II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COMMISSION

COMMISSION DECISION

of 5 July 2005

concerning aid to the livestock and olive-growing sectors provided by Italy under Articles 4 and 5 of Law No 290/99, Article 15(16) of Law No 67/88 and Law No 252/91

(notified under document number C(2004) 4769)

(Only the Italian text is authentic)

(2007/655/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the aforementioned provisions ([1]), and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter dated 6 August 1998, registered on 12 August 1998, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the EC Treaty, of a draft law extending time limits in the agricultural sector. The Law was registered as aid No N 490/1998.

(2) By letter of 30 November 1998, registered on 4 December 1998, the Italian authorities replied to the Commission's request for information of 1 October 1998.

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

(4) By letter dated 25 October 1999, registered on 5 November 1999, the Italian authorities confirmed that the draft law had been adopted as Law No 290/99. The letter enclosed the text of the Law as adopted and supplied some of the information requested by the Commission in its letter of 28 January 1999.

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

(6) By letter dated 24 February 2000 ([2]), the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the EC Treaty in respect of Articles 4 and 5 of Law No 290/99, Article 15(16) of Law No 67/88 of 11 March 1988 (the 1988 Finance Act) and Law No 252/91 of 8 August 1991. By that letter, the Commission also informed Italy that it raised no objections to the other Articles (Articles 1, 2, 3, 6, 7 and 8) of Law No 290/99 in that they did not constitute aid within the meaning of Article 87(1) of the EC Treaty.

(7) In the same letter, the Commission enjoined Italy to provide, in accordance with Article 10(2) and (3) of Council Regulation (EC) No 659/1999 ([3]) all documents, information and data needed for assessing the compatibility of the

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

([2]) SG(2000) D/101808.

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

measures in question within one month of receipt of that letter.

(8) The Commission decision to initiate the abovementioned procedure was published in the *Official Journal of the European Communities* ([4]). The Commission invited interested parties to submit their comments.

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

(10) By letter of 18 May 2000, the Italian authorities submitted to the Commission their comments on the launch of the procedure.

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

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

(13) By letter dated 12 July 2001, the Italian authorities provided the information requested.

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

(15) On 12 March 2002, on the grounds of the varied and unrelated nature of the aid measures provided for by Article 4 of Law No 290/99 on the one hand and of those provided for by Article 5 of the same law and by Article 15(16) of Law No 67/88 and Law No 252/91 on the other, the Commission decided to split the case into two different parts, namely case C/7A/2000 and case C/7B/2000 concerning respectively Articles 4 and 5 of Law No 290/99, Article 15(16) of Law No 67/88 and Law No 252/91.

(16) By letter dated 5 April 2002 ([5]), the Commission informed Italy that it had decided to take a final negative decision with respect to the aid measures provided for by Article 4 of Law No 290/99. By that letter, the Commission also informed Italy that the decision at issue did not concern, nor extended its effects to the farming, operating and improvement loans due on 31 March 1998 for which an extension was provided for by Article 4 of Law No 290/99. By the same token, the decision under examination did not concern Article 5 of Law No 290/99 nor Article 15(16) of Law No 67/88 and Law No 252/91 which constituted the legal basis for granting the aid provided for in Article 5 of Law No 290/99, which is assessed within the framework of State aid No C/7B/2000.

([4]) OJ C 148, 27.5.2000, p. 2.

([5]) Commission Decision SG (2002) D/229239 of 5 April 2002.

(17) Additional information was sent by the Italian authorities in their letter dated 27 February 2003, registered on 28 February 2003, providing information requested by the Commission's letter of 8 May 2002.

(18) Following the outcome of the meeting held between Commission officials and the Italian authorities on 24 March 2004 and of several informal discussions on the topic, the Italian authorities asked, by letter dated 20 May 2004 and registered on 14 June 2004, for additional time in order to provide the information still needed for the assessment of the file.

(19) By letter of 29 October 2004, registered on 3 November 2004, the Italian authorities provided additional information. In the same letter they indicated that they would ask to keep confidential the financial data, the interventions undertaken and the account statements of the companies concerned.

(20) By letter dated 24 November 2004, registered on 3 December 2004, the Italian authorities provided additional information. They also specified that no request for confidentiality had been made at that stage.

(21) Additional information was transmitted by letter dated 4 April 2005, registered on 7 April 2005.

II. DESCRIPTION OF THE AID

II.1 Scope

(22) Law No 290/99, which is divided into eight articles, provides for an extension of the time limits for various operations in the agricultural sector. In its Decision of 24 February 2000, the Commission did not raise objections with respect to Articles 1, 2, 3, 6, 7 and 8 of the abovementioned Law in that they did not constitute aid within the meaning of Article 87(1) of the Treaty. However, the decision to initiate the procedure provided for by Article 88(2) concerned Articles 4 and 5 of that Law as well as Article 15(16) of Laws No 67/88 and No 252/91, which constituted the legal basis for granting the subsidies referred to in Article 5 of Law No 290/99.

(23) A final negative decision on Article 4 of Law No 290/99 was adopted by the Commission on 5 April 2002. The present Decision concerns Article 15(16) of Law No 67/88, Law No 252/91, Article 4 (only for the farming, operating and improvement loans due on 31 March 1998) and Article 5 of Law No 290/99.

II.2 Background

(24) According to the information provided, in the late 1980s, the livestock sector in Italy suffered from the excessive fragmentation of production, which resulted in out-of-date structures, unsuitable to quality production. In order to modernise the whole system, Law No 87/90, subsequently

amended by Law No 252/91, provided for aid for integrated projects, i.e. projects aggregating several undertakings in a cluster-like structure. The projects were included in a programme approved by the Italian inter-ministerial economic committee (CIPE), on the basis that only projects undertaken by a group of interconnected companies capable of ensuring their completion should be financed. This also meant that each company in the project was responsible for the completion of the whole project by guaranteeing (with a special clause) the joint commitment of all the aggregated companies. Furthermore, all the companies were requested to participate financially to the projects in a substantial way, with new capitalisation and, for cooperatives, also in the form of a 10-year loan. The guarantees required by the State (guarantee on the whole project and capitalisation of the companies) to be eligible for aid represented a significant financial constraint for the companies involved.

(25) In view of the fact that the resources allocated to the completion of the integrated projects could not cover the overall financial needs of the sector, additional resources under Law No 67/88 were also used for financing these integrated projects. The interventions were carried out within the framework of an overall programme of rationalisation and restructuring of the beef sector which, in Italy, unlike most other countries in Europe, had only started in the early 1990s. Other countries in the European Union, such as France, had launched programmes for the restructuring and rationalisation of their slaughtering plants as early as the 1970s ([6]). The very high number of slaughtering plants in Italy and their inappropriate distribution over the national territory called for a drastic reorganisation of the sector which, according to the Italian authorities, could only be carried out with strong public support on the basis of a programme designed to modernise the entire sector. In order to survive, Italian undertakings needed to speed up technological innovation and organisational restructuring along two lines:

(a) rationalisation of the breeding systems with the adoption of technological improvement methods designed to achieve standardised productions at competitive costs;

(b) diversification of productions of high quality level and rationalisation of products of constant and uniform quality.

The task of implementing the law was delegated to a group of experts, who were required to draw up an urgent action programme, define the strategic approach and decide whether the projects submitted could be eligible for aid.

([6]) Over the 1970 to 1990 period France managed to reduce the number of its slaughtering plants from 1738 to 357. On the other hand, in the early 1990s, there were still 8 500 operational slaughtering plants in Italy as against the already mentioned 357 units in France, 270 in Germany and 30 in the Netherlands.

Given the serious crisis of the bovine sector, the actions of the programme were mainly targeted to this sector and, to a lesser extent, to the pigmeat and sheepmeat sectors.

II.3 **Measures**

Law No 67/88 of 11 March 1988

(26) Law No 67/88 establishing the credit subsidies referred to in Article 5 of Law No 290/99 lays down provisions for the annual and multiannual state budget and constitutes the Italian 1988 Finance Law. Article 15(16) of this Law allows that cooperatives and their consortia to raise loans up to a maximum of ITL 700 billion for the construction, restructuring or extension of slaughtering plants ([7]). According to the Law, those taking out the loans may use them, up to a limit of ITL 100 billion for 1988 and ITL 50 billion for 1989, to consolidate existing debt on the aforementioned structures and premises. A maximum interest subsidy of 10 % is granted on these loans. Article 15(16) also applies to the funding of projects to consolidate and develop agricultural cooperatives and their consortia engaged in milk or meat production. The Law was never notified to the Commission as required by Article 88(3) of the Treaty.

Article 5 of Law No 290/99

(27) Article 5 of the notified Law establishes the circumstances when credit subsidies on loans contracted under Article 15 (16) of Law No 67/88 can continue to apply even where some of the conditions initially laid down have not been met. In particular, Article 5(2) provides that credit subsidies on loans contracted under the abovementioned Article 15 (16) in respect of joint development or debt-consolidation measures continue to apply even where the integrated project approved under Article 1 of Law No 87/90, as replaced by Article 1 of Law No 252/91, is only completed in part, provided that the integrated project of the person who took out the loan is completed. Article 5(3) provides that credit subsidies on loans contracted for the sole purpose of debt consolidation remain valid even where the integrated project fails to be carried out or is carried out only in part, provided that the person who took out the loan submits a personal investment project, to be undertaken using some of the loan. Moreover, paragraph 4 of the same Article provides that undertakings that have joined together for an integrated livestock project of national importance and eligible for funding under Article 1 of Law No 87/90, as replaced by Article 1 of Law No 252/91, should maintain their right to and eligibility for credit subsidies even where the original integrated project is not completed, provided that they complete their own part of the project.

