

## II

(Acts whose publication is not obligatory)

## COMMISSION

## COMMISSION DECISION

of 13 November 2001

**on the aid scheme which the Sardinia Region (Italy) is planning to implement for the restructuring of holdings in difficulty in the protected crops sector**

(notified under document number C(2001) 3445)

(Only the Italian text is authentic)

(2002/229/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

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

Whereas:

ties<sup>(1)</sup>. The Commission invited interested parties to submit their comments on the aid.

- (4) The Commission received no comments from interested parties.

## II. DESCRIPTION OF THE AID

- (5) The scheme notified is the Regional plan for the restructuring of holdings in the protected crops sector — Decision No 48/7 of 2 December 1997 of the Regional Executive. It includes financial measures (repayment and rescheduling of debt), structural measures (investment) and technical assistance. The Region has earmarked a budget of ITL 60 billion (about EUR 30 million) for the scheme, under which individual holdings may receive up to ITL 600 million (about EUR 300 000).
- (6) According to information submitted by the Region (see letter of 10 September 1998), the aid is a one-off measure, and the viability of the holdings concerned is expected to be restored within a three-year period. The duration of the various restructuring measures is, however: (a) 15 years in the case of the interest-rate subsidy in connection with debt rescheduling; (b) 'the time required for implementation' in the case of outright grants and investment; and (c) unlimited in the case of technical assistance.
- (7) The recipients of the aid are agricultural holdings which are experiencing financial problems, in particular the holdings engaged in the primary production of protected crops, in other words floriculture and horticulture products.

## I. PROCEDURE

- (1) By letter dated 12 January 1998, recorded as received on 15 January 1998, the Italian Permanent Representation to the European Union notified the Commission in accordance with Article 88(3) of the Treaty of an aid scheme for the restructuring of holdings in difficulty in the protected crops sector in Sardinia which was approved by Decision No 48/7 of 2 December 1997 of the Regional Executive. By letters dated 10 September 1998 and 16 November 1998, recorded as received on 15 September and 19 November 1998 respectively, the Italian Permanent Representation provided the Commission with further information.
- (2) By letter of 1 February 1999, 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.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communi-*

<sup>(1)</sup> OJ C 187, 3.7.1999, p. 2.

### Products concerned

- (8) 'Protected agricultural crops' includes all agriculturally useful plant species cultivated under a structure designed to protect them from adverse weather conditions. The species concerned by the measures notified are:
- fruit and vegetables (table tomatoes (*camone* and medium-large), aubergines, peppers, cucumbers, courgettes, melons, watermelons, strawberries, green beans, lettuces, celery, radishes and rocket),
  - herbs (parsley, basil, marjoram, thyme, oregano, etc.),
  - mushrooms,
  - cut flowers (carnations, chrysanthemums, gerberas, roses, snapdragons, gypsophila, statice, gladioli, irises, lilies, etc.),
  - green and flowering pot plants,
  - Mediterranean plants.

### The firms concerned and the financial difficulties they are experiencing

- (9) According to the information provided by the Italian authorities, the beneficiaries under the restructuring plan are mostly small businesses within the meaning of Article 2083 of the Italian Civil Code (some of them are civil partnerships (*società semplici*) and only a very small number are private limited companies (*srl*)). All operate in the primary production sector. Again according to the Italian authorities, the beneficiaries concerned are potentially efficient and productive, their technical insolvency being due to their inability to meet their debts because of losses arising from insufficient output and from difficulties in obtaining prompt payment for the produce marketed.
- (10) The criteria for selecting beneficiaries under the plan take into account the characteristics of Sardinian farms and are concerned on the one hand with the actual difficulties experienced by the firms (substantial operating losses over several marketing years) and, on the other, with their inability to reduce their level of debt without public assistance (e. g. by disposing of part of the firm or personal assets).
- (11) For the purposes of the first criterion (financial), a holding is deemed to be in difficulty if, in the last three marketing years, it has declared an average operating loss equivalent to 25 % or more of its actual income. The loss is calculated by comparing the operating result for the period concerned with the average income from

the sale of its gross output (Article 2425 of the Civil Code), as follows: the estimated average farm expenditure for 1993/1994, 1994/1995 and 1995/1996 is compared with the income from the gross saleable production for those years. The income is determined on the basis of a statement by the holder in accordance with Law No 15 of 4 January 1968, 'Rules on administrative documents and the registration and certification of signatures', and in particular Articles 4 (Statement in lieu of a notarised document), 20 (Certification of signatures) and 26 (Penalties) thereof.

