IV

(Acts adopted before 1 December 2009 under the EC Treaty, the EU Treaty and the Euratom Treaty)

COMMISSION DECISION

of 10 December 2008

concerning State aid C 31/06 (ex N 621/05) granted by Italy on urgent measures to prevent avian influenza

(notified under document C(2008) 7802)

(only the Italian text is authentic)

(2010/332/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 given interested parties notice to submit their comments pursuant to that Article, and having regard to those comments,

Whereas:

I. PROCEDURE

(1) By letter of 9 December 2005, registered on 13 December 2005, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the Treaty, of Article 5 of Law No 244 of 30 November 2005 (Law 244/05).

(2) By telexes of 14 February 2006 (ref. AGR 4535) and of 20 March 2006 (ref. AGR 7800), the Commission requested additional information.

(3) By e-mail of 2 March 2006, registered on 3 March 2006, the Italian authorities notified the Commission of Article 1a(8) and (10) to (14) of the draft law converting Decree-Law No 2 of 10 January 2006 into law. This Decree-Law was converted into law, with amendments, through Law No 81 of 11 March 2006 (Law 81/06). This law amends Article 5 of Law 244/05. The provisions of Article 1a establishing an Emergency Poultry Fund were examined under State aid N 322/2006.

(4) By e-mail of 20 April 2006, registered on 25 April 2006, the Italian authorities provided additional information.

(5) By letter of 13 June 2006, the Commission asked the Italian authorities to extend the 30-day time limit laid down in Article 4(5) of Council Regulation (EC) No 659/1999 [1] to be able to take its decision, i.e. until 26 July 2006, to take account of the time required for the translation of the decision itself.

(6) By e-mail of 22 June 2006, registered on 23 June 2006, the Italian authorities agreed to the extension of the time limit requested by the Commission.

(7) By letter of 5 July 2006, the Commission informed Italy of its decision to initiate the procedure under Article 88(2) of the Treaty in respect of some of the aid measures at issue.

(8) By letter of 19 July 2006, registered on 3 August 2006, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' comments regarding the decision to initiate the formal investigation procedure.

(9) The decision by the Commission to initiate the procedure was published in the *Official Journal of the European Union* [2]. The Commission called on the interested parties to submit their comments on the aid at issue.

(10) The Commission received no comments on this matter from the interested parties.

(11) By letter of 7 May 2008, the Commission asked the Italian authorities for additional information to enable it to close the case in question. The Italian authorities did not reply.

(12) By letter of 30 October 2008, the Commission sent the Italian authorities a reminder. By letters of 4 November 2008, the Italian authorities sent the Commission the information requested by letter of 7 May 2008, confirming that they had not implemented the measures provided for in Article 5(1), (3a) and (3b) of Decree-Law No 202/2005, as amended by Article 1a(7) of Law 81/06.

[1] OJ L 83, 27.3.1999, p. 1.
[2] OJ C 233, 28.9.2006, p. 5.

II. **DESCRIPTION**

Title

(13) Urgent measures to prevent avian influenza.

Legal basis

(14) Article 5 of Decree-Law No 202 of 1 October 2005 (DL 202/05) converted to Law No 244 of 30 November 2005 (Law 244/05) ([3]), as amended by Article 1a(7) of Law No 81 of 11 March 2006 (Law 81/06) converting Decree-Law No 2 of 10 January 2006.

(15) Ministry of Agricultural Policy Decree of 13 January 2006 (Decree of 13 January 2006) laying down detailed rules for implementing the provisions on the withdrawal of poultry meat from the market under Article 5(1) and (2) of Law 244/2005 ([4]).

(16) Article 1a(8), (10), (11) and (12) of Law 81/06 ([5]).

Budget

(17) The resources used to finance the various measures are from the national budget. The Italian authorities indicated an overall budget of EUR 120 million, distributed as follows: EUR 20 million allocated to food aid and EUR 100 million to setting up the Emergency Poultry Fund.

Duration

(18) The Italian authorities' intention was to grant the aid until 1 January 2007; to date, however, no aid has been granted under this scheme.

