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COMMISSION DECISION

of 17 October 2001

on the aid scheme which Italy intends to implement for the production, processing and marketing of products listed in Annex I to the Treaty (Law 81 of the region of Sicily of 7 November 1995)

(notified under document number C(2001) 3060)

(Only the Italian text is authentic)

(2002/195/EC)

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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 regard to Council Regulation (EC) No 1493/1999 of 17 May 1999 on the common organisation of the market in wine ⁽¹⁾,

Having called on interested parties to submit their comments pursuant to the provision cited above,

Whereas:

I. PROCEDURE

- (1) By letter dated 6 December 1995, the Italian authorities notified the Commission under Article 88(3) of the Treaty, of Regional Law No 81 of the region of Sicily of 7 November 1995 laying down financial provisions for 1995 (hereinafter called 'Law No 81/1995'), relating to the production, processing and marketing of products listed in Annex I to the Treaty. By letter dated 2 May 1996, those authorities notified Regional Law No 18 of 6 April 1996 (hereinafter called 'Law No 18/1996') 'on measures to assist entrepreneurs and young people's cooperatives. Fund for agricultural mechanisation (ESA). Amendments to the rules. Extension', which amends Article 10 of Regional Law No 81/1995.
 - (2) The aid measures provided for in Law No 81/1995, application of which has been suspended pending a Commission decision under Article 87 of the Treaty, were entered by the Secretariat-General of the Commission in the register of aid measures notified under numbers:

N 408/B/96: production, processing and marketing of products listed in Annex I to the Treaty, and

N 408/A/96: other sectors.
 - (3) The Commission examined and authorised under Articles 87 and 88 of the Treaty (by letter SG(97) D/07189 of 20 August 1997) aid N 408/A/96, concerning the aid measures contained in Law No 81/1995, if and in so far as those measures applied to sectors other than agriculture, fisheries and aquaculture. Application of the said measures in agriculture, fisheries and aquaculture was examined by the Commission in the context of aid N 408/B/96.
- This Decision does not concern aid N 408/A/96.
- (4) Additional information was transmitted by letters No 5657 of 9 August 1996, No 7382 of 30 October 1996, No 7694 of 13 November 1996 and No 2694 of 12 April 1996. On the basis of the information supplied by the Italian authorities, it is clear that Articles 4 and 9 of Law No 81/1995 apply to agriculture, fisheries and aquaculture, while the authorities did not provide an

⁽¹⁾ OJ L 179, 14.7.1999, p. 1. See recital 36 of this Decision. The Regulation repeals Council Regulation (EEC) No 822/87 of 16 March 1987 on the common organisation of market in wine, which repealed Council Regulation (EEC) No 337/79 of 5 February 1979 on the common organisation of the market in wine, as amended by Council Regulation (EC) No 454/80.

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exhaustive answer to the Commission's questions about the field of application of Article 8, and in particular whether it applied to the production, processing and marketing of products listed in Annex I to the Treaty.

- (5) By letter dated 23 January 1997, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid.
- (6) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities*⁽¹⁾. The Commission invited interested parties to submit their comments on the aid.
- (7) The Italian authorities submitted comments by letters Nos 3155 and 3899, dated 8 May 1997 and 12 June 1997, respectively. The Commission received no comments from other interested parties.
- (8) By letter No 9365 of 23 July 2001, recorded as received on 28 August 2001, the Italian authorities requested that Article 7(7) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty⁽²⁾ be applied for Article 4 of Law No 81/1995, and that the Commission therefore take a decision within two months from the date of receipt of the request.
- (9) This Decision concerns only the applicability of the aid measures in the sectors covered by Annex I to the Treaty (namely agriculture, meaning the primary production, processing and marketing of agricultural, fishery and aquaculture products).

II. DESCRIPTION

- (10) The measures covered by this Decision are solely those provided for in Articles 4, 8 and 9 of Regional Law No 81/1995, described below in so far as they apply to the products listed in Annex I to the Treaty (agricultural and fishery products). In so far as the aid measures provided for by Law No 81/1995 apply to sectors other than agriculture, fisheries and aquaculture, they were examined and approved by the Commission, within the meaning of Articles 87 and 88 of the EC Treaty, by letter SG(97) D/07189 of 20 August 1997.
- (11) *Article 4 of Regional Law No 81/1995.* Under this Article, the regional *Assessore* for agriculture is authorised 'to grant the aids provided for in Article 78 of Regional Law No 25/1993 to winegrowers who, having acquired a replanting right by virtue of Regulation (EEC) No 454/80⁽³⁾ and having suffered losses as a result of the drought in 1988 to 1990, submitted an application for the aid provided for in Regulation (EEC) No 1442/88⁽⁴⁾, on the same conditions'. For the purposes of this Article, ITL 2 000 million (approximately EUR 1 million) was earmarked for 1995.