([7]) The amount of ITL 700 billion is made up of ITL 400 billion for 1988 and ITL 300 billion for 1989.

Article 4 of Law No 290/99

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

(29) On 3 April 2002 ([8]), the Commission took a final negative decision with respect to the aid provided for by Article 4 of Law No 290/99. As clearly indicated in the decision, however, the decision did not concern, nor extended its effects to farming, operating and improvement loans which expired on 31 March 1998 for which an extension was provided for by Article 4 of Law No 290/99. These loans therefore still need to be assessed.

Law No 252/91 of 8 August 1991

(30) The other law referred to in Article 5 as a legal basis for the granting of various forms of aid is Law No 252/91 amending Law No 87/90 on urgent animal husbandry measures. It variously assists exceptional animal husbandry measures in the form of integrated projects of national importance, for which it also authorises the relevant appropriations. The Law also provides for the incorporation of a joint stock company where 51 % of the shares is owned by the Ministry for Agricultural and Forestry Policy which will be entrusted with the following tasks:

(a) providing guarantees on loans;

(b) carrying out funding operations;

(c) granting financing with respect to rescuing and restructuring operations and winding-up of companies;

(d) buying shares of companies carrying out special projects.

II.4 **Beneficiaries**

(31) Livestock farmers operating in the production, processing and marketing of meat products.

([8]) Letter SG (2002) D/229239).

II.5 **Budget**

(32) The total updated budget to carry out the integrated projects amounts to:

Law No 252/91: ITL 97 015 515 581 (about EUR 50 million);

Law No 67/88 (development loans): ITL 6 349 660 726 (about EUR 3,280 million);

Law No 67/88 (consolidation loans): ITL 1 968 222 804 (about EUR 1,016 million).

III. **REASONS FOR INITIATING PROCEEDINGS**

(33) Article 5 of Law No 290/99 lays down the conditions under which the credit subsidies on loans contracted under specific legislative acts can continue to apply even where some of the conditions initially laid down have not been met. At the time the Commission decided to initiate the procedure provided for by Article 88(2) of the Treaty, no background information was available on the Laws referred to by Article 5, which are strictly related to the assessment of the abovementioned Article. The Italian authorities sent the texts of these two laws (Law No 252/91 and Law No 67/88) to the Commission at its express request. However, when the Commission decided to initiate the procedure provided for by Article 88(2) of the Treaty, the Italian authorities had supplied no further information or additional data on these laws or on the aid measures they set up. The Commission was not in a position to decide whether Article 5 of Law No 290/99 related to aid within the meaning of Article 87(1) of the EC Treaty because Italian authorities had not provided clear information on the issue. However, by enabling certain agricultural undertakings to continue to benefit from specific aid measures even in cases of non-compliance with all the initial eligibility requirements, the measure seemed to favour these undertakings with respect to those which, in the same situation, were compliant. As a consequence, the measure provided for by Article 5 led to at least a presumption of aid which, in the absence of information on the part of the Italian authorities, could only be clarified by initiating the procedure provided for by Article 88(2) of the EC Treaty.

(34) Moreover, Article 5 of Law No 290/99 could not be assessed in isolation from the instruments which constituted the legal basis for granting those particular benefits (credit subsidies and financing) it referred to, namely Article 15(16) of Law No 67/88 and Law No 252/91. The texts of these instruments were sent by the Italian authorities to

the Commission at its express request. They clearly provide for State aid within the meaning of Article 87(1) of the EC Treaty. In particular, Article 15(16) of Law No 67/88 provides for the granting of soft loans to agricultural cooperatives and consortia for which a maximum interest subsidy of 10 % may be granted. It therefore relieves the agricultural undertakings concerned of the burden represented by the payment of the full interest rate in force on the market at the time the loan is granted, which would otherwise be paid by any other agricultural undertaking not entitled to that benefit. The 'relief' in question would, in this case, be equal to the difference between the market interest rate ([9]) in force at the time of the loan and the (lower) interest rate actually paid by the beneficiaries thanks to State assistance. For its part, Law No 252/91 authorises the allocations of public funds for the implementation of different types of projects in the livestock sector and in thus doing it favours the recipients of these funds with respect to other agricultural undertakings which are obliged to carry out similar projects relying solely on their own financial resources. By definition, the two measures above seemed to fall within the meaning of Article 87(1) of the EC Treaty.

(35) When the procedure was initiated, the Commission was not in a position to establish the lawfulness of these aid measures. Despite specific and repeated requests in this respect ([10]), Italian authorities did not confirm to the Commission whether the instruments had been notified in accordance with Article 88(3) of the EC Treaty and, therefore, whether the measures therein contained formed part of existing aid schemes assessed by the Commission in the light of Articles 87, 88 and 89 of the EC Treaty or whether they had ever been notified to the Commission.

(36) From a substantive point of view, the Commission had doubts as to the compatibility with the common market of some aspects of the aid schemes provided for by these legislative acts. On the basis of the information available at the time, derived from an analysis of the texts sent to the Commission, some of the measures contained in Article 15(16) of Law No 67/88 and Law No 252/91, might indeed constitute operating aid. In the absence of more accurate and detailed information refuting this preliminary approach, this could only induce the Commission to adopt a negative position with respect to such aid.

(37) The Commission, in its decision to initiate the procedure under Article 88(2) of the Treaty, enjoined Italy to provide all the information available on the terms and conditions (interest rates, guarantees if any, etc.) at which the loans for which an extension was provided by Article 4 of Law No 290/99 were originally granted and the overall amount of the loans granted, as well as to indicate whether the aid formed part of an existing aid scheme (and if so to indicate which one). Since the final decision on Article 4 of Law No 290/99 did not concern or have any effect on the farming, operating and improvement loans which expired on 31 March 1998 for which an extension was provided by the abovementioned Article, these loans still needed to be assessed to establish whether the aid in question was granted at market conditions (and if so, the latter should have been specified) or whether they were part of existing aid schemes approved by the Commission (also to be specified).

IV. INFORMATION PROVIDED BY ITALY FOLLOWING THE INITIATION OF THE PROCEDURE

(38) Following initiation of procedure, in reply to the Commission's specific requests, the Italian authorities provided detailed information by letters dated 18 May 2000, 13 October 2000, 5 July 2001, 27 February 2003 and 29 October 2004, which was registered on 3 November 2004. The information provided in these letters must be read as a whole, since, following in-depth investigation, the Italian authorities revised some of the data originally provided, in particular those related to financial aggregated data. The information provided is summarised in part III.3, with references to the relevant letter.

V. COMMENTS FROM THIRD PARTIES

(39) The Commission only received one letter from third parties. This letter, dated 30 June 2000, was sent by CONAZO, writing as the leading company of a group of undertakings which had benefited from the funds granted by the Italian authorities on the basis of Laws No 252/91 and No 67/88, which were subject to the Commission's proceedings.

(40) In its letter, CONAZO mainly expressed its surprise at the fact that, in initiating proceedings, the Commission had clearly stated that it had not been informed of the existence of Laws No 252/91 and No 67/88 and of the fact that the Italian authorities had granted aid on the basis of these laws.

(41) According to this cooperative, the Commission could not ignore the drastic reorganisation programme for the livestock and slaughtering sectors launched by the Italian authorities as early as 1986. In the same letter, CONAZO referred to the wide-ranging restructuring programme aimed at the two sectors above as drafted by the Italian interministerial committee for economic planning (CIPE) in 1991. The company also recalled that the drastic actions undertaken in the slaughtering sector led to a dramatic reduction in the number of slaughtering plants, which fell from over 8 500 in the 1980s to the current 3 000.

VI. ASSESSMENT

(42) According to Article 87(1) of the EC Treaty, 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, insofar as it affects trade between Member States, is incompatible with the common market.

(43) Articles 87 and 88 of the Treaty apply to the production of and trade in products in favour of which the Italian authorities decided to grant aid. As a matter of fact, Article 40 of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal ([11]) provides that, save as otherwise provided in the Regulation, Articles 87, 88 and 89 of the Treaty, apply to the production of and trade in beef and

([9]) For the purposes of the Commission's assessment, that is the Commission reference rate for Italy at the time of the loan.

([10]) See Commission letter of 28 January 1999.

([11]) OJ L 160, 26.6.1999, p. 21.

veal. A similar provision is contained in Article 21 of Council Regulation (EEC) No 2759/75 of 29 October 1975 on the common organisation of the market in pigmeat ([12]) and in Article 23 of Council Regulation (EC) No 2529/2001 of 19 December 2001 on the common organisation of the market in sheepmeat and goatmeat ([13]).

VI.1 **Existence of aid**

Aid granted on the basis of Article 15(16) of Laws No 67/88 and No 252/91

(44) Article 5 of Law No 290/99 lays down the conditions under which the credit subsidies on loans contracted under specific legislative acts can continue to apply even where some of the conditions initially laid down have not been met. By enabling certain agricultural undertakings to continue to benefit of specific aid measures even in cases of non-compliance with all the initial eligibility requirements, the measure seemed to favour these undertakings with respect to those which, in the same situation, were compliant.