Beneficiaries

(19) Poultry farms, abattoirs and poultry meat-processing companies, poultry-meat wholesalers and poultry-feed manufacturers.

Measures

(20) Article 5 of DL 202/05, as amended by Article 1a(7) of Law 81/06, provides for:

(a) the purchase by AGEA of 17 000 tonnes of poultry meat and other poultry products for humanitarian aid (paragraphs 1 and 2);

(b) the suspension of tax payments, social security contributions and payments in respect of operators in the poultry sector (paragraph 3a);

(c) the granting of aid for loans for the conversion and restructuring of poultry undertakings affected by the emergency situation in the poultry sector (paragraph 3c).

(21) Article 1a(8), (10), (11) and (12) of Law 81/06 provides for an Emergency Poultry Fund ('the Fund') to be set up at the Ministry of Agricultural Policy, with an overall budget of EUR 100 million for 2006, to be used for:

(a) rescue and restructuring aid for the poultry sector (in accordance with Community guidelines on State aid for rescuing and restructuring firms in difficulty ([6]));

(b) compensation for the loss of income or additional expenditure incurred by farmers as a result of implementing the Community, national or regional plans for preventing and eradicating avian influenza and indirect damage resulting from restrictions on moving animals or production stoppages imposed by the health authorities;

(c) aid for closing production (in accordance with paragraph 9 of the Community Guidelines for State aid in the agriculture sector ([7]) ('the guidelines'));

(d) investments for biosecurity and health measures in poultry farms;

(e) the slaughter of animals ordered by the health authority with a view to improving the well-being of animals in the event of overpopulation of production structures or a ban on moving animals.

(22) Article 1a(12) of Law 81/06 states that the implementing measures for aid financed by the Fund are to be adopted by decrees of the Ministry of Agricultural Policy and the Ministry of Health. The Italian authorities undertook, by e-mail of 20 April 2006, to notify the above decrees to the Commission under Article 88(3) of the Treaty.

(23) By e-mail of 23 May 2006, registered on the same day, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the Treaty, of the draft Ministerial Decree on the implementing measures for aid financed by the Fund. These measures were approved under State aid N 322/06 ([8]).

([3]) Official Gazette of the Italian Republic of 30.11.2005, general series No 279, p. 44.
([4]) Official Gazette of the Italian Republic of 26.1.2006, general series No 21, p. 50.
([5]) Official Gazette of the Italian Republic of 11.3.2006, ordinary supplement No 58.
([6]) OJ C 244, 1.10.2004, p. 2.
([7]) OJ C 28, 1.2.2000, p. 2.
([8]) By letter C(2007) 3249 of 10.7.2007 for component A and by letter D(2008) 13797 of 13.5.2008 for component B (ref. AGR 11275).

(24) On several occasions the Commission advised the Italian authorities not to implement the measure provided for in Article 5 of DL 202/05 on the purchase of frozen meat for humanitarian aid ([9]).

(25) The decree of 13 January 2006, which governs the procedures to be adhered to by the AGEA for the purchase of poultry products of Community origin, provides for the following purchase prices:

Carcasses and cuts of meat	Fresh EUR/kg	Frozen EUR/kg
Golden and/or Livorno chickens	2,40	2,10
'Vallespluga' chickens	2,40	2,10
Chickens	1,40	1,20
Chicken legs	1,40	1,20
Chicken wings	1,00	0,80
Turkey drumsticks	1,00	0,80
Turkey legs	1,10	0,90
Turkey wings	1,00	0,80
Turkey (breasts)	1,30	1,10
Guinea fowl and duck	2,40	2,10

(26) All natural or legal persons involved in farming and processing poultry meat for more than 12 months on the date of entry into force of the decree of 13 January 2006 and registered for these activities on the company register of the Chamber of Commerce can offer their products for humanitarian aid purposes.

III. GROUNDS FOR INITIATING THE PROCEDURE

(27) The measures laid down in Article 1a(8), (10), (11) and (12) of Law 81/06 setting up a Fund to be used for financing the measures set out in recital 21(a)-(e) of this final decision were examined under State aid N 322/2006 and declared compatible with the common market ([10]) since they fulfil the relevant conditions of paragraphs 4.1, 4.2, 9 and 11.4 of the guidelines ([11]).