In order to qualify for the aid concerned, winegrowing holdings must meet all three of the conditions laid down in that Article, in other words:

- (i) they must have replanting rights within the meaning of Regulation (EEC) No 454/80⁽⁴⁾;

⁽¹⁾ OJ C 88, 19.3.1997, p. 17.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

⁽³⁾ See recital 36 of this Decision.

⁽⁴⁾ The wording of Article 4 of the Regional Law contains inexact legal references: among the conditions laid down in that Article is possession of replanting rights acquired within the meaning of Regulation (EEC) No 454/80. At the time the Law was published, the provisions inserted by Regulation (EEC) No 454/80 in Regulation (EEC) No 337/79 had not been in force since 1 April 1987 (the date of entry into force of Regulation (EC) No 822/87 on the common organisation of the market in wine). In fact, the replanting rights had been acquired under Regulation (EEC) No 337/79.

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- (ii) they must have been unable to use those rights because of the drought during 1988 to 1990;
- (iii) they must have applied for the premium provided for in Regulation (EEC) No 1442/88 for the permanent abandonment of winegrowing areas.

These beneficiaries can obtain the contributions provided for in Article 78 of Regional Law No 25/93, which stipulates that winegrowing holdings which have applied to grub up and replant and which suffered losses as a result of the drought in 1988 to 1990 qualify for the aid provided for in Regulation (EEC) No 1442/88.

In substance, the aid is intended to compensate the winegrowers concerned for the fact that they were unable, because of the drought, to use replanting rights which expired during the years of the drought, by instead granting them premiums for the permanent abandonment of wine-growing areas.

- (12) With regard to Article 4, in its letter dated 23 January 1997 initiating the procedure, the Commission set out the arguments reproduced in full in recitals 13 to 16 below.
- (13) Regulation (EEC) No 1442/88⁽¹⁾ on the granting, for the 1988/89 to 1997/98 wine years, of permanent abandonment premiums in respect of winegrowing areas⁽²⁾ provides for the grant of aid (financed by the EAGGF Guarantee Section) to wine growers who permanently abandon production in accordance with the conditions laid down in the Regulation. The amount of the premium varies (see the third recital of the Regulation) according to the productivity of the areas concerned, and is designed to cover the cost of the grubbing-up operations, the loss of replanting rights and the loss of future income. It is clear that the first condition to be met is that the vineyard must be grubbed up (Article 4(2) of the Regulation: 'The grant of the premium shall be subject to a written declaration in which the applicant undertakes to grub up the vines on the areas in respect of which the premium has been applied for or to have them grubbed up'; Article 6: 'The amount of the permanent abandonment premium shall be paid [...] provided the applicant has furnished proof that grubbing up has in fact taken place'). In the case of the aid in question, it would seem that the aim of the regional authorities is not to encourage the permanent abandonment of areas currently under vines (the objective of Regulation (EEC) No 1442/88) but rather to compensate wine growers for not using a replanting right. The Sicilian legislation provides for aid of the same type as that referred to in Regulation (EEC) No 1442/88 (the purpose of which is to encourage the grubbing up of vineyards, the amount being calculated on the basis of the estimated loss incurred from such an operation) as a response to an operative event bearing no resemblance to the event giving rise to the aid part-financed by the Community. Having regard to the rules for calculating the aid referred to in the Community Regulation and the different nature of the events giving rise to aid in the case of Regulation (EEC) No 1442/88, on the one hand, and the Regional Law in question, on the other, the latter would undoubtedly lead to over-compensation of the cost borne by the beneficiaries.
- (14) In the light of the foregoing, it is not possible to support the view that the Sicilian provision has a 'similar' objective to that of the Community scheme within the meaning of Article 19 of the Regulation in question: 'This Regulation shall not impede the granting of aid provided for by national rules designed to achieve objectives similar to those sought by this Regulation.

⁽¹⁾ See recital 36 of this Decision.

⁽²⁾ OJ L 132, 28.5.1998, p. 3. The period of validity of the Regulation was extended until the 1997/98 wine year by Regulation (EC) No 1595/96 (OJ L 206, 16.8.1996, p. 36).

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The granting of such aid [...] shall be subject to review on the basis of Articles 92, 93 and 94 of the Treaty'. The above considerations apply where the replanting rights under consideration are valid.

