

IV

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

COMMISSION DECISION

of 28 October 2009

on the aid under Article 99(2)(a) (as regards the agriculture sector) and Article 124(1) and (2) (as amended) of Sicilian Regional Law No 32 of 23 December 2000 laying down provisions for the implementation of the 2000-06 ROP and reorganising the aid schemes for undertakings (aid dossier C 21/04 — ex N 590/B/01)

(notified under document C(2009) 8064)

(Only the Italian text is authentic)

(2010/155/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 that Article,

Whereas:

I. PROCEDURE

- (1) By letter dated 28 August 2001, registered as received on 29 August 2001, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the Treaty, of the provisions of Articles 99, 107, 110, 111, 112, 120, 122, 123, 124 and 135(3) and (4) of Sicilian Regional Law No 32 of 23 December 2000 laying down provisions for the implementation of the 2000-06 ROP and reorganising the aid schemes for undertakings (hereinafter referred to as 'Law No 32/2000').
- (2) By letter dated 17 May 2002, registered as received on 21 May 2002, and letter dated 10 October 2002, registered as received on 11 October 2002, the Italian Permanent Representation to the European Union sent the Commission the additional information requested from the Italian authorities in the letters of 24 October 2001 and 18 July 2002.
- (3) In their letter of 10 October 2002, the Italian authorities supplied additional information concerning only the aid under Article 123 of Law No 32/2000, in view of the urgent nature thereof.
- (4) The aid under Article 123 of Law No 32/2002 was decoupled from the other aid provided for in the notified articles and declared to be compatible with the common market in the context of aid dossier N 590/A/2001 (1).
- (5) As the Italian authorities' letter of 10 October 2002 concerned only Article 123 of the regional law in question, the Commission sent them a reminder letter dated 11 February 2003 asking them to answer the other questions set out in the letter of 18 July 2002.
- (6) By letter dated 5 March 2003, registered as received on 6 March 2003, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the questions raised in the letter of 18 July 2002.
- (7) After examining this reply, the Commission sent a letter dated 2 May 2003 asking the Italian authorities for additional information.
- (8) By letter dated 13 August 2003, registered as received on 18 August 2003, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the letter of 2 May 2003. In this, the Italian authorities announced that Article 111 of Law No 32/2000 was being withdrawn and asked the Commission to adopt a separate decision for some of the articles of the Law.
- (9) By letter dated 1 October 2003, the Commission explained to the Italian authorities that a decision would be taken on the whole aid dossier (N 590/B/2001), and asked them for some clarifications on one of the articles of Law No 32/2000.

(1) Letter SG(2002) D/233133 of 18.12.2002.

(10) By letter dated 7 January 2004, registered as received on 14 January 2004, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the letter of 1 October 2003.

(11) By letter dated 10 March 2004, the Commission officially asked the Italian authorities for further clarifications that had already been requested during informal contacts.

(12) By letter dated 20 April 2004, registered as received on 21 April 2004, and letter dated 24 May 2004, registered as received on 25 May 2004, the Italian authorities sent the Commission the clarifications referred to in recital 11.

(13) By letter dated 21 June 2004 (¹) and letter dated 10 September 2004 (correction to the previous letter, drafted following comments from the Italian authorities in a letter sent by the Italian Permanent Representation to the European Union on 7 July 2004 and registered as received on 12 July 2004) (²), the Commission informed Italy of its decision not to raise objections as regards Article 99(2)(b) (as regards the agriculture sector) and Articles 107, 110 (³), 112, 120, 122 and 135 of Law No 32/2000 and to initiate the procedure laid down in Article 88(2) of the Treaty as regard the aid under Article 99(2)(a) (as regards the agriculture sector) and Article 124(1) and (2) (for some producer groups) of the Law (⁴).

(14) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* (⁵). The Commission invited interested parties to submit their comments on the aid in question.

(15) The Commission did not receive any comments from interested parties.

II. DESCRIPTION

(16) Article 99(2)(a) of Law No 32/2000 makes provision for grants to first- and second-level guarantee consortia (*consorzi fidi*) (in other words, guarantee consortia and associations thereof) to establish or supplement risk funds to be used for the provision of guarantees for the granting of funding by credit institutes, leasing

(¹) Letter SG-Greffé (2004) D/202440 of 21.6.2004.