- (12) The second criterion (property-related) consists in a comparison between the value of the firm's assets, and possibly the holder's personal assets, not including his principal residence, with the total verifiable debt to banks, social security institutions and private individuals which is repayable at 31 December 1996. A holder is considered to be in difficulty if his debts amount to 30 % or more of his assets as defined above. The capital of a firm means all its tangible property (land, greenhouses, buildings, machinery, etc.), based on a valuation by ERSAT (Ente Regionale di Sviluppo e Assistenza Tecnica in Agricoltura — Regional Agricultural Development and Technical Assistance Board) using the appropriate form. The capital is the average of the firm's worth (calculated in accordance with Article 2424 of the Civil Code) and what it would actually fetch on the market. The owner's personal assets are determined on the basis of an official statement by the person concerned in accordance with Law No 15 of 4 January 1968 (Rules on administrative documents and on the certification of signatures).

The extent of the difficulties which a firm is experiencing will take account of the type of holding. Consideration will accordingly be given:

- (a) in the case of individuals, to personal assets and assets belonging to the firm, plus any assets relating to other business activities;
  - (b) in the case of partnerships, to assets belonging to the holder and the personal assets of each individual partner, plus any assets relating to other activities;
  - (c) in the case of limited companies, to company assets.
- (13) By letter of 16 November 1998, the competent authorities replied as set out in points 14 to 20 below to a Commission letter of 19 October 1998 asking for the application of the above criteria to be clarified and illustrated by means of examples.

### Financial difficulties of the firms

- (14) '— [...] the operating result (profit or loss) of the firms is arrived at solely by comparing the income and expenditure for the year concerned. In particular the firm's expenditure [...] may not include all the investment made, only the share of depreciation for the year concerned.

Example: If, in the course of the year in question, a firm has invested ITL 50 million in equipment to be depreciated over a 10-year period, the cost of the investment for that year is ITL 5 million (share of total depreciation). This is accordingly the figure to be used under the heading "expenditure" when calculating the operating result (profit or loss). Thus, if a firm has made a profit of ITL 10 million and invested ITL 50 million, depreciated at a rate of ITL 5 million per year, that share of the depreciation has already contributed, under the heading expenditure, to the formation of the ITL 10 million profit,

— [...] The debt taken into consideration for the purpose of that indicator is not the overall debt (due or yet to fall due) of the firm, but that which was due at 31 December 1996, has not been repaid [...] and is regarded as constituting a level of short-term debt which cannot be sustained by the firm.

A holder is deemed to be in difficulty if his debts that have fallen due (and, obviously, have not been repaid) are equivalent to 30 % or more of the assets. This proportion is regarded as a level of short-term debt which he cannot sustain, making it essential to carry out financial restructuring,

More specifically:

- the criterion cannot but take into account past investment, up to the value of any repayments due, and not made, between 1 January 1992 and 31 December 1996,

- the level of debt taken into consideration is accordingly not the overall level of debt but that which has become due.

Example: A firm which has assets of ITL 100 million and has a total of ITL 30 million in (short-term) debts that have fallen due and a further ITL 50 million in (long-term) debts that have yet to fall due, has net assets of ITL 20 million.'

### Restoration of viability

- (15) 'The recipients of the aid must draw up a balance sheet. This will enable regional officers to verify the return to viability of the firms. It was felt that this should be a condition for qualifying for the aid because, as well as suffering from the handicaps referred to in the introduction to the plan, Sardinian farms tend to lack a business culture, as evidenced, *inter alia*, by a reluctance to adopt even a simple accounting system. The restructuring plan is designed in particular to make good this shortcoming.

The criteria for assessing the return to profitability of firms in difficulty were drawn up after comparing the net output per hectare before implementation of the plan, a figure which is clearly not sufficient to cover outgoings (in particular repayments and bank interest), with that expected afterwards, i.e. taking into account the measures proposed in the restructuring plan, measures which are expected to generate a level of gross saleable production that can fully cover expenditure.