- (15) In the case in point, the replanting rights referred to in the regional provision in question (acquired under Regulation (EEC) No 337/79) are not even valid (since their period of validity was set at eight years by the previous common market organisation, so the 'last' replanting right acquired on the basis of that legislation expired at the latest eight years after 31 March 1987). In substance it seems that the regional aid in question is designed to grant the aid provided for in Regulation (EEC) No 1442/88 (for farmers who grub up their vineyards) to Sicilian wine growers who had acquired replanting rights pursuant to Regulation (EEC) No 337/79 and who, by reason of the weather in 1988 to 1990, were unable to exercise those rights. It would thus be a matter of retrospectively compensating them for the 'loss' of replanting rights which are no longer usable.
- (16) Consequently, if in the case of a valid replanting right the grant of a Regulation (EEC) No 1442/88 type aid would have the effect of overcompensating for the cost to the winegrower, where a replanting right did not legally exist, the aid would simply be 'free' in the sense that it did not compensate for anything and would have to be regarded as an operating aid which was fundamentally incompatible with the common market. The aid in question relates to a sector covered, even as regards abandonment of production, by provisions deriving from the common organisation of the market. These provisions, according to the consistent case law of the Court of Justice, are complete and exhaustive in nature and prevent the Member States from adopting measures which might jeopardise them. In the light of the foregoing, the regional aid in question would appear to constitute an infringement of the Community provisions on the common organisation of the market in wine (Regulation (EEC) No 822/87); it would not therefore qualify for any of the exemptions provided for in Article 87(2) and (3) (ex Article 92(2) and (3)) of the Treaty.
- (17) *Article 8 of Regional Law No 81/1995* provides for an ITL 10 000 million increase in the working capital of the CRIAS (Cassa regionale per il credito alle imprese artigiane) to be used to grant subsidised short-term loans to craft undertakings.
- (18) In its letter of 23 January 1997 initiating the procedure, the Commission based its arguments on the detailed considerations set out in recitals 19 and 20 below.
- (19) It is not possible to rule out the possibility that craft undertakings engaged in producing, processing and marketing products listed in Annex I to the Treaty fall within the scope of this Article. By letter No 23927 of 17 June 1996, the Commission asked the Italian authorities to specify what sectors of activity were covered by the definition of craft undertaking and, in particular, whether it included the production, processing and marketing of agricultural products. In their reply No 7382 of 30 October 1996, the Italian authorities admitted that, while agricultural holdings producing agricultural products did not qualify for such loans, in the region concerned the term craft undertaking had sometimes been interpreted in ad hoc legislative texts in such a way as to include some processing and marketing activities (for investments in the dairy sector, for instance), and that it was therefore necessary to refer to national Law No 443 of 8 August 1985 (framework law on craft activities) to interpret the scope of the Article concerned. That national Law excludes agricultural undertakings engaged in production from the definition of craft undertakings. In the light of the foregoing, it is not possible to rule out that the subsidised short-term loans granted by the CRIAS also relate to craft undertakings engaged in processing and/or marketing agricultural products. This measure,

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being a new aid scheme remaining in force after 1 January 1996⁽¹⁾, should be assessed under the guidelines on national aids in the form of subsidised short-term loans⁽²⁾, but in the absence of any further information, these measures cannot usefully be assessed in the light of those guidelines. Consequently, the Commission decided to initiate the procedure laid down in Article 88(2) (ex Article 93(2)) of the Treaty in respect of the aid provided for in Article 8 of Regional Law No 81/1995, in so far as it is applicable to the production and/or processing and/or marketing of products listed in Annex I to the Treaty (i.e. to the extent that the exclusion of the 'agricultural sector' from its scope does not cover all these activities).

- (20) *Article 9 of Regional Law No 81/1995.* Article 9 of Regional Law No 81/1995 authorises the expenditure referred to in heading 05 of the Regional Ministry for Cooperation and increases regional budget heading No 75826 by ITL 3 000 million. The Italian authorities specified that the expenditure referred to in Article 9 of Regional Law No 81/1995 is for the refinancing of aid provided for in Regional Law No 26 of 27 May 1987, examined under Cases C-3/87 (approved by decision of 21 October 1987) and C-45/87 (approved by Decision SG(88) D/12824 of 8 November 1988). Law No 26 of 27 May 1987 was extended and some of its provisions amended by Regional Law No 25/90, which was examined and approved by the Commission in aid Case NN 27/92 (decision SG(92) D/15059 of 3 November 1992).
- (21) The Commission decided to initiate the procedure provided for in Article 88(2) on the basis of the considerations set out in recital 22.
- (22) The various laws listed above, which implement aid in the fisheries sector, were examined in the light of the guidelines for the assessment of State aids in the fisheries sector⁽³⁾ which referred to compliance with the conditions set out in Council Regulation (EEC) No 4028/86 on Community measures to improve and adapt structures in the fisheries and aquaculture sector⁽⁴⁾. The Commission does not have sufficient information at its disposal to assess whether the aid granted in the fisheries sector under Regional Law No 81/1995 is compatible with the rules in force at the time of notification, i.e. the guidelines for the examination of State aids to fisheries and aquaculture⁽⁵⁾, which refer to compliance with the conditions set out in Council Regulation (EC) No 3699/93 of 21 December 1993 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products⁽⁶⁾.