(²) Letter SG-Greffé (2004) D/203974 of 10.9.2004.

(³) However, the decision contains recommendations concerning this Article.

(⁴) Article 124 of Law No 32/2000 also contained an aid measure in paragraph 3, but the Commission established that it was a national aid measure explicitly authorised by a Regulation establishing a common organisation of the market and that, as a result, it should not be examined any further.

(⁵) OJ C 52, 2.3.2005, p. 23.

companies, business loan transfer companies and para-banking bodies (⁶).

(17) Such grants, which cannot be combined with other schemes with similar aims, are financed with part of the EUR 20 million earmarked for all the measures under Article 99 and granted to guarantee consortia that apply for them. Their value cannot exceed the total sum subscribed by the members and by bodies supporting the consortia.

(18) The guaranteees in the strict sense must allow the beneficiaries to access credit more easily (since around 70 % of undertakings in the agricultural sector in Sicily are small enterprises, some of them may not be able to establish the necessary security to cover a loan or obtain a guarantee). They have the following characteristics:

— the gross grant equivalent is calculated in accordance with the method described in the second subparagraph of point 3.2 of the Commission Notice on the application of Articles 87 and 88 of the EC Treaty to State aid in the form of guarantees (⁷);

— they may cover no more than 80 % of the loan, in line with the provisions of points 3.3 and 3.4 of that Notice;

— they must be provided for operations whose characteristics (aid intensity, beneficiaries and objectives) are in line with the provisions of the Community guidelines for State aid in the agriculture sector (⁸), to solvent undertakings with good financial standing, in line with the provisions of points 3.5 and 5.2 of the aforementioned Notice;

— they must concern only loans granted in the context, and according to the conditions, of schemes authorised by the Commission;

— their liquidation is dependent on the debtor being subject to implementation of the legal procedures laid down in the event of insolvency (placing the beneficiary undertaking in bankruptcy, etc.);

— they may be enjoyed also by parties that do not belong to the consortia (membership of the latter is open to all operators in the agriculture sector without restrictions) (⁹).

(⁶) These provisions apply to both the agricultural and fishing sectors. Reference is made only to the agriculture sector in the decision to initiate the procedure provided for by Article 88(2) of the Treaty and in this decision because, in the letter of 24 May 2005 referred to in recital 12, the Sicilian Fisheries Department stated that, at a later date, a separate notification would be made for the fishing sector.

(⁷) OJ C 71, 11.3.2000, p. 14.

(⁸) OJ C 232, 12.8.2000, p. 17.

(⁹) These criteria are not set out in Article 99 but were notified in the additional information supplied by the Italian authorities.

(19) Article 124(1) and (2) of Law No 32/2000 provide for start-up grants for producers' organisations recognised pursuant to Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organisation of the market in fruit and vegetables (¹). Such aid, which is granted for a duration of five years, covers 100 % of the costs incurred by the organisation in the first year and must decrease by 20 % annually in the following years, reaching zero at the end of this period. In addition, aid cannot be granted after the fifth year or after the organisation has been recognised for seven years. The aid is financed with part of the EUR 3 615 198 earmarked for all of the measures provided for by Article 124.

(20) In their letter of 13 August 2003, the Italian authorities stated their intention to amend the Law in such a way as to bring the procedure for granting the aid into line with those laid down in Regulation (EEC) No 1035/72. They also pointed out that only the following organisations would be able to avail themselves of the aid:

- ASPROSUD of Messina, recognised on 13 March 1992, for the fourth and fifth year after recognition (1995 and 1996);
- Sicilia Verde of Bagheria, recognised on 8 July 1993, for the third, fourth and fifth year after recognition (1996, 1997 and 1998);
- AGRISUD of Vittoria, recognised on 15 November 1994, for the second, third, fourth and fifth year after recognition (1996, 1997, 1998 and 1999);
- APRO FRUS of Capo d'Orlando, recognised on 23 November 1990, for the fourth and fifth year after recognition (1994-1995 and 1995-1996).

III. INITIATION OF THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

(21) The Commission initiated the procedure laid down in Article 88(2) of the Treaty in relation to the aid under Article 99(2)(a) and Article 124(1) and (2) of Law No 32/2000 (as regards the agriculture sector in the first case and as regards the organisations ASPROSUD, Sicilia Verde and APRO FRUS in the second) as it had doubts as to its compatibility with the common market.