As a result of the improvement the restructuring plan will bring about in the running of the farms in terms both of product quality and a choice of production that is in keeping with market requirements, the depreciation costs of machinery and equipment and repayments to banks will, after implementation of the plan, represent only 29,7 % of gross saleable production instead of the present 43 %.

The minimum profit after restructuring is expected to be 1,4 %.

Table 2

#### IMPACT OF COSTS ON REVENUE

##### Present system (output volume = 800 quintals)

(TTL million)

Costs	Income	Annual profit or loss	Value as % of income
Outgoings	75	- 55	43
Cultivation	72		41
Wages and salaries	84		48
Total	231	- 55	- 31,3

Outgoings comprise the fixed costs due to amortisation of plant and buildings, maintenance and repayments on loans.

**Proposed system (output volume = 1 100 quintals)**

(ITL million)

Costs		Income	Value as % of income
Outgoings	79	266,4	29,7
Cultivation	112		42,0
Wages and salaries	71,8		26,9
Total	262,8	266,4	98,6
Annual profit	3,6		1,4

Outgoings comprise the fixed costs due to amortisation of plant and buildings, maintenance and repayments on loans.

**Comparison of present and proposed systems**

(ITL million)

Headings	Present system	Proposed system	Absolute difference	Percentage difference
Income	176	266,4	90,4	+ 51,4
Costs	231	262,8	31,8	+ 13,8
Profit or loss	- 55	3,6	58,6	+ 93,4

The restructuring plan for holdings is essentially based on the following measures within the holding:

(A) identification of the volume of output required for restoration of viability; this is the volume corresponding to an average unit cost (K) that is at least equal to the market price (P).

In the example in Table 2, the volume required is 1 100 quintals per hectare, compared with the present output of 800 quintals per hectare. As  $K=K_t:Q_t$

(where K is the average unit cost,  $K_t$  the total cost and  $Q_t$  total output),

under the present system,  $P < K$

$$\frac{231\,000\,000 (K_t)}{800 (Q_t)} = 288\,750 (K)$$

$$\frac{P}{176\,000\,000} : \frac{Q_t}{800} = 220\,000 \text{ unit price}$$

under the proposed system,  $P > K$

$$\frac{262\,000\,800 \text{ (Kt)}}{1\,100 \text{ (Qt)}} = 238\,182 \text{ (K)}$$

$$\frac{P}{266\,400\,000} : \frac{Q_t}{1\,100} = 242\,182 \text{ unit price.}$$

The improvement in output volume and quality required to restore viability will be obtained by:

- (a) introducing technological innovation (see recital 14), optimal use of production factors and more suitable production methods, e.g. higher output when demand is highest, and market returns best, for a particular product (from December to February for the "camone" tomato);
- (b) protecting the crops against disease through the restructuring measures described at 14(a);
- (c) switching from relatively unprofitable products to products with a wider market and a higher market value. In addition to guaranteeing that output will be placed on the market, the marketing organisations which beneficiaries will join under the plan will also identify high-demand products;
- (d) reducing expenditure on wages and salaries thanks to cuts in the workforce either through the technological improvements introduced or through the transfer of grading and packaging to the marketing organisations.

In the example given, wages and salaries account for 48 % of expenditure under the present system and 26,9 % under the proposed system;

- (e) cutting production costs by using, wherever possible, less expensive production techniques, e.g. the widely used pest control technique based on methyl bromide (sterilisation) would be replaced by another method (solarisation) which is not only cheaper but also more environmentally friendly.

Another external factor with a substantial impact on the restoration of viability is the growing demand for authentic typical products, which the marketing organisations are not at present in a position to satisfy from output. Lastly, technical assistance plays an important role in the short term by filling the gaps in farmers' skills, and in the longer term by helping farmers to acquire or consolidate the skills needed to run their holdings efficiently.'

#### **Measures in the plans for restoration of viability**

- (16) The restructuring plan submitted by potential recipients on the forms provided by the authorities should specify:
  - financial restructuring measures,
  - small technological upgrading works,
  - commitment to introduce farm accounts,
  - commitment to join a production organisation and to adapt production to market demand [...],
  - formal commitment to refrain from submitting land-improvement projects [...] for five or 10 years. (Five years where the holding has complete and efficient equipment over that period, and benefits only from the financial restructuring measure; 10 years if the holding also benefits from technological improvement measures. The normal period of effectiveness is 10 years).'