(28) This decision therefore relates to the sub-measures set out in recital 20(a), (b) and (c), which deal with the purchase by the AGEA of 17 000 tonnes of poultry meat and other poultry products for humanitarian aid; the suspension of payment of taxes, social security contributions and payments in respect of operators in the poultry sector and the granting of aid for loans for the conversion and restructuring of poultry undertakings affected by the situation.

(29) The measures set out in recital 20 appear to qualify as State aid in so far as they are granted by way of State resources, either in the form of loss of earnings from tax revenues for public authorities, or in terms of prices to be paid for the purchase of poultry meat and in so far as these measures could affect trade because of Italy's position in this sector of production (Italy was the fourth biggest producer of poultry meat in the EU in 2004).

(30) The Italian authorities did not provide any information to justify these measures in the light of State aid rules, in particular paragraph 11.4 of the guidelines ([12]) and the Community guidelines on State aid for rescuing and restructuring firms in difficulty. ([13]) The Commission could not therefore rule out the possibility of this aid constituting operating aid, i.e. aid designed to relieve an undertaking of costs which it would normally have to pay in the course of its day-to-day business or its normal activities.

(31) The Commission therefore initiated the procedure provided for in Article 88(2) of the EC Treaty because it had doubts as to the compatibility of the measures provided for in Article 5 of DL 202/05, as amended by Article 1a(7) of Law 81/06. According to the aforementioned Article 88, aid to facilitate the development of certain economic activities or of certain economic regions may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

IV. COMMENTS FROM INTERESTED PARTIES

(32) Following the initiation of the procedure, the Commission has received no comments.

V. COMMENTS MADE BY ITALY

(33) The Italian authorities sent their comments on the initiation of the procedure by letter of 19 July 2006, registered on 3 August 2006.

(34) First of all, the Italian authorities draw the Commission's attention to the fact that, despite the urgency, no specific measures have been adopted yet.

([9]) By letter D(2005) 38372 of 12.12.2005 (ref. AGR 31606), by telex D(2006) 9256 of 20.3.2006 (ref. AGRI 7800) and by letter D(2006) 1927 of 12.4.2006 (Directorate-General for Development).
([10]) See footnote 7.
([11]) See footnote 6.
([12]) See footnote 6.
([13]) See footnote 5.

(35) The Italian authorities then refer to paragraph 18 of the initiation decision, which provides that under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

(36) They conclude that, based on the interpretation of the spirit and of the letter of the regulation, State aid is prohibited not systematically or absolutely, but only in cases where trade is distorted or market advantage conferred on beneficiaries.

(37) The Italian authorities believe that, in the case in question, these eventualities can be considered to have been ruled out entirely, since the sole intention of the legislature was to establish a system of partial and ex post compensation in respect of losses caused by the crisis in the sector.

(38) In this regard, they stress, in particular, that the measures referred to in (b) (the suspension of tax payments, social security contributions and payments in respect of operators in the poultry sector — paragraph 3a of Article 1a(7) of Law 81/06) would have applied as *de minimis* aid if the three-year budget allocated to Italy had not been fully absorbed by another measure.

(39) The Italian authorities cite paragraph 22 of the decision to initiate the procedure, which refers to the possibility of a derogation under Article 87(3)(c) of the Treaty, which provides that aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(40) In that respect, they point out that there is no dispute that the present case is of a well-known kind and, in accordance with the well-established principles of legal literature and of case-law, well-known facts need not be demonstrated on the basis of evidence; such evidence is only necessary in the case of situations where there is doubt or uncertainty regarding the establishment of facts.

(41) The Italian authorities also draw the Commission's attention to the fact that if it were deemed that Article 87(3)(c) of the Treaty did not apply to the proposed measure, such measure should be authorised on the basis of Article 87(2)(b), which provides that aid to make good the damage caused by natural disasters or exceptional occurrences is compatible with the common market.