(22) With regard to the aid under Article 99(2)(a) of Law No 32/2000 for the agriculture sector, the very principle of granting a guarantee presupposes the existence of a loan.

The list of schemes to which the provision of guarantees can be applied, which was sent by the Italian authorities at the Commission's request, included several schemes which would be difficult to finance through loans, given the nature of the measures envisaged (for example, it was hard to imagine that aid intended to cover insurance premiums in the agriculture sector could take the form of a loan).

(23) Another element that led the Commission to doubt the compatibility of the aid under Article 99(2)(a) of Law No 32/2000 with the common market is the possibility for it to be granted in combination with application of the measures provided for by Article 124(1) and (2) of the Law. The Commission could not avoid doubting its compatibility, given that there were also reservations as to the eligibility of the aid under Article 124(1) and (2).

(24) Lastly, the Commission did not have information on how the Italian authorities would check that combining the potential aid element of the guarantees and the aid for the schemes to which such guarantees were applicable did not lead to the eligible aid percentages being exceeded in relation to those schemes.

(25) As regards the aid under Article 124(1) and (2) of Law No 32/2000, the Italian authorities had clarified that this was intended exclusively to settle outstanding payments of grants to producers' organisations recognised pursuant to Regulation (EEC) No 1035/72. These grants should have already been paid, but was not the case because the EAGGF had not guaranteed financial coverage for the financial commitments made at Italian level.

(26) The Italian authorities had added that the aid could be received only by entities that had acquired a right to the aid prior to 21 November 1996 (the date of entry into force of Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables (²), which replaced Regulation (EEC) No 1035/72), and had not forfeited that right.

(27) When examining the aid dossier, the Commission had been able to establish that, by virtue of Article 53 of Regulation (EC) No 2200/96, any rights acquired by producers' organisations prior to the entry into force of the Regulation, pursuant to Article 14 and Title IIa of Regulation (EEC) No 1035/72, would be maintained until

(¹) OJ L 118, 20.5.1972, p. 1.

(²) OJ L 297, 21.11.1996, p. 1.

they were exhausted, and that, if all the conditions under Article 14 of Regulation (EEC) No 1035/72 were met, any national aid granted under that Article would, *ipso jure*, be compatible with the rules governing the common organisation of the market in fruit and vegetables and should not be subject to any further examination in the light of the rules applicable to State aid (1).

(28) On the basis of these considerations, the Italian authorities undertook to amend the procedures for granting the aid provided for, so as to bring it into line with the provisions of Regulation (EEC) No 1035/72 (see recitals 19 and 20). However, the Commission noted on the list of beneficiaries supplied by the Italian authorities that, for the organisations referred to in recital 21, the aid laid down would be paid long after the deadline of seven years after recognition of the organisation and that, as a result, all the conditions of Article 14 of Regulation (EEC) No 1035/72 would no longer be met (since one of these conditions lays down that the aid must be paid over five years up to at most seven years following recognition) and that, in consequence, the aid would have to be examined in the light of Articles 87 and 88 of the Treaty.

(29) During this examination in the light of Articles 87 and 88 of the Treaty, the Commission established that, since Regulation (EEC) No 1035/72 had been repealed by Regulation (EC) No 2200/96, granting of aid on the basis of a provision that no longer existed to organisations whose rights had lapsed (thus rendering inapplicable Article 53 of Regulation (EC) No 2200/96, to which reference is made in recital 27) would interfere with the operation of the mechanisms for the common organisation of the market in fruit and vegetables established by Regulation (EC) No 2200/96. By virtue of point 3.2 of the Community guidelines for State aid in the agriculture sector, the Commission may in no case approve aid that is incompatible with the provisions governing the common organisation of a market or that would interfere with the proper functioning thereof.

(30) Accordingly, the Commission could not avoid doubting that the aid was compatible with the common market.

(31) These doubts were bolstered by the fact that aid granted in the circumstances outlined would constitute aid with retroactive effect, which is explicitly prohibited in accordance with point 3.6 of the Community guidelines on State aid in the agriculture sector, as it is completely lacking the necessary incentive element that must characterise aid in the agricultural sector, except for aid of a compensatory nature.

