that the aid scheme under examination applies only to small and medium-sized enterprises in accordance with Commission Regulation (EC) No 1/2004, this Regulation is not applicable (see Article 20 of Commission Regulation No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products, OJ L 1 of 3.1.2004).

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

([12]) Article 2 reads: '1. The measures provided for in this law are subject to compliance with EC rules on State aid, and to the conclusion of the procedures under by Article 88(2) and (3) of the Treaty'.

(49) The examination of the aid measure therefore falls within the scope of the Guidelines ([13]), and in particular Point 11.2 thereof (Aid to make good the harm caused by natural disasters or exceptional occurrences).

(50) Point 11.2 of the Guidelines provides that because they constitute exceptions to the general principle of the incompatibility of State aid with the common market enshrined in Article 87(1) of the Treaty, the Commission has consistently held that the notions of 'natural disaster' and 'exceptional occurrence' contained in Article 87(2)(b) must be interpreted restrictively. 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. The Commission did not, however, accept that a fire at a single processing plant which was covered by normal commercial insurance could be considered as an exceptional occurrence. As a general rule, the Commission does not accept that outbreaks of animal or plant diseases can be considered to constitute natural disasters or exceptional occurrences. However, in one case the Commission did recognise a widespread outbreak of a completely new animal disease as an exceptional occurrence. Because of the inherent difficulties in foreseeing such events, the Commission will continue to evaluate 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 harm. Compensation should normally be calculated at the level of the individual beneficiary, and in order to avoid over-compensation, any payments due, for example under insurance policies, should be deducted from the amount of aid. The Commission also authorises aid to compensate farmers for loss of income resulting from the destruction of the means of agricultural production, provided that there is no over-compensation.

(51) In its decision to initiate the procedure with regard to this aid, the Commission set out clearly its doubts as to whether the event giving rise to compensation constituted an exceptional occurrence (see Recital 27 above).

(52) In the same Decision the Commission also set out clearly its doubts on other aspects of the aid measure, in particular on some aspects which are essential for establishing a link between the event concerned and the losses allegedly caused by it for which the compensation is planned (see Recital 28 above).

([13]) OJ C 232, 12.8.2000.

(53) Since the Italian authorities have not provided any new or further element of information or evaluation, the reasons which led the Commission to adopt that decision remain valid.

(54) Regarding the exceptional nature of the event concerned, the Commission took the view, in accordance with its consistent practice, that the implicit assumption for the application of Article 87(2)(b) is that an exceptional occurrence is something is, by its nature, unforeseeable ([14]).

(55) The Commission also considered that it had in the past accepted in one case ([15]) that a roadblock could constitute an exceptional occurrence, in so far as that roadblock could be assimilated to a strike that had disrupted the economic activity in the country concerned to an appreciable extent (between 29 June and 18 July 1992) and in so far as it was possible, on the basis of the information available, to find a direct link between the aid and the roadblock.

(56) In the case at hand, despite receiving a request to that effect, the Italian authorities have not provided the information that would allow the Commission to regard the strike and roadblocks as an exceptional event. In particular, in the absence of information to the contrary, the Commission is entitled to conclude that since the demonstration concerned had been announced beforehand to the public authorities it cannot be regarded as an unforeseen event either for the public authorities or for the economic sectors concerned by it. Strikes can be a frequent event and, if there is advance notice, suitable precautions may be taken. The element of unforeseeability is therefore missing in this case. Moreover, since neither the actual causes of the strike nor the reasons for it ending after eight days were clearly indicated, it cannot be excluded that the possibility of an imminent strike taking place in the transport sector were known to the public, through the mass media, for a long time.

(57) The fact that the announced demonstration may have developed into a bigger event than expected does not *per se* serve to transform it into an exceptional occurrence within the meaning of Article 87(2)(b). Since the competent authorities did not specify the numbers taking part (which, according to the information provided should have originally been 50) in relation to the total number of road hauliers operating in Sicily, or the geographical extent of the strike, the Commission cannot even conclude that, in terms of dimension and developments, the event may have exceptionally disrupted the economic activity in the country concerned to a significant and appreciable extent.