III. COMMENTS FROM ITALY

- (23) By letters No 3155 of 8 May 1997 and No 3899 of 12 June 1997, the Italian authorities commented only on Articles 4 and 8 of Law No 81/1995. Regarding Article 4 in particular, they pointed out the following facts.
- (24) The winegrowers in question were unable to use replanting rights already acquired because those rights expired during the years in which the drought occurred. Under the arrangements provided for in Law No 25/93 it would be possible to compen-

⁽¹⁾ This is the date set by the Commission for the application of the new set of rules on national aids in the form of subsidised short-term loans to aid which is not 'existing' within the meaning of Article 88 (ex 93(1)) of the Treaty.

⁽²⁾ OJ C 44, 16.2.1996.

⁽³⁾ OJ C 269, 19.10.1985.

⁽⁴⁾ OJ L 376, 31.12.1986, p. 7.

⁽⁵⁾ OJ C 260, 17.9.1994, p. 3.

⁽⁶⁾ OJ L 346, 31.12.1993, p. 1. Consolidated version in Regulation (EC) No 2468/98 (OJ L 312, 20.11.1998).

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sate farmers for the loss of an acquired replanting right and for lack of future income, in consideration of the fact that the objective sought by Regulation (EEC) No 1442/88⁽¹⁾, namely reduction of winegrowing potential, was achieved in any event, albeit for reasons independent of the will of the farmer.

- (25) The winegrowers really did grub up their vineyards, and bore the grubbing costs, but received no State assistance. The authorities are therefore proposing to calculate the aid using the production average of the five wine years preceding the grubbing operation to grant the level provided for in Regulation (EEC) No 1442/88, paying the premium at the ECU value of the reference wine year.
- (26) The Regional Law stipulates that the premium may be paid only where a replanting right existed which was valid during the five wine years following the grubbing operations, and provided no grubbing premiums were paid.
- (27) Regarding Article 8 in particular, the Italian authorities specified that the working capital and the available funds, abolished by that same Article, were paid into a single, separately-managed fund, with a view to providing assistance to craft undertakings as provided for in Article 64 of Regional Law No 6/97. At the time the ITL 10 billion (approximately EUR 5 million) referred to in Article 8 were transferred, the competent regional *Assessorato* had advised the transfer but recommended that the CRIAS should not permit craft undertakings engaged in producing, processing or marketing agricultural products to qualify for the aid.
- (28) The Italian authorities have submitted no comments regarding Article 9 of Law No 81/1995.

IV. ASSESSMENT OF THE AID

(a) Article 4 of Law No 81/1995

- (29) Article 4 of Law No 81/1995 provides for aid to winegrowers who, having acquired replanting rights under Regulation (EEC) No 454/80/EEC⁽¹⁾ and suffered damage as a result of the drought of 1988 to 1990, applied for the aid provided for in Regulation (EEC) No 1442/88⁽¹⁾, on the same conditions.
- (30) Article 87(1) of the Treaty stipulates that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market. The Commission considers that in the case in point the conditions are met for applying Article 87(1) in respect of all the measures concerned. Article 71 of Council Regulation (EC) No 1493/1999 stipulates that Articles 87, 88 and 89 of the Treaty apply to production of and trade in the products covered by it.
- (31) Article 4 of the Law under examination provides for aid intended to compensate winegrowers for damage suffered because they were unable to use a replanting right acquired under Regulation (EEC) No 337/79, provided they had applied for the aid provided in Regulation (EEC) No 1442/88 for permanent abandonment. The winegrowers receiving this State aid enjoy economic advantages which they would not otherwise enjoy in the normal course of their business and they thereby improve their competitive position in relation to other farmers in the Community who do not receive the same aid.
- (32) This aid affects competition and trade between Member States. The beneficiaries carry out an economic activity in a sector

⁽¹⁾ See recital 36 of this Decision.

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which is the subject of trade between the Member States, namely the wine sector. In 1995, intra-Community trade in the wine sector amounted to 31 346 000 hl and 152 848 000 hl was produced in the Community of 12, including 58 776 000 hl by Italy (i.e. 38 % of total production in the Community of 12). In addition, Italy accounted for 34,1 % of world trade in the wine sector. Sicily is a wine-producing region; in 1995 it accounted for 18 % of wine production in Italy (on approximately 164 000 ha). The measure in question is therefore a State aid within the meaning of Article 87(1) of the Treaty.