(1) This approach had already been followed in relation to the aid provided for at national level for producers pursuant to Article 14 of Regulation (EEC) No 1035/72 – see aid dossier N 157/02, which was closed by letter SG(2001) D/288558 of 16.5.2001.

(32) Lastly, the Commission also had doubts as to the validity of the argument that the EAGGF had not guaranteed financial coverage of the commitments made at Italian level, since cofinancing of the establishment of producers' organisations involves automatic reimbursement by the EAGGF of part of the aid approved in the context of the common organisation of the market.

IV. COMMENTS FROM THE ITALIAN AUTHORITIES

(33) By letter dated 26 August 2004, registered as received on 30 August 2004, letter dated 24 November 2004, registered as received on 26 November 2004, and letter dated 26 October 2005, registered as received on 28 October 2005, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to initiation of the procedure under Article 88(2) of the Treaty in relation to the aid under Article 99(2)(a) and Article 124(1) and (2) of Law No 32/2000 (as regards the agriculture sector in the first case and as regards the organisations ASPROSUD, Sicilia Verde and APRO FRUS in the second).

(34) In their letter dated 26 August 2004, the Italian authorities sent the following requests and comments concerning the aid under Article 99(2)(a) of Law No 32/2000:

- they asked that some schemes mentioned in the list referred to in recital 22 be removed from the list, as they had established that, in practice, they could not be financed through loans;
- they clarified that, for the schemes still included on the aforementioned list, the guarantee would concern only the private part of the investment where the scheme had already been approved and funded, and the whole eligible amount where the scheme had already been approved but not yet funded, but that, regardless of the case considered, the gross grant equivalent of the guarantee could not exceed the maximum aid permitted by the scheme in question (there was provision for checks on a sample of at least 5 % of the self-certifications requested from the beneficiaries);

— they confirmed that they would draw up the implementing rules for Article 99(2)(a) of Law No 32/2000 and that these rules would include the aforementioned list.

(35) In the same letter, the Italian authorities made the following comments on the aid under Article 124(1) and (2) of Law No 32/2000 for the three organisations referred to in recital 21:

- they asserted that, in their view, the position adopted by the Commission in the context of aid dossier N 157/2000 had to be followed in the matter at hand too and that the aid laid down for the three organisations in question should not be subject to an examination in the light of Articles 87 and 88 of the Treaty;
- they referred back to the provisions of Article 53 of Regulation (EC) No 2200/96, on the basis of which any rights acquired by producers' organisations are maintained until they are exhausted (and thus until final settlement of the grant), so as to stress that the right was acquired when the organisation made an application in due form and that, in the matter at hand, all the applications had been submitted within the deadline of seven years after recognition and that the right could not be prejudiced by a delay by the public authorities, in general terms, in seeking appropriate funds to settle the aid;
- they confirmed the amendment to Law No 32/2000 referred to in recital 20.

(36) By letter received on 24 November 2004, the Italian authorities sent a copy of Article 12 of Regional Law No 15 of 5 November 2004 (hereinafter referred to as 'Law No 15/2004') amending, *inter alia*, Articles 99 and 124 of Law No 32/2000.

(37) With regard to Article 99 of Law No 32/2000, Article 12(2) and (4) of Law No 15/2004 increased the number of potential beneficiaries of the measures provided for, by including undertakings that do not belong to organisations and that assume the burden of administrative expenses linked to the provision of a guarantee, and laid down that, for the 2000-06 period, the maximum amount earmarked for the measures under the Article was EUR 20 000 000.

(38) Meanwhile, Article 12(8) of Law No 15/2004 introduced a new paragraph 2 to Article 124 of Law No 32/2000, replacing the procedures for granting the aid described in recital 19 above with procedures in line with Article 14 of Regulation (EEC) No 1035/72.

(39) This new paragraph 2, which was added to Article 124 of Law No 32/2000 to replace the existing paragraph that the Italian authorities had undertaken to amend (see recital 20), reads as follows:

'In compliance with Article 14 of Regulation (EEC) No 1035/72, the maximum amount of such aid shall

be 5 % (for the first and second years), 4 % (for the third year), 3 % (for the fourth year) and 2 % (for the fifth year) of the value of the marketed production covered by the activity of the producers' organisation. The amount of the aid may in no case exceed the organisation's real establishment and administrative operation costs. No aid may be paid in respect of costs incurred after the fifth year or more than seven years after recognition.'