([14]) See point 92 of Commission Decision 2000/625/EC of 13 June 2000 on the aid scheme implemented by Ireland to promote the transport of Irish livestock by sea to continental Europe (OJ L 263 of 18.10.2000, p. 17). See also point 33 of the Communication from the Commission to the European Parliament and the Council — The repercussions of the terrorist attacks in the United States on the air transport industry/* COM/2001/0574 final */.

([15]) See Commission Decision 96/148/EC of 26 July 1995 on the measures decided by France as a result of the blockade of the French road network in 1992 (OJ L 34 of 13/02/1996 p. 38).

Lastly the event concerned lasted only eight days (from 30 September to 8 October at 3am, according to the information provided), compared with the three weeks (between 29 June and 18 July 1992) in the case the Commission regarded as constituting an exceptional occurrence ([16]).

(58) Moreover, since it is not known whether and to what extent the law regulating strikes was applied to the event in question, it is not possible on the one hand to conclude that the event was so serious as to make it necessary for the public authorities to order the striking transporters to give up the strike in order to protect the constitutional rights of other citizens, and on the other hand to exclude that in compliance with the said law, adequate precautions to minimise or cancel the effects of the strike may have been taken.

(59) Accordingly, on the basis of the information provided, the Commission therefore conclude that the event in question is an exceptional occurrence that has unforeseeably and exceptionally disrupted the economic activity in the country concerned to an appreciable extent. Actually from the information available it appears that the event was announced in advance, that it may have affected some economic activities in a limited area in the country concerned, and that its relatively short duration (compared to the blockades that the Commission has previously accepted as an exceptional occurrence ([17]) cannot lead to the conclusion that this event has caused to a significant and appreciable extent a disruption in the economy of the country concerned.

(60) Therefore, on the basis of Commission practice, the event concerned constitutes a normal business risk and caused to the economic operators concerned a type of harm which they should either face with their own resources as falling within business risk, or for which they should seek compensation under national law from the legally responsible subjects.

(61) Moreover on the basis of the information available, unlike in the case which the Commission held to be an exceptional occurrence, in the case under examination, it is not possible to conclude that there is a direct link between the strike and the roadblocks and the aid to be granted. Indeed, since the competent authorities confirmed that they do not have the information requested by the Commission regarding, in particular, the products for which compensation would be provided, the beneficiaries of the measure (primary producers or also processing and marketing operators) and, in certain cases, also the detailed rules for calculating the compensation (see point 28 above), the Commission cannot conclude that the planned aid is necessarily and exclusively linked to the losses caused by the strike and the roadblocks in Sicily which occurred between 30 September and 8 October 2000).

([16]) See footnote 15 above.

([17]) See footnote 15 above.

(62) In particular, Article 1 of the notified Law and the standard notification form provide for the following beneficiaries: 'enterprises, or groups thereof, engaged in agricultural production, processing and marketing'. However the explanations provided by the competent authorities as to the detailed rules for calculating the harm suffered and the related compensation appear to refer only to the harm suffered by individual agricultural primary producers. In the absence of information from the competent authorities, the Commission does not know exactly what type of operators would benefit from the aid measure and, should the aid be granted also to operators in the processing and marketing sectors, the Commission does not know what type of harm each of these two categories of operators suffered and according to what criteria this harm was assessed and calculated. The Commission therefore considers that the losses for which compensation could be granted to (at least some of) the beneficiaries may therefore be linked (also) to causes other than the strike and the roadblocks concerned.

(63) With regard to primary producers, the competent authorities planned to provide compensation also to those farmers who, as a result of the strike and of the roadblocks could not collect/harvest their produce and therefore lost their production. In this case the harm suffered by the farmers would be calculated on the basis of 'expert reports drawn up by qualified agronomists concerning the value of the production on the plants/trees' which will be presented together with the contracts. In the absence of any clarification from the competent authorities, the Commission cannot accept the proposed detailed rules for calculating the harm suffered and the related aid proposed in this specific case since it is not clear why the said detailed rules would in this case differ from those used for other producers (see point 28 above); the nature and purpose of the expert reports concerned are not clear either; it is not specified when and how the said reports were drafted and, lastly, it is not known for what type of products the said expert reports would be used to evaluate the harm. The Commission therefore considers that, for this reason too, the losses for which compensation could be granted to (at least some of) the beneficiaries may therefore be linked (also) to causes other than the strike and the roadblocks concerned.