(42) In the present case, according to the Italian authorities, the Council of Ministers already explicitly acknowledged the exceptional nature of the occurrence by adopting Regulation (EC) No 679/2006 of 25 April 2006 amending Regulations (EEC) No 2771/75 and (EEC) No 2777/75 as regards the application of exceptional market support measures ([14]).

(43) The Italian authorities consider that one and the same occurrence, deemed to be exceptional for the purposes of adopting exceptional market measures, cannot be deemed to be normal for the purposes of evaluating State aid designed to respond to the same emergency situation.

(44) Finally, the Italian authorities point out that the Commission itself actually recognised the exception nature of the occurrence by adopting Regulation (EC) No 1010/2006 of 3 July 2006 on certain exceptional market support measures in the eggs and poultry sector in certain Member States ([15]).

VI. ASSESSMENT OF THE AID

1. Prohibition of State aid within the meaning of Article 87(1) of the EC Treaty

(45) Under Article 87(1) of the Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, insofar as it affects trade between Member States, be incompatible with the common market.

(46) The measures set out in paragraph 20 of this text appear to qualify as State aid inasmuch as they confer an economic advantage (in the form of a loss of earnings from tax revenues for the state and in terms of the price to be paid for purchasing poultry meat with no access to the Community market on account of avian influenza) on a particular sector (poultry), it amounts to funding from (national) public resources and such aid is likely to affect trade.

([14]) OJ L 119, 4.5.2006, p. 1.
([15]) OJ L 180, 4.7.2006, p. 3.

(47) According to the case-law of the European Court of Justice, an improvement in the competitive position of an undertaking as a result of State aid generally leads to distortion of competition in relation to competing undertakings not receiving such assistance ([16]). The Court has held that the relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected ([17]).

(48) A measure affects trade between Member States when it hinders imports from other Member States or facilitates exports to other Member States. The crucial factor is that intra-Community trade develops, or is in danger of developing, differently because of the measure in question.

(49) The product benefiting from the aid scheme is the subject of trade between Member States and is therefore exposed to competition.

(50) Thus, the criteria concerning the effect on trade and the distortion of competition are fully met.

(51) The measure at issue is in effect, therefore, State aid within the meaning of Article 87(1) of the EC Treaty.

(52) The fact that the measure is intended to compensate the poultry sector for losses due to the avian influenza makes no difference to the nature of the aid if such aid fulfils the conditions of Article 87(1), as is the case with the measure in question. On the other hand, both the guidelines that apply in the present case (in view of the fact that it was notified in 2005) and the new Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013 ([18]) specifically provide for the possibility of granting aid to make good the damage caused by natural disasters or exceptional occurrences, or by animal and plant diseases.

2. **Assessment of compatibility**

(53) The prohibition referred to in Article 87(1) of the EC Treaty is not unconditional. In order to be considered compatible with the common market, the proposed measure must benefit from one of the derogations provided for by Article 87(2) and (3) of the Treaty. The Commission will discuss below the conditions for the applicability of Article 87(2)(b) of the EC Treaty and of the provisions of the 2000-2006 agricultural guidelines on animal diseases, which were in force when the above measure was notified in 2005.

Derogations provided for by Article 87(2) of the EC Treaty

(54) The Italian authorities referred to Article 87(2)(b) of the EC Treaty, which declares aid to make good damage caused by exceptional occurrences compatible with the common market. In their letter of reply of 19 July 2006 they refer to avian influenza as an exceptional occurrence.

(55) No definitions of the terms 'exceptional occurrence' and 'natural disaster' are given by the Treaty so it needs to be verified whether the avian influenza affecting Italy can be considered a 'natural disaster' within the meaning of Article 87(2)(b) of the Treaty. Since they constitute exceptions from the general principle of the incompatibility of State aid with the common market, laid down by Article 87(1) of the Treaty, it has been the consistent practice of the Commission to give a restrictive interpretation of the notions of 'natural disaster' and 'exceptional occurrence' referred to in Article 87(2)(b), as set out in paragraph 11.2 of the guidelines.