(45) Moreover, that Article cannot be assessed in isolation from the legislative acts constituting the legal basis for granting those particular benefits (credit subsidies and financing) it refers to, namely Article 15(16) of Law No 67/88 and Law No 252/91. As set out in paragraphs 37 to 39 above, these two legislative acts clearly provide for State aid within the meaning of Article 87(1) of the EC Treaty. In particular, Article 15(16) of Law No 67/88 provides for the granting of soft loans to agricultural cooperatives and consortia for which a maximum interest subsidy of 10 % may be granted. The State therefore relieves the agricultural undertakings concerned of the burden represented by the payment of the full interest rate in force on the market at the time the loan is granted, which would otherwise be paid by any other agricultural undertaking not entitled to the same benefit. In this case, the 'relief' in question equals the difference between the market interest rate in force at the time of the loan and the interest rate actually paid by the beneficiaries thanks to State assistance.

(46) Law No 252/91 authorises the allocations of public funds for the implementation of different types of projects in the livestock sector and, by so doing, it favours the recipients of these funds with respect to other agricultural undertakings which are obliged to carry out similar projects by relying solely on their own financial resources. According to the case law of the Court of Justice, 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. Moreover, as there is heavy intra-Community trade in the livestock sector ([14]), the measure may distort competition and affect trade between the Member States.

([12]) OJ L 282, 1.11.1975, p. 1.

([13]) OJ L 341, 22.12.2001, p. 3.

([14]) In 2000, 1 154 000 t of bovine animals and calves were slaughtered in Italy. In the same period in EU 7 401 000 t of animals were slaughtered.

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

VI.1(a) *Compatibility of the aid*

(48) The prohibition in Article 87(1) is followed by the exemptions provided for in Article 87(2) and (3).

(49) The exemptions listed in Article 87(2) are manifestly inapplicable given the nature of the aid measure in question and its objectives. Indeed, Italy did not argue that Article 87(2) was applicable.

(50) Article 87(3) specifies the circumstances under which State aid may be considered to be compatible with the common market. Compatibility with the common market must be assessed from the Community's point of view and not from an individual Member State's.

(51) Article 87(3)(a) is manifestly inapplicable since the aid is not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(52) As regards Article 87(3)(b), the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.

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

(54) Under Article 87(3)(c) of the Treaty, aid designed to facilitate the development of certain economic activities or of certain economic areas may be considered compatible with the common market provided that it does not adversely affect trade to an extent contrary to the common interest. The notified aid scheme must therefore be assessed within the framework of that article and of the specific provisions applicable to the case being examined.

(55) All the integrated projects which benefited from the aid provided for by Law No 67/88 and Law No 252/91 were approved by 31 December 1992 ([15]). The relevant financial commitments were approved by the same date. The aid under discussion was never notified to the Commission and is therefore unlawful within the meaning of Article 1(f) of Regulation (EC) No 659/1999. According to point 23.3 of the Community Guidelines for State aid in the agriculture sector ([16]), unlawful aid within the meaning of Article 1(f)

([15]) See letter of the Italian authorities of 18 May 2000.

([16]) OJ C 232, 12.8.2000, pp. 17 to 41.

of Regulation (EC) No 659/1999 must be assessed in accordance with the rules and guidelines in force at the time the aid is granted.

(56) According to the Italian authorities all the aid granted was connected to investments undertaken within the framework of the five integrated projects approved ([17]). The investments were undertaken both at the level of primary production (stockbreeding) and at the level of processing and marketing of agricultural products.

(57) The investments which were considered eligible for aid substantially concerned: technological and health modernisation, the strengthening of slaughtering plants, the disposal and use of sub-products, meat processing and packaging lines, the adaptation of areas and equipment for a better presentation of the products and implementation or the logistics, the purchase of production facilities and of processing and marketing facilities to improve production technology, the purchase of facilities to favour the development of quality processes. Investments in intangible assets such as marketing and patents were also taken into account in the assessment of the overall projects but were never financed.

(58) The following expenses were not eligible for aid:

— promotional and advertising activities,

— intangible investments such as trademarks,

— design and building costs,

— legal, administrative and tax costs.

VI.1.(a) 1. Investments connected to the processing and marketing of agricultural products

(59) At the time the projects and the relevant commitments were approved, the Commission considered compatible with the common market all investments where the aid rates did not exceed the maximum aid rates normally admitted by the Commission for the sector, namely 55 % (75 % in Objective 1 regions) in the case of projects complying with the sectoral programmes or the general criteria laid down in Regulation (EEC) No 866/90 ([18]) and 35 % (50 % in Objective 1 regions) for all the other projects, provided that these were not excluded from the selection criteria laid down in the Annex to the Commission Decision of 7 June 1990 concerning investments which could be financed within the framework of Regulations (EEC) No 866/90 and (EEC) No 867/90, used with the requisite adjustments pursuant to Article 87 of the Treaty.

(60) It is therefore to be seen whether the investments benefiting from the aid actually met the requirements of Regulation (EEC) No 866/90 as well as the sectoral restrictions provided for by the Commission Decision of 7 June 1990. Point 2.10 of the Annex to the abovementioned Decision, which explicitly concerns meat and eggs, establishes priority investments, that is investments which are seen as particularly positive by the Commission since they are considered to favour more than others the development of a specific sector.

(61) With respect to priority investments, the Commission looks favourably on the creation of cutting facilities linked to slaughterhouses, particularly in production areas where such facilities do not exist. On the other hand, the same point excludes all investments resulting in an increase in the slaughter capacity for pigs, cattle, sheep or poultry, unless equivalent capacity is no longer used by the same or another undertaking or, in the case of pigs, cattle, sheep and poultry other than chickens, the production level in the region indicates a shortfall in production capacity.

(62) As indicated by the Italian authorities, only some of the investments undertaken by them concerned the creation of cutting facilities. Since the Italian authorities were unable to specify exactly the part of the investments which went into the cutting facilities, it is necessary to determine whether the investments in question belonged to the type of investments explicitly excluded under point 2.10, namely whether they resulted in an increase in the slaughter capacity unless equivalent capacity was made available by the same or another undertaking ([19]).

([17]) Out of the 13 integrated projects originally submitted, only eight were approved and only five were eventually completed.

([18]) Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products (OJ L 91, 6.4.1990, pp. 1 to 6).

([19]) In order to show compliance with the abovementioned requirement, at first the Italian authorities provided a study prepared by the Italian institute for studies, research and information on the agricultural market (ISMEA) of September 2000, which contained a general overview of the changes which characterised the slaughtering industry in Italy over the 1990s. The conclusion of the study was that over the 1990 to 1998 period, slaughtering capacity fell by 3 % in Italy. According to the Italian authorities this contraction proved that the investments undertaken on the basis of the laws under assessment complied with the abovementioned sectoral restrictions. The Commission objected that the contraction in slaughtering capacity described in the ISMEA study was the result of the trend in the meat sector over those years throughout Europe. Indeed, the reduction in the number of slaughtering facilities and in the slaughtering capacity which characterised the sector in Italy over the 1990s (mainly as a result of the need to adjust to new hygiene standards) had already characterised the slaughtering sectors of other countries over the 1970s (for example, France). As highlighted in the document, Italy started to reorganise its sector only later, during the 1980s and 1990s. The 3 % reduction claimed by the Italian authorities did not therefore prove compliance with Decision 90/342/EEC. The Italian authorities were therefore invited to provide the specific data of changes in slaughtering capacity brought about by the investments undertaken in each of the plants taking part in the integrated projects.

(63) In their letter of 12 July 2001, the Italian authorities stressed that investments in the slaughtering, processing and marketing of agricultural products were carried out within the framework of seven projects. They provided data showing, for each plant taking part in the project, that the overall *ex-post* slaughtering capacity is on the whole lower that the *ex-ante* one by 30 heads/hour. The requirement of point 2.10 of the Annex to Decision 90/342/EEC is therefore observed.

(64) The aid rates, expressed as gross grant equivalent of aid, following the method described in the Guidelines on Regional aid ([20]) and including all forms of public aid accorded under Laws No 252/91 and No 67/88 (Law No 290/1999 did not modify the aid rates, the volume of aid, nor the beneficiaries of aid under Law No 252/91 and No 67/88) did not exceed the 75 % aid rate (for investments located in Objective 1 regions) and the 55 % aid rate which was authorised at the time for investments connected to the processing and marketing of agricultural products for areas located outside Objective 1. Regardless of their location, all investments under examination therefore complied with the maximum aid rates authorised by Community legislation in force at the time, as shown in Table 1 below.

Table 1

Investments in the processing and marketing sector

		Eligible costs (ITL)	Total contribution (ITL)	%
CONAZO	Investments in less favoured areas	4 972 623 097	3 729 467 323	75,00
	Investments in other areas	48 753 248 149	26 480 183 539	54,31
FIORUCCI	Investments	39 831 488 798	14 170 000 000	35,57
GUARDAMIGLIO	Investments	15 296 548 104	5 477 000 000	35,81
INALCA	Investments	139 597 581 320	42 502 000 000	30,45
PRUNOTTO	Investments	4 243 327 136	1 930 000 000	45,48
CAMALLEVAMENTI	Investments	4 667 623 201	2 567 192 000	55,00
C.L.S.M.	Investments	6 067 000 000	3 260 533 100	53,74

(65) In accordance with Article 11 of Regulation (EEC) No 866/90, the measures at issue are aimed at rationalising or developing the preparation, preservation, treatment and processing of agricultural products or recycling of by-products or manufacturing waste, at improving marketing channels, including the transparency of price formation, at applying new processing techniques, including the development of new products and by-products, or opening up new markets and innovative investments and at improving product quality.