(64) Moreover, although repeatedly requested, the Italian authorities never provided the Commission with a list of products which, because of their nature (perishability, harvesting period, etc) actually needed to be delivered or collected rapidly over the period concerned (30 September to 8 October 2000), for which no alternative form of storage (freezing for example) could be envisaged and for which the Italian authorities envisaged the compensation. Since this list was deemed to be necessary for the possible authorisation of the aid measure and in particular to establish the link between the strike and the roadblocks and the losses for which aid could be paid to the beneficiaries, the Commission cannot establish such a link.

(65) Lastly, the Italian authorities did not exclude the doubt that the road hauliers may be liable under national law for compensation to agricultural undertakings for the (contractual and non-contractual) harm caused by their demonstration, strike and roadblocks, and therefore that the aid measure might be considered as constituting indirect operating aid to the striking road hauliers themselves.

(66) Since, in order to avoid any duplication of compensation due to potential contractual harm or penalties paid to them by the striking transporters, the beneficiaries would have to declare that they did not initiate any proceedings against the road hauliers concerned, and since the explanation provided by the competent authorities, that the road hauliers would be liable as private individuals and not as undertakings, did not appear convincing and did not appear to exclude that under the national law the striking road hauliers might be indeed liable for harm to the farmers, the Commission cannot conclude that the real beneficiaries of the aid measure are the operators of the agricultural sector and that the measure is not (also) an operating aid the road hauliers themselves or to some of them.

(67) In the light of the above, since the Italian authorities confirmed that they do not have the information requested regarding any of the doubts expressed by the Commission regarding both the exceptional nature of the event and the other aspects of the aid measure, all the doubts that the Commission had when it decided to initiate the procedure remain and preclude a favourable assessment of the aid measure as an aid to make good the harm caused by an exceptional occurrence within the meaning of Article 87(2)(b) of the Treaty.

(68) For the reasons set out above, the Commission therefore concludes that the event concerned cannot be considered as an exceptional occurrence within the meaning of the Treaty and that, in any case, the necessary and exclusive link between the said event and the losses of the beneficiaries which the aid is aimed at compensating could not be established.

(69) Regarding the possibility that the aid measure under scrutiny may satisfy other State aid rules for the agricultural sector, 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 are considered to constitute 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.

(70) The aid under examination does not contain any incentive element and does not require any counterpart on the part of the beneficiary. As shown above, it does not even meet the requirements under point 11 of the Guidelines for consideration as a compensatory aid compatible with the common market. The aid in question merely improves the financial situation of producers, without contributing to the development of the sector and, in particular, provides for operating aids aimed at relieving the beneficiaries of operating costs linked to normal business risk.

(71) Consequently there is no justification, under the State aid rules applicable to agriculture, for the aid measure provided for in Article 1 of Regional Law No. 27/2000, in favour of undertakings engaged in the production, processing and/or marketing of agricultural products listed in Annex I of the Treaty. The Commission therefore regards this type of aid as operating aid which is not compatible with the common market. This type of aid, which relieves the recipients of a part of their management costs, has no durable and structural effect on the sectors concerned and it only gives an advantage to Sicilian products over products which do not benefit from comparable measures, in Italy or in other Member States.

(72) The aid provided for in Article 1 of Regional Law No 27/2000 cannot therefore benefit from a derogation under Article 87(2)(b) or Article 87(3)(c) of the Treaty or from any other derogation provided for by the Treaty.

VI. **CONCLUSION**

(73) In the light of the points set out above, the aid measure provided for in Article 1 of Regional Law No 27/2000 is incompatible with the common market and may not be implemented.

(74) According to Article 2 of Regional Law No 27/2000, the implementation of the aid measures envisaged by this Law is conditional upon their approval by the Commission. In their observations the competent authorities confirmed that the aids had not been implemented,

HAS ADOPTED THIS DECISION:

Article 1

The State aids which Italy is planning to implement in favour of undertakings engaged in the production, processing and/or marketing of Annex I agricultural products under Article 1 of Sicilian Regional Law No 27/2000 of 23 December 2000 to make good the harm caused by the road hauliers' strike and the

roadblocks in Sicily between 30 September and 8 October 2000 are incompatible with the common market.

The above aids 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, 7 May 2004.

For the Commission
Franz FISCHLER
Member of the Commission