- (33) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty clearly do not apply and the Italian authorities did not even invoke them. According to the information available, the drought cannot be considered an exceptional occurrence within the meaning of Article 87(2)(b). Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3). It is therefore necessary to ascertain whether application of the proposed measures can benefit from this exemption.
- (34) Article 4 of Law No 81/1995 provides for the grant of aid to winegrowers who, having acquired replanting rights under Regulation (EEC) No 454/80 but been unable to use them because of the drought in 1988 to 1990, applied for the aid provided for by Regulation (EEC) No 1442/88. The rights to which the Italian authorities refer, and which constitute the prerequisite for the grant of aid, were acquired under Regulation (EEC) No 337/79 on the common organisation of the market in wine.
- (35) Since the Italian authorities correctly informed the Commission of the Law in question as provided for in Article 88(3) of the Treaty, it is to be assessed in accordance with the rules set out in the Community guidelines for State aid in the agricultural sector⁽¹⁾ (hereinafter called 'the guidelines'). Point 23.3 of the guidelines states that these guidelines are to apply to new State aids, including aids notified by Member States but on which a Commission decision is still pending, with effect from 1 January 2000.
- (36) Regulation (EC) No 1493/1999 repealed previous Regulations (EEC) No 822/87 on the common organisation of the market in wine, which itself repealed Regulations (EEC) No 337/79, and (EEC) No 1442/88 on the granting of permanent abandonment premiums in respect of winegrowing areas. Article 4 of Regulation (EC) No 1493/1999 referred to above concerns replanting rights and Articles 8, 9 and 10 cover permanent abandonment premiums.
- (37) Under Article 4 of Regulation (EC) No 1493/1999, replanting rights can be acquired in two ways: either they can be similar rights acquired under prior Community or national legislation, or they are granted by the Member States to producers who undertake to grub up an area of vines before the end of the third year after the year in which the area was planted. The replanting rights concerned had actually been acquired under prior Community legislation. The wording of Article 4 of Law No 81/1995 is quite clear on this point (the aid may be granted only to winegrowers who, 'having acquired a replanting right under Regulation (EEC) No 454/80 and suffered damage as a result of the drought of 1988 to 1990, applied for the aid provided for in Regulation (EEC) No 1442/88, on the same conditions'). It must therefore be proved that these rights are still valid and that they can be converted into permanent abandonment premiums.
- (38) The winegrowing holdings in question bore the grubbing costs in exchange for the possibility of exercising replanting rights on the

⁽¹⁾ OJ C 28, 1.2.2000, p. 2.

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grubbed or equivalent surfaces. In the case in point, the replanting rights (acquired under Regulation (EEC) No 337/79⁽¹⁾) are no longer valid. Annex IVa(C) to Regulation (EEC) No 337/79 (Annex inserted by Regulation (EEC) No 454/80) defines replanting rights as ‘the right, under the conditions laid down in this Regulation, to plant vines, during the eight years following the year in which regularly declared grubbing took place, on a pure cultivation area equivalent to that in which vines were grubbed’. As these producers did not use their replanting rights before the expiry date (the Italian authorities have stated that the rights concerned expired in 1988 to 90), they were no longer valid at the time when the Law under examination was notified and *a fortiori* they are not valid within the meaning of the first indent of Article 4 of Regulation (EC) No 1493/1999.

- (39) Since replanting rights acquired under Regulation (EEC) No 337/79 have expired, any aid to compensate for those rights would be retrospective aid incompatible with point 3.6 of the guidelines, which stipulates that aid granted retrospectively in respect of activities which have already been undertaken by the beneficiary cannot be considered to contain the necessary incentive element, and must be considered to constitute operating aid which is simply intended to relieve the beneficiary of a financial burden. Except in the case of aid schemes which are compensatory in nature, all aid schemes should therefore provide that no aid may be granted in respect of work begun or activities undertaken before an application for aid has been properly submitted to the competent authority concerned.
- (40) The only case in which retrospective aid could be granted in the light of the guidelines, once it had been found to be compatible with the rules of the relevant common market organisation, is that of schemes which are compensatory in nature. In the case in point, it must therefore be ascertained whether point 11 of the guidelines, concerning ‘aids to compensate for damage to agricultural production or the means of agricultural production’, in this specific case aid intended to compensate farmers for losses resulting from bad weather (the drought in 1988 to 90), is applicable. In fact, in their letter No 3899 of 12 June 1997, the Italian authorities linked the failure to use the replanting rights (and therefore the losses suffered) with the drought. Point 11.1.2 of the guidelines nevertheless stipulates that, in order to avoid a risk of distorting the conditions of competition, the Commission considers it important to ensure that, subject to administrative and budgetary constraints, aid to compensate farmers for damage caused to agricultural production is paid as soon as possible after the occurrence of the adverse event concerned. Where aid is paid only several years after the occurrence of the event in question, there is a real danger that the payment of such aid will produce the same economic effects as operating aid. This is particularly the case where aid is paid retrospectively in respect of claims which were not properly documented at the time. Therefore, in the absence of a specific justification, resulting for example from the nature and extent of the event, or the delayed or continuing nature of the damage, the Commission will not approve proposals for aid which are submitted more than three years after the occurrence of the event. In the case in point, that period has expired and the authorities have provided no information with which to analyse the nature and extent of the event, or the delayed or continuing effect of the damage, which could justify extending the three-year deadline laid down in the guidelines.
- (41) The aid cannot even be considered to be aid for closing production capacity within the meaning of point 9 of the guidelines. Indeed, if this aid is not to be considered as pure operating aid

⁽¹⁾ As amended by Regulation (EEC) No 454/80.