Beneficiaries will also receive, for an unlimited period, technical assistance provided by 'ATA technicians and agricultural advisers [...] paid by the Region's operational agency ERSAT (Regional Agricultural Development and Technical Assistance Board).'

### Financial measures for restructuring

- (17) In the letter of 10 September 1998, the authorities provided the following information on this measure:

'The credit institutions concerned by the restructuring plan for holdings in the greenhouse sector which are experiencing difficulties are private-sector banks [...]. As these banks will, in accordance with agreements reached, waive their right to interest on arrears both on debt due by 31 December 1996 and on that due at a later date, until such time as the beneficiary concludes a new contract (point 4.1(a) of the Plan), the contribution of the Region will consist of:

- (a) a capital allowance on part of the principal of the debts of the beneficiaries towards credit institutions incurred from 1 January 1992 and due by 31 December 1996;
- (b) an interest subsidy for multiannual loans (of up to 15 years), arising from the rescheduling of the outstanding debt of the holdings and comprising:
  - 1 — outstanding debt as referred to in point (a);
  - 2 — payments due after 31 December 1996 up to the date of the new loan;
  - 3 — other outstanding payments that may fall due (outstanding capital repayments on agricultural loans, if any).

The aid referred to in (b), uprated to the date of conclusion of the contract, may not exceed 30 % of the reference rate fixed by the State for improvement loans (at present 6,50 %).

The total amount of the two forms of aid (grant and interest subsidy) may not exceed 75 % of the debt due by 31 December 1996, net of interest on arrears. In the case in point, as the only compressible cost is the regular redemption payment on the loan, which can be reduced through financial restructuring, the first step will be to compare the highest sustainable repayment for the holding (ITL 3 500/m<sup>2</sup>) with the repayment under the new redemption plan, making projections for the new loan on the basis of varying assumptions involving:

1. primarily the duration of the loan (which can vary from five to 15 years);
2. secondly the allowance on the principal of loans repayable on 31 December 1996.

The result of these two operations will show the exact amount of capital outstanding to be covered by a loan, and thus determine the new repayment, which should not exceed the highest sustainable repayment.

The figures obtained must then be brought into line with the other limits set by the plan, which are as follows:

- *maximum public aid* for financial restructuring: 75 % of the debt repayable on 31 December 1996, net of interest on arrears borne by the banks;
- *maximum public aid*, including structural aspects of assistance: ITL 600 million.'

### Planned investment for restructuring

- (18) According to the national authorities, the investment specified below 'is essential in that it is intended to limit or prevent the effects of adverse weather conditions, to protect plants from disease, to reduce production costs and improve the quality of the products (environmentally friendly production methods), thus enhancing their marketability by the marketing organisations. Given the precarious financial situation of the beneficiaries, it is planned to provide aid at a rate of 75 % of eligible expenditure.

The investment concerns holdings engaging in primary production and comprises the following:

a — *Installation of anti-insect netting: ITL 1 000/m<sup>2</sup>*

Anti-insect netting, placed on all glasshouse openings, is essential to keep out insects that are harmful to crops and carry viruses; the use of netting can cut infestation by tobacco whitefly, which is responsible for TYLCV infection, by about 90 %. Netting reduces the aeration of crops by about 50 %;

b — *Forced ventilation and climate control: ITL 1 200/m<sup>2</sup>*

After the operation referred to in point (a), it is essential to install a system of forced ventilation and climate control.

As anti-insect netting interferes with natural ventilation, forced ventilation and control of relative moisture content of air are needed to avoid serious crop problems due to fungal diseases such as botrytis, downy mildew, cladosporium, bacteria, and major plant diseases such as hyperhidrosis, fasciation of the stem, etc.;

c — *Removable insulation: ITL 6 500/m<sup>2</sup>*

It is essential to install removable insulation. This ensures output of worthwhile quality in the winter months and, in the process, achieves energy savings of 50 %;

d — *Warm-air ventilation: ITL 4 000/m<sup>2</sup>*

Warm-air ventilation equipment improves the circulation of warm air, enables air moisture content to be controlled and leads to a further 20 % improvement in energy saving;

e — *Drainage equipment: ITL 6 400/m<sup>2</sup>*

Without drainage, it is impossible to achieve rational irrigation and feeding on clay soil, especially in the autumn and winter;

f — *Outside works for fresh water collection: ITL 2 350/m<sup>2</sup>*

These works are restricted to greenhouse holdings in areas with no shared irrigation installation, and solely where groundwater is either inadequate or unsuitable.