(66) Pursuant to Article 11(3) of Regulation (EEC) No 866/90, eligible expenses are limited to:

— the acquisition of immovable property, with the exception of land purchase,

— the purchase of new machinery and equipment, including computer software and programmes,

— general costs, such as architects', engineers' and consultants' fees and feasibility studies, up to a ceiling of 12 % of the costs referred to before.

(67) As explained further below in the document (see points 80 to 98), the financial balance needs should have been excluded from the eligible expenses, which have been recalculated solely on the basis of expenses directly linked to investments and eligible costs. Furthermore, the CIPE programme explicitly aimed at ensuring coherence and compliance with CMO rules.

(68) In view of the foregoing considerations, the aid granted by the Italian authorities to carry out the investments planned within the framework of the integrated projects described above was compatible with the common market according

([20]) OJ C 74, 10.3.1998, p. 9, as amended (OJ C 258, 9.9.2000, p. 5).

to Article 87(3)(c) of the EC Treaty. This only applies to aid granted in connection with the actual implementation of the investments with the exclusion of any aid granted for the financial recovery of the companies considered and of the aid linked to consolidation loans which are assessed in the following sections.

VI.1.(a) 2. Investments on farms

(69) As already explained, the aid scheme also provided for aid in favour of investments at the level of primary production carried out by groups of companies in line with the rationale of the overall project.

(70) Aid was granted to the companies CONAZO, GEA and Val di Cesola ([21]). The eligible expenses and the total aid received are shown in Table 2.

Table 2

Investments in the production sector

	Total eligible expenses (ITL)	Total contribution (ITL)	%
CONAZO	7 652 930 000	2 678 525 500	35,00
G E A	2 368 708 000	558 831 181	23,59
Val di Cesola	553 923 850	278 830 197	50,34

(71) Upon the date of approval of the various projects and consequent allocation of the relevant resources, aid for investments on farms was assessed on the basis of the provisions of Council Regulation (EC) No 2328/91 on improving the efficiency of agricultural structures ([22]). The Regulation, which established a part-financed system designed to improve the efficiency of agricultural holdings, applied to individual farms. It established a framework for common action authorising or requiring Member States to put in action a certain number of aid schemes which were partially financed at Community level. At the same time, the Regulation established a framework regulating the granting of certain types of nationally funded aid from Member States. Article 35 of Regulation (EEC) No 2328/91 defined the conditions under which Member States were authorised to provide State aid in order to achieve the same objectives as set in the Regulation. In particular, Article 35 stated that the regulation was without prejudice to the right of Member States to adopt additional aid measures in the areas covered by the Regulation with the exception of those covered by Articles 2, 6 to 9, 11, 12(2), (3) and (4), and 17 on terms differing from, or in amounts exceeding, the ceilings laid down in the Regulation, provided that Articles 92, 93 and 94 of the Treaty were not infringed. Article 35(2) provides that Articles 92, 93 and 94 of the Treaty, with the exception of Article 92(2), did not apply to the aid measures governed by Articles 2, 6 to 9, 11, 12(2), (3) and (4), and 17.

(72) The types of aid measures which Member States were authorised to grant were therefore clearly defined by the provisions of Article 35 which limited the scope of intervention of Member States with respect to purely State-funded aid. In practice, Member States had to notify the Commission of any decision to grant aid for the initiatives covered by the Regulation either in the framework of the procedure provided for by the Regulation with a view to obtaining Community part-financing or on the basis of Articles 87 and 88 of the Treaty with respect to State aid. The Italian authorities did not notify the Commission of the aid in question in the framework of the procedure provided for by Regulation (EEC) No 2328/91 with a view to obtaining Community part-financing or pursuant to Article 12(2), (3) and (4) of that Regulation. The aid measure should therefore be assessed on the basis of Articles 87, 88 and 89 of the Treaty within the limits and on the conditions set out in the Regulation.

(73) Article 12 of Regulation (EEC) No 2328/91 specifies the types of investments which Member States are authorised to fund exclusively out of their own resources. As stated under Article 35, Articles 87 to 89 of the Treaty do not apply to Article 12(2), (3) and (4). The aid measures therefore can only be assessed on the basis of Article 12(1) and (5) of Regulation (EEC) No 2328/91.

([21]) Gea and Val di Cesola were part of the original project Centro Carni Sud, that was not completed and therefore not admitted to financing. The two projects undertaken by Gea and Val di Cesola, however, were fully completed and financed.

([22]) OJ L 218, 6.8.1991, p. 1.

(74) The measures provided for by Article 12(1) are additional aid which, under strictly defined conditions, may be granted by Member States on top of the Community part-financed system of aid granted under Regulation (EEC) No 2328/91. These additional aid measures may only be granted to holdings which satisfy all the conditions for eligibility to Community aid as laid down in the Regulation (Articles 5 to 9) and only to integrate previously approved part-financed aid measures. Since this paragraph only concerns aid intended to supplement part-financed aid measures previously approved, these aid measures do not fall within its scope.

(75) Article 12(5) specifies the types of investment aid not subject to the prohibition and limitation provided for by the rest of the Articles and which could in principle be authorised. These are:

— aid for land purchase,

— subsidised operating loans for a period non exceeding one marketing year,

— the purchase of male breeding stock,

— securities for loans contracted, including interest,

— aid for investment in the protection and improvement of the environment, provided that it does not entail an increase in production,

— aid for investment for the purpose of improving hygienic conditions or complying with Community animal welfare standards where these are stricter from Community standards, provided that these investments do not give rise to an increase in production, and that they are granted in accordance with Articles 87 and 88 (formerly 92 and 93) of the Treaty.

(76) By letter of 13 October 2000, the Italian authorities declared that aid for investments in primary production have only been granted under Law No 252/91 to three projects. These investments were aimed at restructuring and improving breeding centres in order to reduce production costs, improve quality and improve the health and well-being of animals. On the whole, the investments allowed better ventilation of the premises, reduced animal density, improvement of the illumination, water distribution and so on. The Italian authorities assured that the aid was granted towards the completion of investments going beyond the animal health and well-being standards set in Directive 91/629/EEC ([23]) and in Directive 91/630/EEC ([24]). In their letter of 24 November 2004, registered on 3 December 2004, the Italian authorities provided the list of investments as proof that these were aimed at improving animals' health and well-being and that they went beyond the rules applicable at the time concerning animal hygiene and well-being. Each financed project has been checked by an inspection committee of the Ministry and the relevant Region to verify that the objectives of the projects were achieved.

(77) The maximum aid rate provided for in the Regulation (35 % and 75 % in less favoured areas), including all public sources of aid channelled to the investments was not exceeded.

(78) Furthermore, the Italian authorities assured the Commission that the total number of animals was not increased, following the completion of the investments and that all the investments were carried out in accordance with the requirements in Article 6 of Regulation (EEC) No 2328/91.

(79) As set out in Section VI.1 (a) 3, eligible expenses do not include financial recovery needs (esigenze di equilibrio finanziario), nor the loans for debt consolidation.

(80) In view of the foregoing, the abovementioned aid measures granted by the Italian authorities to carry out the investments in the primary production are compatible with the common market according to Article 87(3)(c) of the EC Treaty.

VI.1.(a) 3. Aid for the financial recovery of companies and debt consolidation

(81) As stated in the section above, Article 5(2) of Law No 290/99 stipulates that credit subsidies on loans contracted under Article 15(16) of Law No 67/88 in respect of joint development or debt consolidation measures continue to apply even where the integrated project approved under Article 1 of Law No 87/90, as replaced by Article 1 of Law No 252/91, is only completed in part, provided that the integrated project of the person who took out the loan is completed. Article 5(3) provides that credit subsidies on loans contracted under the above Law for the sole purpose of debt consolidation remain valid even where the integrated project fails to be carried out or is carried out

([23]) Council Directive 91/629/EEC of 19 November 1991 laying down minimum standards for the protection of calves (OJ L 340, 11.12.1991, pp. 28 to 32).

([24]) Council Directive 91/630/EEC of 19 November 1991 laying down minimum standards for the protection of pigs (OJ L 340, 11.12.1991, pp. 33 to 38).

only in part, provided that the person who took out the loan submits a personal investment project to be undertaken using some of the loan.

(82) The credit subsidies referred to in Article 5 of Law No 290/99, which were the subject of the Commission's initial assessment, are provided for in Law No 67/88. Article 15(16) of this Law, against which the Commission decided to initiate proceedings, provided that cooperatives and their consortia can raise loans up to a maximum of ITL 7 000 billion for the construction, restructuring or extension of slaughtering plants. Also, according to that Article, farmers taking out the loans may use them, up to a limit of ITL 100 billion in 1988 and of ITL 50 billion in 1989, to consolidate existing debt on the aforementioned facilities and premises.

(83) Both Article 5 of Law No 290/99 and Article 15(16) of Law No 67/88 provide therefore for the possibility to use the allocations to consolidate debts.