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in favour of the holdings concerned, it must be demonstrated to be in the interest of the sector as a whole. This premium compensates the Sicilian producers in question for grubbing up carried out almost 13 years before the aid was notified and therefore it in no way serves as an incentive to benefit the sector and must accordingly be considered as pure operating aid.

- (42) Moreover, an essential requirement for the grant of any State aid in the agricultural sector is that it does not interfere with the mechanisms of the common organisation of the market for the product concerned. But beneficiaries under Article 4 of Law No 81/1995 do not qualify for the permanent abandonment premium under Regulation (EC) No 1493/1999. Chapter II of Title II of Regulation (EC) No 1493/1999 (Articles 8 and 9) states that the premium may be granted in return for the permanent abandonment of winegrowing on a particular area. The premium may be granted, subject to the provisions of this Chapter, to producers of winegrowing areas cultivated for the production of wine grapes. The winegrowers in question were unable to apply for the permanent abandonment premiums under Regulation (EC) No 1493/1999 because the areas had not been cultivated since the 1981/82 wine year (final date for grubbing). Any aid granted to those winegrowers would therefore be incompatible with the rules of the common organisation of the market.
- (43) Even if Articles 87, 88 and 89 are fully applicable to the sectors covered by the common organisations of the markets, their application nevertheless remains subject to the provisions of the relevant Regulations. In other words, recourse by a Member State to Articles 87, 88 and 89 cannot override the provisions of the Regulation governing the market organisation concerned. Under no circumstances, therefore, can the Commission approve aid which is incompatible with the provisions governing a common organisation of the market or which would impair the smooth operation of that organisation. Granting the aid provided for in Article 4 of Law No 81/1995 would contravene the rules of the common organisation of the market in wine laid down in Regulation (EC) No 1493/1999, as demonstrated in the previous point, and cannot therefore benefit from any of the exemptions provided for in Article 87(3) of the Treaty.
- (44) Even an assessment of this aid in the light of the Community rules applicable prior to the entry into force of Regulation (EC) No 1493/1999, quoted in Article 4 of Law No 81/1995 (the rules under which the rights had been acquired), shows that none of the exemptions provided for in Article 87(3) of the Treaty apply.
- (45) The purpose of Article 4 of the Law in question is to grant aid to winegrowers who acquired replanting rights within the meaning of Regulation (EEC) No 337/79 (rights which expired during the 1988 to 90 wine years, as stated by the Italian authorities) and who applied for premiums for the permanent abandonment of wine-growing areas, with a view to compensating them for the objective impossibility of exercising those rights. The Community legislator had provided for two different options:
- the possibility of definitively grubbing up the vineyards, compensated by the premiums provided for in Regulation (EEC) No 1442/88, or
 - the possibility of grubbing up vineyards and obtaining replanting rights for an area equivalent to that grubbed up, as provided for in Regulation (EEC) No 337/79.

The producers in question originally chose the second option and obtained replanting rights in return for grubbing up.

- (46) Under Article 19 of Regulation (EEC) No 1442/88, the grant of subsequent national aid is permitted provided such aid is designed to achieve objectives similar to those sought by that Regulation. The grant of such aid is subject to review on the basis of Articles 87, 88 and 89 (ex Articles 92, 93 and 94) of the Treaty. Additional State aid could therefore be granted only

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if the aid scheme and Regulation (EEC) No 1442/88 shared common objectives. The Law under examination provides for compensating replanting rights which the wine growers had acquired, but which they had not been able to use owing to the drought. The objective of the Law therefore does not correspond to that of Regulation (EEC) No 1442/88, since not using a replanting right cannot be considered the same as permanent abandonment carried out for the purposes of and under the terms of Regulation (EEC) No 1442/88. In addition, the detailed rules for implementing Regulation (EEC) No 1442/88 are not complied with, since at least one of the conditions *sine qua non* for receiving permanent abandonment premiums is not met. In fact, under Article 1(1) of the above Regulation, to qualify for permanent abandonment premiums, producers must hold cultivated winegrowing areas for the production of: wine, table grapes or grapes for drying, or cultivated winegrowing areas used as root-stock nurseries provided that the root-stock varieties are listed in the classification of vine varieties. The Sicilian wine growers clearly do not come in this category, since the areas for which they applied for the premiums were not cultivated at the time they submitted their applications within the meaning of Regulation (EEC) No 1442/88 (since the grubbing-up of the vineyards, the essential requirement for being granted replanting rights, had already been carried out).