Constructing water-collection reservoirs will help attenuate groundwater salination, one of the causes of lost output;

g — *Combined fertiliser and irrigation spraying control blocks: ITL 600/m<sup>2</sup>*

Ordinary single or double action pumps can be used on 10 % of the total area of the holding where the effectiveness of combined fertiliser and irrigation spraying needs to be improved (maximum rationalisation of combined fertiliser and irrigation spraying is essential to underpinning the income of the holding).'

#### Technical assistance for restructuring

- (19) According to the Italian authorities, 'technical assistance, advisory services and vocational training provided by ERSAT as part of its national activities, [which] also include services provided by technicians and agricultural extension officers [...], involves:

- examining the state of the farm infrastructure,
- determining whether the crops cultivated are such as to enable the holding to repay its debt,
- determining whether the holding should change to other crops,
- determining which essential technological improvements should be introduced,
- providing specialised consultancy services over a three-year period (regarded as necessary for a lasting return to stable management),
- monitoring the return to normal management,
- vocational training.

All these services [...] are provided by employees of the Region and do not therefore involve any cost other than their normal remuneration.

However, it is also planned to use the services of self-employed "technicians" working on contract to ERSAT exclusively for highly specialised work, at a cost that cannot be determined at the moment but which is part of the normal operating costs of ERSAT.

The contracts concluded by the Region are governed by rules guaranteeing transparency of the operations concerned (e.g. publication in the Official Gazette of the Region and supervision by the Court of Auditors).'

#### **Contribution of the Sardinia Region to the restructuring plan**

- (20) According to the competent authority 'the arrangements for the financial participation of the Sardinia Region will be as follows:
- (a) repayment of the principal of loans repayable by 31 December 1996;
  - (b) payment of interest following the rescheduling of any outstanding debt due or still to fall due;
  - (c) capital grants towards (investment) measures under 4.2 of the plan (75 % of eligible expenditure).

The sum of a + b may not exceed 75 % of the debt due on 31 December 1996, net of the interest on arrears.

Technical assistance forms part of the ordinary activities of ERSAT and its cost is therefore not included in the restructuring plan.'

#### **Contribution of the banks to the restructuring plan**

- (21) In its letter of 19 October 1998, the Commission requested that the competent authorities: provide the names of the banks that would waive their right to interest outstanding on the debts of potential beneficiaries; specify whether all the banks with claims on all potential beneficiaries would take part in the scheme; and indicate the amount of interest which these banks were forgoing. In their letter of 16 November 1998, the competent authorities specified, in reply to the Commission, that the banks concerned by the implementation of the plan were: Banca Nazionale del Lavoro; Cariplo; Banco di Sardegna; Istituto Bancario San Paolo di Torino; Monte dei Paschi di Siena; Istituto di Credito delle Casse Rurali e Artigiane; Banca Meliorconsorzio; Banco di Napoli; Credito Italiano; Banca Commerciale Italiana; and Banca di Sassari. The competent authorities further stated that the amount of interest on the debt of beneficiaries forgone by the banks would be determined on a case-by-case basis, and could not be ascertained or notified at that stage.

#### **Contribution of the beneficiaries to the restructuring plan**

- (22) According to the authorities 'The following costs will be borne by beneficiaries:
- 25 % of eligible investment for measures under 4.2 of the plan (i. e. investment),
  - the interest on rescheduled debt not covered by financing from the Region.

The capacity of the beneficiary to bear the relevant costs will be ensured by the new financial conditions and productive situation of the holding, which means that individual holdings may normally be expected to be in a position to pay these costs within the first three years of activity.

Beneficiaries must produce documentary evidence of expenditure incurred as follows:

- (a) for the purchase of machinery and equipment: invoices;
- (b) for labour input provided by the beneficiary or third parties: an itemised record based on unit prices laid down in the appropriate regional schedule of rates, periodically updated and approved by departmental order.'

#### **Duration of aid and of measures planned under the restructuring plan**

- (23) According to the competent authorities, 'This is a one-off scheme that is not intended to be prolonged. The duration of the measure is one year, which is the time required to implement the plan (administration procedures and paperwork).