(84) Nevertheless, according to the information submitted by the Italian authorities in their reply to the initiation of proceedings by the Commission ([25]), within the framework of Law No 252/91, the State also took into account what are described as financial recovery needs. According to the Italian authorities, the execution of the project called for a high financial commitment in terms of both the actual implementation of the 'development projects' and of recovery of the financial commitment resulting therefrom ([26]). Financial recovery needs were considered additional to the investments since they were strictly related to the amount of money generated by said investments.

(85) In the light of the above, it is apparent that part of the aid granted by the Italian authorities to the companies for the relevant projects was actually aimed at enabling these companies to face the financial burden ensuing from, but not strictly related to, these investments.

(86) The Commission has always expressed doubts as to the compatibility with the common market of the aid for debt consolidation provided for by Law No 67/88 and of aid for financial recovery granted under Law No 252/91. In their reply to the initiation of proceedings, dated 18 May 2000, the Italian authorities claimed that both aid measures were granted in connection with investments carried out within the framework of the integrated projects planned. Indeed, the Italian authorities stated that Law No 67/88 had linked the acknowledgement of debt consolidation to the actual completion of the investment projects. In their opinion, the consolidation loan simply aimed at providing cooperatives with liquidity and in this respect worked as a grant. The consolidation loan was a financial operation linked, in every case, to an investment project.

(87) Despite this statement, the Commission expressed its doubts on the abovementioned aid measures by declaring that, contrary to the Italian authorities' contention, the description provided and the wording of the Law seemed to indicate that the aid was aimed at relieving the beneficiaries from their financial difficulties with no link whatsoever with the actual completion of the investments. In the same letter expressing its reservations, the Commission also invited the Italian authorities to explain whether the aid in question complied with any of the provisions applicable at the time the aid was granted.

(88) In their reply to the abovementioned letter ([27]), the Italian authorities stated that, with respect to financial recovery, the financial actions planned took account of the overall financial requirement of each integrated project. This overall global financial requirement consisted in the actual investments and in the financial equilibrium, which could not exceed 50 % of the overall financial requirement. The financial recovery therefore ensured the payment of the financial charges linked to the investments undertaken.

(89) Following the Commission's remarks on this specific point, the Italian authorities, in their letter of 29 October 2004, registered on 3 November 2004, undertook to disaggregate the financial recovery needs from eligible expenses. Therefore, the financial recovery needs of the companies, originally included in the eligible expenses linked to the investments, were deducted. This means that only eligible expenses directly linked to the completion of the financed investments, funded under the conditions indicated above, were considered. Financial recovery never resulted in an additional transfer of financial resources from the State to the companies undertaking integrated projects, but it was originally added to the eligible expenses.

([25]) Letter of the Italian authorities of 18 May 2000.

([26]) See p. 5 of the abovementioned letter.

([27]) Letter of the Italian authorities of 13 October 2000.

(90) According to the new calculation (excluding the financial recovery needs from the eligible expenses), the aid intensity of the two cooperatives who benefited from it (CONAZO and *Consorzio latterie sociali mantovane*) was still limited to 35 % for primary production, was below 55 % for the processing and marketing sector in ordinary areas and was limited to 75 % in less favoured areas, as shown in the table below:

Table 3

Financial recovery

	Eligible costs ITL	Public contribution under Law No 252/91	%
CONAZO			
Production	7 652 930 000	2 678 525 500	35,00
Processing in less favoured areas	4 972 623 097	3 729 467 323	75,00
Processing	48 753 248 149	20 700 797 658	42,46
TOTAL CONAZO	61 378 801 246	27 108 790 481	44,16
Consorzio Latterie Sociali Mantovane			
Processing in non disadvantaged areas	6 067 000 000	3 260 533 100	53,74

(91) Concerning debt consolidation, the Italian authorities specified that the 'debt consolidation funds' were aimed at financing 'development loans', i.e. loans linked to the completion of the integrated projects for which the resources provided for by Law No 252/91 proved to be insufficient and 'consolidation loans', aimed at financing previous investments.

(92) 'Development loans' are granted within the scope of the integrated projects financed under Law No 252/91 and on the same conditions. They were granted to CONAZO, GEA and Val di Cesola. The gross grant equivalent of these loans was included in the overall aid intensity and the maximum grant equivalent deriving from the cumulation of the aid in form of cash subsidy under Law No 252/91 and in form of development loans under Law No 67/88. The total aid rates are in accordance with the aid rates authorised at the time by the Commission (as shown in Table 2 above).

(93) The 'consolidation loans' that only concern CONAZO, however, were linked to previously accomplished investments and are designed to reduce the cost of financing loans contracted in respect of earlier investments. They were granted under the conditions set in Commission letter of 7 March 1989 ([28]), namely:

— aid (for example, to pay interest) should be aimed at reducing the financial burden of previous loans taken out to fund investments,

— the cumulated grant equivalent of previous loans granted when the loans were taken out and of the new aid measure may not exceed the Commission limit rates for primary production investments: 35 % or 75 % in less favoured areas pursuant to Directive 75/268/EEC; for processing or marketing investments: 55 % (75 % in Objective 1 areas),

— the aid in question must follow adjustments in the interest rates on new loans to take account of changes in the price of money (the aid must be less than or equal to the change in the rate for new loans) or must be for agricultural undertakings presenting guarantees of viability, particularly where the financial burden resulting from existing loans is such that there is a risk that the undertaking's viability might be in danger or that it may become bankrupt.

(94) In the present case, in their letter of 12 July 2001 and in that of 29 October 2004, registered on 3 November 2004, the Italian authorities specified that the debt consolidation loans were only granted to one company, CONAZO, which was not in financial difficulty. The aid granted for debt consolidation was meant to relieve the company from debts relating to previous investments, in order to allow the cooperative to undertake new investments for the modernisation of the livestock sector. The consolidation loans were granted to finance projects undertaken between 1986 and 1993 for the setting-up of slaughtering plants, the construction of buildings, purchase of equipment and the purchase of a breeding centre for a total amount of

([28]) SEC(89) 343/2 of 7.3.1989.

ITL 12 396 406 733 (about EUR 6 million). The gross grant equivalent of this contribution on the overall eligible costs is around 9 % (ITL 1 198 351 597) and therefore did not exceed the Commission aid rates, as specified above.

(95) The aid was granted to help the cooperative to face difficulties deriving from soaring interest rates, ranging from 17,80 % in 1986 to 14,75 % in 1993. Although the cooperative was viable, the high interest rates applied by the banks were seriously detrimental to its financial situation. Furthermore, the cooperative was undertaking new investments within the integrated projects financed under Law No 252/91. In order to participate in such projects, the cooperative had to meet a *sine qua non* condition that the part of overall financial requirement not covered by State contribution would be covered by the beneficiary companies in two ways:

(a) at least 20 % with fresh capital paid by the shareholders as capital increase or with a 10-year loan at market rates;

(b) with a guarantee covering the total project, on the basis of a joint and several liability, according to which each partner of the integrated project was liable towards the other partner should any part or all the project fail to be undertaken.

(96) According to the Italian authorities, the sum of the new financial commitments and the old ones (deriving from the high bank rates for the completion of previous investments) would have borne heavy consequences even for viable companies, such as the one concerned by this measure. Moreover, the 'consolidation loans' were always linked to the company's development plan, showing its financial situation, the investments undertaken and to be undertaken and compliance with the conditions indicated in point 94.

(97) The investments for which debt consolidation loans were granted were different from and fully independent of those financed under Law No 252/91 and the public contribution towards debt consolidation (at the conditions indicated above) did not affect the aid rates of the investments financed under Law No 252/91.

(98) Furthermore, the Italian authorities underlined that Article 5(3) of Law No 290/99 (which stipulates that credit subsidies on loans contracted under Law No 67/88 for the sole purpose of debt consolidation remain valid even where the integrated project fails to be carried out or is carried out only in part, provided that the person who took out the loan submits a personal investment project, to be undertaken using part of the loan) had never been applied. No aid (in the form of consolidation debts loans) was granted for investments which were not carried out in their totality.

(99) On the basis of the information provided by the Italian authorities, the Commission can therefore conclude that:

— the debt consolidations loans granted under Law No 67/88 were compatible with the relevant State aid rules applicable at the time when the aid was granted,

— the financial resources granted under Law No 67/88 as development loans were included in the overall financial envelope of each project and assessed according to the State aid rules applicable to investments in primary production or in the processing and marketing sector (see sections VI.1 a 1 and VI.1 a 2),

— the financial recovery needs never resulted in any transfer of public resources and their amount was deducted from the eligible expenses.

VI.2(d) Concerning the loans referred to in Article 4 of Law No 290/99

(100) In their letter dated 27 February 2003, the Italian authorities clearly stated that the measure provided for in Article 4 of Law No 290/99 had never been implemented, since it was impossible to identify the credit operations that the law intended to finance (namely the operating, improvement and agricultural loans which expired on 31 March 1998). Indeed, as these credit operations were non-existent, no State aid within the meaning of Article 87(1) of the Treaty could have been granted under Article 4 of Law No 290/99 and the measures related thereto.

VI.3 **Finagra**

VI.3.1. *Existence of aid*

(101) As pointed out in the paragraph above, Law No 252/91 also envisages the establishment of a private-law holding company (*finanziaria di partecipazioni di diritto privato*) with a subscribed and paid-up capital of ITL 70,114 million. The main shareholder is the Ministry for Agriculture and Forestry Policy which owns 92,79 % of the company's shares. The remaining 7,21 % is owned by 13 different credit institutions.