- (47) Moreover, as stated in recital 39 above, the replanting rights had expired in the 1988 to 1990 wine years and were therefore no longer valid, even at the time the measure in question was notified. Since the objective of the aid provided for in Article 4 of Law No 81/1995 is to compensate winegrowers for the loss of replanting rights they no longer had when the Law was adopted, it constitutes retrospective aid in breach of the rules on the common organisation of the market in wine, including Regulation (EEC) No 337/79, as amended by Regulation (EEC) No 454/80. The Commission must conclude that the measure cannot benefit from the exemptions provided for in Article 87(3) of the EC Treaty.

(b) Article 8 of Regional Law No 81/1995

- (48) Article 8 of Regional Law No 81/1995 provides for an ITL 10 000 million increase in the working capital of the CRIAS (Cassa regionale per il credito alle imprese artigiane) to be used to grant subsidised short-term loans to craft undertakings.
- (49) Article 8 of Law No 81/1995 provides for aid, in the form of subsidised short-term loans, intended for craft undertakings. These public funds are granted without any reciprocal action on the part of the undertakings which, thanks to these loans, improve their competitive position in relation to other farmers in the Community who do not receive the same aid. On the basis of the information received, it is impossible to rule out that this aid is also intended for undertakings engaged in processing and marketing products listed in Annex I to the Treaty. Article 51 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations⁽¹⁾ stipulates that Articles 87 to 89 of the Treaty apply to aid granted by the Member States for measures to support rural development.
- (50) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty clearly do not apply and the Italian authorities did not even invoke them. Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3).

⁽¹⁾ OJ L 160, 26.6.1999, p. 80.

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- (51) Since these are subsidised short-term loans, they must be assessed in the light of the Commission communication on State aids dealing with subsidised short-term loans in agriculture⁽¹⁾ and State aid discipline relating to subsidised short-term loans in agriculture⁽²⁾. In their comments the Italian authorities did not provide sufficient information to rule out once and for all the possibility that this Article also applies to craft undertakings engaged in processing and marketing products listed in Annex I to the Treaty. Article 64 of Law No 6/97, which repeals Article 8, provides for a direct transfer of the resources intended for subsidised short-term loans to craft undertakings, without subsequently specifying the categories of craft undertakings to which the Law refers.
- (52) In their letter No 3155 of 8 May 1997, the Italian authorities stated that when the transfer was made they had advised the CRIAS to debar from the aid craft undertakings engaged in producing, processing or marketing agricultural products.
- (53) Such advice is of dubious value. In the first place, the very fact that such a recommendation might be appropriate clearly arises from the possibility of granting subsidised short-term loans to undertakings operating in the agricultural sector. Moreover, the Italian authorities have not denied that this possibility exists: in their letter No 7382 of 30 October 1996, while excluding undertakings operating in the primary production sector from the list of potential beneficiaries of the aid, they confirmed that in Sicily the term craft undertaking had sometimes been interpreted in ad hoc legislative texts in such a way as to include some processing and marketing activities (for investments in the dairy sector, for instance). In the case in point, according to the Italian authorities it is necessary to refer to national framework Law No 443 of 8 August 1985, Article 3 of which defines craft undertakings as [...] those having as a predominant objective the production of goods and services, even semi-finished products, or the supply of services, excluding agricultural activities [...]. The wording of the Law does not permit the conclusion that such exclusion also covers agricultural craft undertakings engaged in processing and/or marketing agricultural products.
- (54) Once it is accepted that subsidised short-term loans can be granted to undertakings engaged in processing and/or marketing agricultural products under Article 8, the legal force of the 'recommendation' by the regional authorities must be analysed, that is, it must be determined whether such a recommendation could provide sufficient guarantee to be able to conclude with certainty that no undertakings engaged in producing, processing and/or marketing products listed in Annex I to the Treaty can qualify for loans under Article 8. In the abovementioned letter, it appears that at the time the funds were transferred, the competent regional *Assessorato* advised the transfer but recommended that craft undertakings engaged in producing, processing or marketing agricultural products should be excluded from eligibility for the aid. This formulation suggests that such a recommendation has no binding effect.
- (55) In view of the foregoing, it cannot be ruled out that the scheme applies to craft undertakings engaged in processing and/or marketing agricultural products. Accordingly, the Article must be assessed in the light of the guidelines, the Commission communication on State aids: subsidised short-term loans in agriculture, and State aid discipline relating to subsidised short-term loans in agriculture. In particular, the Commission clearly states, in point A of its communication on State aids: subsidised short-term loans in agriculture, that subsidised short-term loans are operating aids and acceptable only in exceptional circumstances because of their potential to distort competition. The

⁽¹⁾ OJ C 44, 16.2.1996, p. 2.