(56) The need for such a restrictive interpretation has been consistently confirmed by the Court of Justice ([19]).

(57) To date, the Commission has considered earthquakes, avalanches, landslides and floods as natural disasters. Exceptional occurrences that have been accepted include war, internal disturbances or strikes and, with certain reservations and depending on their extent, major nuclear or industrial accidents and fires that result in widespread loss.

(58) As a general rule, the Commission does not accept that outbreaks of animal or plant diseases can be considered to constitute natural disasters or exceptional occurrences. However, in one case the Commission did recognise the very widespread outbreak of a completely new animal disease as an exceptional occurrence ([20]).

(59) The consistent practice of the Commission has been to consider avian influenza as an animal disease ([21]) and to use long-established principles in the Guidelines on the fight against animal and plant diseases.

([16]) Judgment of the Court of Justice of 17 September 1980 in Case C-730/79, [1980] ECR 2671, paragraphs 11 and 12.

([17]) Judgment of the Court of Justice of 21 March 1990 in Case C-142/87, [1990] ECR I-959, paragraph 43, and Judgment of 14 September 1994 in Joined Cases C-278/92 and C-280/92, [1994] ECR I-4103, paragraphs 40 to 42.

([18]) OJ C 319, 27.12.2006, p. 1.

([19]) Judgment of the Court of Justice of 11 November 2004 in Case C-73/03 *Spain* v *Commission* paragraph 37, and Judgment of 23 February 2006 in Joined Cases C-346/03 and C-529/03 *Giuseppe Atzeni and Others*, paragraph 79.

([20]) In particular for aid to farmers affected by the BSE crisis. See letter D(2001) 290558 of 27.7.2001 (ref. AGR 25807) case NN46/01, letter D(2001) 292096 of 9.11.2001 (ref. AGR 37860) case N 657/01, and letter D(2001) 290526 of 27.7.2001 (ref. AGR 25798) case N 437/01.

([21]) Avian influenza is also an International Office of Epizootics (OIE) listed disease.

(60) In general, an exceptional occurrence must at least present the characteristics of an occurrence that, by its nature and its effect on the operators concerned, is clearly distinguished from usual conditions and is outside the framework of the normal conditions under which a market operates.

(61) Moreover, the data submitted by Italy lead to the conclusion not that the aforementioned disease was of an exceptional nature but that it is a recurring phenomenon.

(62) According to the Italian authorities the exceptional nature of the occurrence was explicitly recognised by the Council of Ministers when it adopted Regulation (EC) No 679/2006 and Regulation (EC) No 1010/2006.

(63) In the cases above, the avian influenza crisis had led to a fall in the consumption of poultry and eggs in a number of Member States, resulting in a sharp drop in prices. The regulations governing the eggs and poultry market allowed the EU to co-finance compensation measures only in cases where there was a case of avian influenza on a farm or where farmers were prevented from moving their poultry because of restrictions imposed on farmers by veterinary orders. There was no possibility to provide EU aid to take account of market problems linked to a fall in sales caused by a loss of consumer confidence. Because of the severity of the market crisis in some countries in 2006, the Commission authorised the co-financing of 50 % of the cost of market support measures, with national budgets paying the other half.

(64) The Commission would point out that the slump in prices suffered by the sector is not in itself an exceptional occurrence within the meaning of the Treaty. Rather, it is an economic circumstance well-known in some agricultural sectors, which is caused by various factors including an incorrect planning of supply compared with demand (cyclical falls in price in the pigmeat sector are proof of this), or by purely commercial factors, the origin of which cannot be termed an exceptional occurrence (e.g. the reorientation of consumers' preferences to alternative products). Similarly, the mere existence of a well-known disease such as avian influenza does not constitute an exceptional occurrence. On the contrary, the spread of the disease and the subsequent crisis of the poultry sector may, in some cases, even be a result of the failure by national authorities to apply rigorously the safety and prevention standards required to control the disease.

(65) Through the market support measures proposed in the aforementioned regulations, the Commission's intention was to deal with the problem of the negative consequences of the avian influenza crisis on the market. The Commission has therefore made very clear its intention to intervene in the crisis, entirely excluding any other measures considered to affect commercial conditions to an extent contrary to the common interest.