(102) The institutional tasks of the company are the following: assistance in the preparation of economic/financial programmes for restructuring and development projects, granting of guarantees for credit operations, organisations of 'pool' financing, preliminary contacts with banks in order to favour the financing operations planned, acquisition and sale of minority shares in companies, cooperatives, consortia, bodies and associations and granting of aid.

(103) By Legislative Decree No 1 of 9 January 1999 (*Riordino degli enti e delle società di promozione e istituzione della società Sviluppo Italia S.p.A*), Finagra was merged into Sviluppo Italia S.p.A. ([29]).

([29]) Legislative Decree No 1 of 9 January 1999 (Riordino degli enti e delle società di promozione e istituzione della società Sviluppo Italia S.p.A).

(104) The Italian authorities have consistently stated that Finagra operations have never involved State aid elements and that Finagra has always operated under normal market economy conditions within the meaning of the Commission's communication on the application of Articles 92 and 93 (now Articles 87 to 89) of the EC Treaty to public companies ([30]).

(105) In order to prove that Finagra has always operated under normal market conditions, upon the Commission's request, the Italian authorities have provided details of all the 12 operations (in companies within the meaning of Article 5) approved by the company until 31 December 1998 ([31]).

(106) An analysis of Finagra's activities showed that Finagra had operated at three levels:

— purchase of equity shares

— granting of loans

— issuance of guarantees.

(107) In their letter dated 13 October 2000, the Italian authorities stressed that, even if rescuing and restructuring operations were contemplated by the company's articles of association, Finagra had never undertaken operations of this type.

VI.3.1.(a) Purchase of equity shares

(108) The Commission's position on the purchase of shares by public authorities in private companies is set out in the Communication of the Commission on the application of Articles 92 and 93 of the EEC Treaty to public authorities' holdings. According to the communication, 'public holding' means a direct holding of central, regional or local government, or a direct holding of financial institutions or other national, regional or industrial agencies which are funded from State resources within the meaning of Article 87(1) of the EC Treaty, or over which central, regional or local government exercises a dominant influence.

(109) Italy, through its Ministry for Agricultural and Forestry policy owns about 92 % of Finagra's shares; as such, this holding can be defined as 'public' within the meaning of the abovementioned communication.

(110) The Treaty establishes both the principle of impartiality with regard to the system of property ownership (Article 222) and the principle of equality between public and private undertakings. This means that Commission action may neither penalise nor favour public authorities which provide companies with equity capital. Nor is it for the Commission to express any opinion as to the choice companies make between methods of financing — loan or equity — irrespective of whether the funds are of private or public origin. In this respect, the Commission needs to establish whether the holdings acquired by Finagra in various companies operating in the agricultural sector actually constituted State aid according to Article 87(l) of the EC Treaty and must therefore be assessed on the basis of Articles 87 to 89 of the EC Treaty or whether, as claimed by the Italian authorities, such interventions did not constitute State aid according to the provisions of the abovementioned communication.

(111) The communication distinguishes four types of situation in which public authorities may have occasion to acquire a holding in the capital of companies:

(a) the setting-up of a company,

(b) partial or total transfer of ownership from the private to the public sector,

(c) in an existing public enterprise, injection of fresh capital or conversion of endowment funds into capital,

(d) in an existing private sector company, participation in an increase in share capital.

(112) Straightforward partial or total acquisition of a holding in the capital of an existing company, without any injection of fresh capital, does not constitute aid to the company.

(113) According to the information provided by the Italian authorities, Finagra's interventions in existing private sector companies took the form of an increase in the share capital of the company's concerned and it cannot therefore be immediately excluded that they constituted State aid according to Article 87(1) of the EC Treaty.

(114) The injection of fresh capital in a private company cannot however be taken as clearly constituting State aid when the capital is contributed by the public authority in circumstances that would be acceptable to a private investor operating under normal market conditions. On the other hand, there is State aid when the 'private investor' principle is not respected and the injection of fresh capital is contributed in circumstances which would not be acceptable to a private investor operating under normal market economy conditions ([32]). Point 3.2 of the communication lists six situations where this may be the case.

(115) In their letter of 13 October 2000, the Italian authorities stated that the holdings were always taken on a temporary basis for a period not longer than five years. Upon a preliminary analysis therefore, the holdings might seem to fall within the scope of point 3.3(iii) of the communication, where it is stated that there is State aid whenever the holding is a short-term one, with duration and selling price fixed in advance, so that the return to the provider of capital is considerably less than he could have expected

([30]) Bulletin EC 9-1984.

([31]) For an overall commitment of ITL 33 458 million.

([32]) Ibid., point 3.3.

from a capital market investment for a similar period. The information provided by the Italian authorities, however, proved that the similarity with the possibility provided for in point 3.3(iii) on the existence of State aid is confined to this element. Indeed, the time limited acquisition was never provided for in any legal document and was decided at the discretion of the board of directors, where the other 13 members were also represented. As specified later (see point 120), Finagra acquired shares in cooperatives in its capacity as financing member (*socio sovventore*), which enabled it to obtain higher benefits compared to a regular investor. One obligation upon every financing member was to keep the shares for a minimum period of time, but without any obligation to sell them at the end of the minimum period. As specified further in this document, Finagra was one of the many financing members (including banks) and was subject to exactly the same rules/requirements as any other private investor. In case of other companies, the average holding time of Finagra was 3 to 3.5 years and the sale was carried out at market value. The Italian authorities reiterated on several occasions that the selling price of the shares was never pre-determined, but it was fixed at market rates. They denied the existence of any evidence (legal document, written or oral agreement or implicit understanding of any type) pointing towards an a priori definition of the front selling price of the holding, which was defined on the basis of the market value at the moment of the sale (see letter of 27 February 2003).

(116) According to the Italian authorities, evidence of this is that in all but one cases Finagra obtained a positive return from the sales of the shares. The only exception was the acquisition of shares of one cooperative (ARA) that went into voluntary receivership, with a loss of ITL 500 million (about EUR 250 000). The loss in one acquisition of shares could not be considered per se as an indication that Finagra did not operate as any other private investor, when the decision to buy shares in the company was sound and based on viable financial and economic perspectives and all the means to recover the invested money had been used. In this specific case, when such acquisition was decided, the cooperative was undertaking a process of restructuring and modernisation in order to increase production and rationalise its industrial processes. The cooperative had a high potential for growth, since it was well-rooted in the economic reality of the geographical context in which it operated. Its revenue rose constantly from 1990 to 1994 and its economic performance improved. The cooperative, however, found itself in difficulty when facing the high costs of modernisation and the decreasing prices of meat. In 1996, therefore, the cooperative went into receivership. The cooperative, which was also part of an integrated project financed under Law No 252/92, completed the part of the project under its responsibility. After its receivership, the State recovered the entire money allocated for the financed investments. The shares owned by Finagra, however, were lost with the receivership of the company, despite all the recovery procedures being activated. In their letter of 24 November 2004, the Italian authorities clarified that the guarantee for a total of ITL 125 million had been called in and that the remaining ITL 375 million were therefore a credit in favour of Finagra. At the moment, the recovery procedure is still pending and Finagra will recover (following normal recovery procedures) at least 40 % of the outstanding credit.

(117) In view of the above, Finagra's short-term shareholding cannot in itself be regarded as State aid within the meaning of Article 87(1).

(118) Other elements of the shareholding should be taken into account. In particular, in their letter of 12 July 2001, the Italian authorities provided an in-depth study to prove that their interventions in the form of shareholding acquisitions were undertaken according to market principles, after a thorough assessment of the company's financial position, especially the structure and volume of its debt. No investment was made when the financial position of the company was not such that a normal return from the capital invested could be expected within a reasonable time. As clearly stated by the Italian authorities, in all the cases at issue, Finagra's interventions were based on an in-depth analysis of the company's financial situation (analysis of the financial statements at the moment of the operation) centreing on the possibility of normal returns on the investments. The financial position of the company was always sound. The criteria used to assess the viability of a company before deciding the acquisition of shares were the following:

— position of the company in the market (geographical context, level of diversification, percentage of sales on the global and local market),

— the trend of company's profit/revenue and a critical analysis of the reasons determining such profit,

— the gross operating margin, the marginal profit and the net assets,

— the effectiveness of financial management in the use of total resources.

These criteria were detailed and set down in Finagra's internal rules.

The Italian authorities have provided the details of the acquisitions of shares in five companies/cooperatives, specifying the situation of the companies against each of the previously mentioned parameters (see letters of 5 February 2001 and 26 November 2004).