⁽²⁾ SG(97) D/10801, 19.12.1997.

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grant of such aid is therefore strictly conditional on compliance with the requirements laid down in the abovementioned documents.

- (56) The abovementioned Community rules on subsidised short-term loans clearly show that these loans are operating aids, the grant of which must be subject to appropriate rules. In particular, according to points B and C of the abovementioned Commission communication, subsidised short-term loans must be made available to all operators in the region on a non-discriminatory basis irrespective of the agricultural activity for which the operator needs a short-term loan. The State must clearly identify the financing disadvantages of the sector, in terms of the gap between the interest rate paid by operators in the agricultural sector and the rate paid in the rest of the economy of the Member State concerned for short-term loans of a similar amount, not linked with investments. Under no circumstances may the amount of the loans exceed the cash-flow requirements arising from the fact that production costs are incurred before income from output sales is received. In no case may the aid be linked to particular marketing or production operations. Compliance with these conditions is essential if subsidised short-term loans are to be granted. The Italian authorities have given no information about these aspects.
- (57) Under the terms set out above, the aid provided for in Article 8 must be seen as an operating aid. Where the production, processing and marketing of products listed in Annex I to the Treaty is concerned, point 3.5 of the guidelines states that in order to be considered compatible with the common market, any aid measure must contain some incentive element or require some counterpart on the part of the beneficiary. Unless exceptions are expressly provided for in Community legislation or in these guidelines, unilateral State aid measures which are simply intended to improve the financial situation of producers but which in no way contribute to the development of the sector, and in particular aids which are granted solely on the basis of price, quantity, unit of production or unit of the means of production are considered to constitute operating aids which are incompatible with the common market. Furthermore, by their very nature, such aids are also likely to interfere with the mechanisms of the common organisations of the markets.
- (58) Since this measure concerns subsidised short-term loans which are by nature operating aids, the Commission must conclude that it cannot benefit from any of the exemptions provided for in Article 87(3) of the Treaty, in so far as it is applicable to undertakings engaged in producing, processing and marketing products listed in Annex I to the Treaty.

(c) Article 9 of Law No 81/1995

- (59) Article 9 of Regional Law No 81/1995 authorises the expenditure referred to in heading 05 of the Regional Ministry for Cooperation and increases regional budget heading No 75826 by ITL 3 000 million.
- (60) The regional aid in question is granted for the refinancing of expenditure already allocated and approved by the Commission in the context of the aid provided for in Regional Law No 26 of 27 May 1987, examined under Cases C-3/87 (approved by decision of 21 October 1987) and C-45/87 (approved by Decision SG(88) D/12824 of 8 November 1988). The existence of State aid had been checked in the context of these two aids.
- (61) The prohibition on granting State aid is not unconditional. In this case, the exceptions provided for in Article 87(2) of the Treaty do not apply and the Italian authorities did not even invoke them. Given the nature of the notified scheme, the only exemption which could be applied is that provided for in Article 87(3).

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- (62) The aid provided for in Article 9 must be assessed on the basis of the guidelines published in OJ C 19 of 20 January 2001, which refer to Council Regulation (EC) No 2792/1999 laying down the detailed rules and arrangements for Community structural assistance in the fisheries sector. The Commission still does not have the information needed to assess the aid provided for in this Article. Italy must therefore be ordered to provide the information necessary to assess these aid measures so that the Commission can take its decision in full knowledge of the facts. Should Italy fail to comply, under Article 13 of Regulation (EC) No 659/1999 the Commission will take its decision on the basis of the information available.

V. CONCLUSIONS

- (63) Under Article 7(7) of Regulation (EC) No 659/1999, should the Member State concerned so request, the Commission will, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission will take a negative decision.
- (64) In the light of the foregoing, the Commission can conclude that the aid measures provided for in Articles 4 and 8 of the Regional Law under examination, in so far as they apply to agriculture, constitute State aid within the meaning of Article 87(1), which cannot benefit from any of the exemptions provided for in Article 87(3),

HAS ADOPTED THIS DECISION:

Article 1

The aid which Italy is planning to grant on the basis of Articles 4 and 8 of Law No 81 of the region of Sicily of 7 November 1995 for the production, processing and marketing of the products listed in Annex I to the Treaty, not including the fisheries and aquaculture sector, is incompatible with the common market.

The aid may accordingly not be implemented.

Article 2

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

▼M1**▼B***Article 4*

This Decision is addressed to the Italian Republic.