(40) In their letter received on 26 October 2005, the Italian authorities stated that Article 99(2)(a) of Law No 32/2000 had been repealed by Article 23 of Regional Law No 11 of 21 September 2005 and announced the withdrawal of the relevant notification.

V. ASSESSMENT

(41) 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 is, in so far as it affects trade between Member States, incompatible with the common market.

(42) The measures examined in the matter at hand fulfil this definition, in that they are financed from public resources, favour the production of certain goods (e.g. fruit and vegetables) and could affect trade given Italy's position on those markets (in 2005, Italy produced 11 443 000 tonnes of fruit, excluding citrus fruit, making it the largest fruit producer in the European Union).

(43) However, in cases covered by Article 87(2) and (3) of the Treaty, some measures may enjoy derogations and be considered compatible with the common market.

(44) Taking account of the measures described above, the only possible derogation in the matter at hand is that laid down in Article 87(3)(c) of the Treaty, according to which aid may be considered compatible with the common market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(45) The Commission notes, first of all, that Article 99(2)(a) of Law No 32/2000 was repealed without being applied (given the suspensive effect linked to initiation of the procedure under Article 88(2) of the Treaty) and that the Italian authorities have withdrawn the relevant notification. This renders superfluous any examination of the applicability of the provisions of the derogation provided for by Article 87(3)(c) of the Treaty.

(46) With regard to the aid under Article 124(1) and (2) of Law No 32/2000, the Commission notes that the procedures for granting the aid were brought into line with Regulation (EEC) No 1035/72, as amended by Article 3 of Council Regulation (EEC) No 3284/83 of 14 November 1983 amending Regulation (EEC) No 1035/72 on the common organisation of the market in fruit and vegetables as regards producers' organisations⁽¹⁾, by means of the provisions of the new paragraph 2 of Article 124 of Law No 32/2000, which was introduced by Article 12 of Law No 15/2004.

(47) As at the date of adoption of this law, aid to producers' organisations was governed by Regulation (EC) No 2200/96.

(48) As indicated in recital 27, Article 53 of Regulation (EC) No 2200/96 lays down that any rights acquired by producers' organisations prior to the entry into force of the Regulation, pursuant to Article 14 and Title IIa of Regulation (EEC) No 1035/72, are maintained until they are exhausted, provided that the conditions of Article 14 are met.

(49) The provisions of the new Article 124(2) of Law No 32/2002, as introduced by Article 12 of Law No 15/2004, comply with the conditions of Article 14 and, in practice, ensure that any producers' association that does not satisfy these conditions is excluded. Since, in Regulation (EEC) No 1035/72, the rules on State aid applied only within the limits set by the Council and the Regulation itself contained, in Article 14, a directly applicable provision that authorised the payment of national aid conditional upon compliance with certain conditions that were satisfied at the time, the national aid in question must no longer be subject to examination in the light of the rules applicable to State aid.

(50) In consequence, the other doubts expressed by the Commission when the procedure was opened have also become redundant.

VI. CONCLUSION

(51) Since Article 99(2)(a) of Law No 32/2000 has been repealed, the Commission does not need to rule on the compatibility with the common market of the aid

provided for therein. Accordingly, the procedure opened in relation to these provisions has become redundant and may be closed.

(52) Given that Article 124(2) of Law No 32/2000, as amended by Article 12 of Law No 15/2004, brings the aid laid down for producers' organisations into line with the provisions of Article 14 of Regulation (EEC) No 1035/72 and that, accordingly, such aid is considered automatically compatible with the rules governing the common organisation of the market and must no longer be subject to examination in the light of the rules applicable to State aid, the procedure opened in this connection has become redundant and may also be closed,

HAS ADOPTED THIS DECISION:

Article 1

The procedure under Article 88(2) of the Treaty initiated in relation to the aid under Article 99(2)(a) (as regards the agriculture sector) of Sicilian Regional Law No 32 of 23 December 2000 is hereby closed owing to having become redundant, since Italy has withdrawn the notification.

Article 2

The procedure under Article 88(2) of the Treaty, which was initiated in relation to the aid under Article 124(1) and (2) (as amended) of Sicilian Regional Law No 32 of 23 December 2000 but which has become redundant, is hereby closed.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 28 October 2009.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 325, 22.11.1983, p. 1.