(119) Finagra's shareholding in a company generally never accounted for over 30 % of the net worth of the company acquired and never exceeded 10 % of Finagra's capital at the time when the decision to buy the shareholding was taken, as shown in the following table:

Table 4

Shares owned by Finagra on total net worth of the companies ([1])

Company			
MCLC	Net worth	Finagra	%
1994	28 412 481 648	1 240 200 000	4,36
1995	28 458 138 741	2 479 800 000	8,71
1996	30 546 834 954	2 479 800 000	8,12
1997	32 191 589 226	2 479 800 000	7,70
1998	33 957 143 898	2 479 800 000	7,30
1999	32 090 948 834	1 239 600 000	3,86
2000	34 682 267 274	1 239 600 000	3,57
Unicarni	Net worth	Finagra	%
1994	12 669 243 845	2 000 000 000	15,79
1995	13 416 526 526	2 000 000 000	14,91
1996	14 558 518 843	2 060 000 000	14,15
1997	51 844 215 895	1 060 000 000	2,04
1998	51 918 316 470	1 075 000 000	2,07
1999	57 568 500 113	765 899 344	1,33
2000	60 804 913 354	795 580 426	1,31
2001	63 879 483 570	778 153 996	1,22
2002	64 931 137 640	799 164 462	1,23
Ultrocchi	Net worth	Finagra	%
1995	46 033 965 272	1 805 200 000	3,92
1996	46 202 537 881	1 805 200 000	3,91
1997	46 376 056 268	1 805 200 000	3,89
Guardamiglio	Net worth	Finagra	%
1995	9 807 056 542	0	0,00
1996	17 688 327 264	3 000 000 000	16,96
1997	17 457 904 625	3 000 000 000	17,18
1998	17 703 648 203	3 000 000 000	16,95

([1]) As reported at 31 December of each year.

(120) The companies always presented normal investment prospects and a sufficient margin of self-financing. In the operations undertaken, Finagra defined the criteria for the transfer of the investments undertaken and obtained guarantees from the counterparts in compliance with the principles contained in the abovementioned Communication. As shown by Finagra's articles of association, the board consisted of five members, also representing the minority shareholders (banks, credit institutes and private companies). All the decisions of the board were taken by majority and in a manner completely independent of the Government. These decisions were not subject to any ratification or control by the public administration. All its interventions were freely assessed by the administrative board, exercising its activity in compliance with the rules applicable to any merchant bank (Legislative Decree No 385/93). The board carried out Finagra's financial and credit activities fully independently from the State, basing its decisions on three elements: the risk, the expected return and the company's viability. These procedures are laid down in Finagra's internal rules.

(121) Furthermore, when the holding concerned cooperatives, Finagra participated as financing member. This means that, according to Italian Law, it had a special position compared to normal members of the cooperatives, namely:

— it obtained a higher profit than normal members (on average 2 % more),

— it could appoint one member to the board of directors and one member to the board of statutory auditors,

— when acquiring the participation of a cooperative as financing member, Finagra obtained guarantees on 50 % of the invested capital, constituted as a security. This guarantee was not requested by other members and was an extra security conditional upon the participation of Finagra.

(122) By buying shares in cooperatives as financing member, Finagra acted as any other private member, mostly banks and credit institutions, under the same conditions. The Italian authorities provided evidence of this by listing all the credit institutes and private individuals/companies participating as financing members in the cooperatives where Finagra also held shares ([33]) (see Table 5 in point 136). They also provided the documentation concerning a bank's intervention in one of those cooperatives, MCLC, to prove that Finagra acted under the same conditions as any other private financing member, the only difference being that Finagra requested greater guarantees before deciding whether to finance a cooperative as financing member. Furthermore, they provided the decisions concerning the issue of shares for Unicarni's financing members and the requests (and acceptance) of many private credit institutions seeking to become financing members.

([33]) Private companies and individuals: CoopFons Spa, Agricola Sabbadina srl, CCFR Scarl. Among the credit institutes: Banca Agricola Mantovana, Em. Popolare Spa, Bipop Carire Spa, Banca Popolare di Verona — Banca S.Geminiano S. Prospero, Banca di Roma, Finec Merchant Spa, Agrisviluppo Spa.

(123) The additional guarantee requested by Finagra consisted in a security in favour of Finagra on 50 % of the shares. As an example, in the case of MCLC, the security in national bonds was worth ITL 1 240 million (of the total shares held by Finagra and worth ITL 2 479,8 million) and in the case of Unicarni, it was worth 1 674 million (of the total shares held by Finagra and worth ITL 2 825,9 million). The Italian authorities underlined that such an additional guarantee (which is substantial compared to the company's shares held by Finagra) was not requested by other private financing members and it is, according to them, an additional proof that Finagra applied the same (and even tougher) criteria than private investors.

(124) As an additional element, the Italian authorities also indicated that Finagra's balance sheet had always shown a positive return on capital.

(125) In the light of the foregoing, the Commission may conclude that, in buying shares, Finagra acted as any other private operator, under market conditions. There was therefore no element of State aid, within the meaning of Article 87(1) of the Treaty, involved in such acquisition.

VI.3.1.(b) Granting of loans

(126) As stated in point 106 above, Finagra's operations also included the granting of loans to companies operating in the agriculture sector. According to the information submitted by the Italian authorities, Finagra had granted loans for a total amount of ITL 17 800 million.

(127) In their letter dated 13 October 2000, the Italian authorities stated that the loans had always been granted at market conditions by applying an interest rate which reflected the risk connected to the loan granted and was never lower that the one in force at the time the loans were granted.

(128) The loans were granted at an interest rate equivalent to that on government bonds (*Rendistato*) for operations lasting more than 18 months, minus 5 points. The minimum interest rate to be paid is however set at 3 %. In general, the interest rate on government bonds is considered as a benchmark to establish the economic viability of financial investments. An investment is considered viable if its prospective yield is deemed to be at least equal to that which can be obtained with the same amount of money if invested on government bonds. However, the 5-point decrease compared to the State bond (*Rendistato*) interest rate shows that Finagra could have accepted rates lower than market rates when granting the loans.

(129) In this respect, the Italian authorities pointed out that the choice of companies to which loans were granted was made very carefully to minimise the risk of insolvency. Indeed, in granting the loans, Finagra acted like any

financial institution operating in market conditions, considering whether to grant the loans to the above-mentioned beneficiaries. The loans were granted on the basis of investments submitted by the applicants and the contracts always provided for loan granting and repayment conditions compatible with the undertakings of the companies applying for the loans. Under the contracts, loans had always to be reimbursed within 48 months or immediately in the event of non-performance of the contract or delays in the repayment. The loans were always granted to support economically viable projects and to favour the aggregation of several entities for managing projects based on tangible industrial plans with realistic development prospects. The repayment capacity was assessed by Finagra on the basis of the documents available (financial accounts, investment projects, three-year plans) followed by thorough analyses just like the enquiries carried out for the same purpose by credit institutions. Furthermore, all companies concerned have regularly paid back the amounts due in compliance with the deadlines set, which proves, according to the Italian authorities, that the companies had been selected on the basis of strictly economic criteria, to minimise the risk of insolvency.

(130) The minimum interest rate levied by Finagra was 3 % until May 1999 and 2 % after that date (until June 2000, when Finagra merged into Sviluppo Italia). This is clearly below the Commission reference rates applicable for the relevant period.

(131) However, a distinction can be made between cooperatives and private companies receiving the loans. Only two cooperatives received loans from Finagra (MCLC and Unicarni) worth in total ITL 8,3 billion.

(132) In the case of cooperatives, loans were granted by Finagra under the conditions set for financing members, a particular kind of cooperatives' membership expressly provided for by Law No 59/92 (see description in point 120 above). The decision to grant loans was taken by Finagra on the basis of the return on the loans, based on the rates established in the articles of association of cooperatives. These decisions were accepted by Finagra's administrative board, representing all financing and other members (including, as explained before, several banks, credit institutes and private investors).

(133) The interest rates applied were also part of the expected return on the equity investments, on which Finagra, as financing member, obtained a higher return than normal members and was therefore linked to the overall investment strategy of Finagra. Not only could Finagra directly control the management of the companies receiving the loans ([34]) and obtain higher profit rates, but it could also reduce the management costs, since it had large banks and credit institutions as partners. The Italian authorities declared that the other private financing members, when lending money to the cooperatives of which they were members, applied the same interest rates, since those interest rates are laid down in the rules for the collection of members' loans, approved by the cooperatives.

([34]) Finagra, as financing member of cooperatives could appoint one member of the Administrative board and one of the statutory auditors' board.

(134) According to the Italian authorities, therefore, the interest rates on loans applied by Finagra should be assessed against the other conditions linked to the provision of these loans, i.e.

— the link between the status of financing member of cooperatives and that of loan-supplier,

— the fact that the loan rates applied were the same for all subsidising members,

— the direct participation of Finagra in the management of the cooperatives receiving the loans, through its participation to their boards,

— the capital return 2 % higher than that of any other normal member of the cooperatives,

— the fact that Finagra granted loans only to cooperatives giving sufficient guarantees of repayment, by applying stricter rules for the provision of loans,

— the low management costs of Finagra, due to the participation of banks in its holding, that allowed it to have lower rates,

— the internal regulation for collection of capital, providing a minimum rate of 3 % until May 1999, even when the application of the government bond (*Rendistato*) rate minus 5 points would have led to values close to zero and even negative at some points.

(135) In order to prove that Finagra was one of the many financing members of these cooperatives, the Italian authorities provided the request (and acceptance) of many credit institutions to become financing members of MCLC and Unicarni, under the same terms and conditions as Finagra.

(136) The number of financing members in MCLC and Unicarni is shown in the table below.

Table 5

Financing members of MCLC and Unicarni

	Financing members of MCLC and Unicarni
1994	23
1995	35
1996	39

	Financing members of MCLC and Unicarni
1997	52
1998	55
1999	58
2000	61
2001	79
2002	93
2003	103

In 2004, Unicarni had ten financing members for a total value of financing shares of EUR 5 918 000 and MCLC had 64 financing members for a total value of financing shares of EUR 1 559 286.