(66) However, the Italian authorities have provided no evidence of the reasons why the present case is any different from other cases of avian influenza which were not considered as exceptional occurrences. As a result, the aid proposed by the Italian authorities cannot be authorised on this legal basis: the derogations referred to in Article 87(2) are not applicable. Specifically, the provisions of paragraph (b), which state that aid to make good damage caused by natural disasters or exceptional occurrences are compatible with the common market, do not apply.

Derogations provided for by Article 87(3) of the EC Treaty

(67) It must be examined whether the measure proposed may be considered to be compatible with the common market within the meaning of Article 87(3) of the Treaty. The provisions of paragraph (c) are particularly relevant. According to these, aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(68) Paragraph 11.4 of the guidelines governs State aid to compensate farmers for losses caused by animal diseases.

(69) These state that where a farmer loses livestock as a result of animal disease, or where his crops are affected by plant disease, this does not normally constitute a natural disaster or an exceptional occurrence within the meaning of the Treaty. In such cases, aid provided in compensation for the losses incurred and aid to prevent future losses may only be permitted by the Commission on the basis of Article 87(3)(c) of the Treaty, which provides that aid to facilitate the development of certain activities may be considered compatible with the common market provided that it does not affect trading conditions to an extent contrary to the common interest.

(70) For this derogation to apply, the Member State must demonstrate that all the conditions for the compatibility of the proposed measures are fulfilled.

(71) According to paragraph 1.1.4 of the guidelines, the Commission considers that the payment of aid to farmers to compensate for losses resulting from animal or plant diseases may only be accepted as part of an appropriate programme at Community, national or regional level for the prevention, control or eradication of the disease concerned. Aid which simply compensates farmers for losses incurred without taking any steps to remedy the problem at source must be considered as pure operating aid, which is incompatible with the common market.

(72) The Commission considers, however, that the Italian authorities did not provide sufficient evidence to justify the application of such derogation in the light of the rules applicable to State aid, in particular paragraph 11.4 of the guidelines.

(73) Accordingly, the aid proposed by the Italian authorities cannot be authorised on this legal basis.

(74) The Italian authorities did not indicate any other measures as a legal basis for the aid.

(75) Even though the Italian authorities never referred to the application of the rescue and restructuring guidelines, for the sake of completeness, the Commission examined whether the Community Guidelines on State aid for rescuing and restructuring firms in difficulty ([22]) do not apply in the present case. The first condition in order to qualify for rescue or restructuring aid is that the firm in question is regarded as being in difficulty within the meaning of the aforementioned guidelines. Based on the information at the Commission's disposal, it does not appear that the firms concerned were in difficulty within the meaning of the aforementioned guidelines.

(76) In any event, the Commission would point out that, in order to fulfil its duty to cooperate with the Commission, the Member State concerned must provide all the information necessary to enable the Commission to verify that the conditions for the derogation from which it seeks to benefit are satisfied ([23]). The Italian authorities never submitted any document enabling the Commission to examine the information in the light of the guidelines, despite the indications given by the Commission in paragraph 24 of the initiation decision (paragraph 30 of the final decision).

VII. **CONCLUSION**

(77) In light of the foregoing, the Commission may conclude that the aid which Italy proposes granting to the poultry sector constitutes State aid within the meaning of Article 87(1), which cannot benefit from any derogation provided for in Article 87(2) and (3).

(78) Since the measure has been notified in accordance with Article 88(3) of the Treaty and the Italian authorities have not granted it, there is no need to request recovery of the aid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid which Italy proposes granting in order to prevent the avian influenza is not compatible with the common market.

Accordingly, the granting of the aid is not authorised.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 December 2008.

For the Commission
Mariann FISCHER BOEL
Member of the Commission

([22]) See footnote 5.

([23]) Judgment of the Court of First Instance of 15 June 2005 in Case T-171/02 *Regione autonoma della Sardegna* v *Commission* [2005] ECR II-2123, paragraph 129.