(137) All the financing members, when providing loans, were bound by the rules for the collection of loans approved by the boards of the cooperatives. Those rules provided for an interest rate equivalent to that on government bonds (*Rendistato*) for operations lasting more than 18 months, minus five points. The minimum interest rate to be paid was set at 3 % until May 1999. Finagra therefore acted as any other (private) financing member when providing the loans to the cooperatives.

(138) The financing members provided a substantial part of the money borrowed by the two cooperatives. As shown in the table below, in the period between 1996 and 2003, MCLC and Unicarni received loans by Finagra and other private investors, as financing members.

Table 6

Loans granted to MCLC and Unicarni by all financing members in the period 1996 to 2003

Year	Total loans received by financing members(ITL)	No of financing members	Value of the loans granted by Finagra (ITL)
1996	6 390 361 001	39	3 500 000 000 ([1])
1997	6 727 572 001	48	
1998	10 366 345 007	51	33 000 000 000 ([2])
1999	10 274 854 007	53	
2000	8 342 949 006	53	
2001	8 520 314 006	54	
2002	6 603 670 715	91	
2003	7 491 842 237	98	

([1]) This amount includes the 4-year loan worth ITL 500 million to Unicarni and the 4-year loan worth ITL 3 billion to MCLC granted in 1996. MCLC also obtained loans in 1994 worth ITL 1 500 million (letter by the Italian authorities dated 5 July 2001).
([2]) Loan granted to Unicarni.

(139) The fact that these loans were granted under the same terms and conditions as any other private investor, investing considerably in the same cooperatives where Finagra entered as financing member, proves that the principle of equality was respected.

(140) On the basis of the foregoing considerations, the Commission can conclude that in granting the loans to cooperatives Finagra behaved as a private investor operating on the market under the same conditions. The preference given by Finagra to the specific borrowers in the agricultural sector stems from Finagra's will and statutory duty to intervene in agricultural undertakings. In this respect, the loans granted by Finagra to the cooperatives do not constitute State aid within the meaning of Article 87(1) of the Treaty.

(141) In the case of other private companies, the difference between the aid rates at which the loans were granted and the Commission reference rates may well constitute State aid within the meaning of Article 87(1) of the Treaty, even if all the conditions referred to above in points 125 to 129 are fulfilled also in the case of private companies. The difference between the return on loans granted to private companies and loans granted to cooperatives in which Finagra was a financing member is undeniable and has been summarised in points 131 to 133 above. In the case of cooperatives, Finagra, even when applying rates that were lower than the Commission reference rates, acted as

any other private investor in the same situation and expected a higher return of the equity operations to which the loans were linked. This additional return, together with the Finagra's market behaviour, which is comparable to that of any other private operator in the same situation, is clearly not applicable in case of loans to private companies.

(142) The Italian authorities stated that Finagra had granted loans only to two private companies (Guardamiglio and Ultrocchi) and that the difference between the applied rates for these loans and the Commission reference rate applicable at the time ranged from — 3,18 to — 5,20 percentage points. According to the Italian authorities, this difference can be considered as aid towards the completion of investments belonging to the integrated projects provided for by Law No 252/91, but clearly distinguished from those financed by that Law. The investments, therefore, despite observing all the criteria for obtaining funding under Law No 252/91, did not benefit from any funds under this Law or any other public funds. These projects came within the integrated projects, but were functionally independent of them. The loans were part, therefore, of a strategy aiming at finalising integrated projects, by using different means of financing (though not cumulated, as in this case). The gross grant equivalent aid rate of the two loans granted for completing investments in the processing and marketing sector is 0,96 % and 4,51 %, as shown in the following table.

Table 7

Finagra's loans to private companies

Beneficiary	Eligible costs (not covered by Law No 252/91)(ITL)	Difference of interests (ITL)	% of aid
1	2	3	4 = 3/2
GUARDAMIGLIO	9 162 000 000	413 508 030	4,51
ULTROCCHI	42 940 033 423	415 954 000	0,96

(143) Since it considers that all the subsidised investments comply with the rules applicable to the investments in the processing and marketing sector as listed in Section VI.1 (a) 1 and that the aid rate (calculated as the gross grant equivalent of the difference between the applied rate for these loans and the Commission reference rate applicable at the time) are within the maximum aid rates applicable for this kind of investments, the Commission can conclude that the loans granted by Finagra to private companies constitute State aid within the meaning of Article 87(1) of the Treaty. This aid is compatible with the common market according to Article 87(3)(c) of the EC Treaty.

VI.3.1.(c) The provision of guarantees

(144) In their letters of 29 October 2004, registered on 3 November 2004, and of 23 November 2004 the Italian authorities stated that Finagra only provided one guarantee with respect to bank loans, in favour of Guardamiglio.

(145) The bank guarantee for Guardamiglio, worth ITL 2 billion, was granted on a loan of ITL 17 billion, which Guardamiglio fully repaid without calling in the guarantee.

(146) When the guarantee was set up, the provision of State guarantees was examined according to the principles laid down in the Commission letter SG(89) D/4328 of 5 April 1989, in the Commission letter to Member States SG(89) D/12772 of 12 October 1989 and in the Commission communication to the Member States on the application of Articles 92 and 93 of the EC Treaty and of Article 5 of Commission Directive 80/723/EEC to public undertakings in the manufacturing sector ([35]). On the basis of these documents, the Commission accepted the guarantees only if their realisation was contractually linked to specific conditions which may go as far as the compulsory declaration of insolvency of the beneficiary or any similar procedure. An assessment of the aid element of guarantees entailed an analysis of the borrower's financial situation. The aid element of these guarantees would be the difference between the rate which the borrower would pay in a free market and that actually obtained with the benefit of the guarantee, net of any premium paid for the guarantee.

(147) In this case, according to the Italian authorities, the guarantee does not constitute State aid within the meaning of Article 87(1) of the Treaty for the following reasons:

— the beneficiary was not in financial difficulty,

— the borrower had obtained a loan for ITL 17 billion on the financial market, which proves that the company was considered trustworthy and the invest-

([35]) OJ C 307, 13.11.1993, pp. 3 to 14.

ment viable,

— the guarantee was linked to a specific financial transaction, it was for a fixed maximum amount and for a limited amount of time; the guarantee only covered around 11 % of the total loan,

— the borrower had not received the loan at conditions more favourable than the normal market rate, because of Finagra's guarantee,

— the guarantee was subject to specific conditions for recovering the credit, either by extra judicial settlement or, in compliance with the provisions contained in the Italian civil code, through the forced execution of credit on the guaranteed debtor's assets;

— the premium requested by Finagra was an annual rate of 0,40 % and represented, according to the Italian authorities, the market price for additional guarantees ([36]) at the time, considering the sound financial situation of the beneficiary, its economic prospects and the investments about to be undertaken. The market price of a primary guarantee at the time was 0,70 %, according to the Italian authorities. In case of an additional guarantee, the market rate was between 0,40 % and 0,70 %, according to the beneficiary's financial situation. In case of a loan granted to a company judged positively by a pool of banks and with good economic perspectives, undergoing a thorough process of modernisation, the annual rate of 0,40 % reflects, as stated by the Italian authorities, the market rate applicable to this type of operation. The guarantee is linked to an underlying operation (investments), which is part-financed by the State through Law No 252/91 and therefore in line with State aid rules.

(148) On the basis of the foregoing information, the Commission can conclude that the guarantee provided by Finagra does not constitute State aid under Article 87(1) of the Treaty.

VII. **CONCLUSION**

(149) The Commission finds that Italy has unlawfully implemented the aid in question contrary to Article 88(3) of the Treaty. However, from all the foregoing considerations, it is clear that:

— the aid measures provided for by Article 15(16) of Law No 67/88, Article 5 of Law No 290/99 and Law No 252/91 (integrated projects) are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty,

— the measures provided for by Article 4 of Law No 290/99 (namely: the operating, improvement and agricultural loans due on 31 March 1998 were never implemented and, therefore, did not amount to State aid within the meaning of Article 87(1) of the Treaty,

— the interventions of Finagra, under Law No 252/91 relating to the acquisition of shareholdings, the granting of loans to cooperatives and the provisions of guarantees did not constitute State aid within the meaning of Article 87(1) of the Treaty,

— the interventions of Finagra under Law No 252/91 relating to the granting of loans to private companies were State aid within the meaning of Article 87(1) of the Treaty. They are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

1. The State aid which Italy implemented in favour of the meat sector, provided for by Article 15(16) of Law No 67/88, Article 5 of Law No 290/99 and Law No 252/91 (integrated projects) and Finagra's interventions under Law No 252/91 relating to the granting of loans to private companies are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty.

2. The measures provided for in Article 4 of Law No 290/99 concerning the operating, improvement and agricultural loans due on 31 March 1998 were never implemented and did not result, therefore, in State aid within the meaning of Article 87(1) of the Treaty.

3. The interventions of Finagra, under Law No 252/91 relating to the acquisition of shareholdings, the granting of loans to cooperatives and the provisions of guarantees did not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 5 July 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

([36]) The guarantee granted by Finagra was indeed an additional guarantee, since the loan was already covered by a primary guarantee.