The different operations each have their own specific duration:

- interest subsidies will last for five to 15 years,
- grants for maintenance and improvements will be for the normal time required for technical completion,
- technical assistance, as specified above, is an institutional service and as such is of unlimited duration.

During the implementation of the plan, assistance will, as long as holdings have not achieved the desired results, be more concentrated and compulsory.'

#### **Commitments entered into by the Italian authorities**

- (24) 'In implementing the plan notified, the Region undertakes to comply with the requirements laid down in the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(2)</sup>.

The Region also undertakes to send the Commission a detailed annual report on aid granted, as specified at 3.2.2 of the guidelines.'

#### **Possible duplication of debt-repayment aid to the same beneficiaries**

- (25) By letter of 19 October 1998, the Commission asked the competent authorities to give assurances that none of the potential recipients of the aid provided for in the said measure had previously received any aid for restructuring, non-notified aid, or incompatible aid which Italy had been asked to recover. By letter dated 16 November 1998 the competent authorities replied to the Commission's questions as follows:

'1. the Region has never granted restructuring aid; 2. in authorising the rescheduling of loans, Regional Law No 4 of 19 January 1998, approved by the Commission on 3 June 1998, cancels for the beneficiaries of the plan the effects of previous rules, which are implicitly repealed; 3. The regional authorities affirm that, where it appears that an applicant has received incompatible aid which the authorities have been asked to recover but which has not yet been recovered, the amount of incompatible aid will be deducted from the aid granted under the plan.'

- (26) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because of its doubts regarding the compatibility of the measure with the common market. Those doubts concerned the following:

(a) *with regard to the financial difficulties of the firms:*

— since the majority of the firms concerned do not keep accounts (an undertaking to keep accounts is one of the requirements for receiving aid for restructuring), there was room for doubt as to the appropriateness of the criteria proposed by the Italian authorities for evaluating operating losses and the level of debt of the potential recipients (for example, there did not appear to be a clear distinction between short-term and long-term debts; moreover, the latter could conceivably be linked to investments to be depreciated in the context of any normal economic activity; and a firm the cost of whose investments was depreciated by annual instalments was not necessarily to be regarded as being in difficulty),

— according to the Italian authorities a firm would be regarded as being in difficulty if its debts which had fallen due but had not been repaid were equivalent to 30 % or more of its assets, but it was not specified whether or not these were net assets,

<sup>(2)</sup> OJ C 283, 19.9.1997, p. 2.

— in the light of the points set out in the first indent, it was a question of determining whether the debt criterion could indicate a serious level of debt and whether the operating loss criterion could point to the existence of a highly critical situation,

— the application of the abovementioned criteria appeared to be based in particular on certification by the recipients themselves;

(b) *with regard to restoration of viability:*

— the financial measures proposed (payment by the Region of the share of the principal which had fallen due on 31 December 1996; payment by the Region of an interest subsidy in connection with the rescheduling of the outstanding debt which had fallen due or was yet to fall due; waiving by the credit institutions of the interest payable on arrears) could merely constitute operating aid, especially since they did not appear to make it possible to calculate easily the debt to be repaid and the aid to be granted,

— the outright grant in respect of investment (75 % of eligible expenditure) appeared to be too high,

— the scheme notified did not provide for any reduction in capacity or the abandonment of unprofitable activities and there was no guarantee as to the existence of market outlets for the products concerned,

— there was a question as to whether a 50 % increase in profits thanks to the adoption of new cultivation techniques, the introduction of technological innovations and, where necessary, conversion to more profitable products could in fact restore viability within three years, especially since, as indicated in the preceding indent, there was no guaranteed market outlet for the products concerned;

(c) *with regard to avoidance of undue distortions of competition:*

— although the Commission had asked the Italian authorities to show, with the help of supporting documents, what effects aid intended to bring about an increase in profits of about 50 % would have on prices and what the outlets for the products concerned would be, the abovementioned authorities provided no documentation in support of their statements,

— the scheme made no provision for a reduction in capacity, even though such a reduction appeared to be necessary in the floriculture sector;

(d) *with regard to the principle whereby aid must be in proportion to the restructuring costs and benefits:*

— the ceiling of ITL 600 million (about EUR 300 000) per recipient holding seemed high, in view of the types of problems which had allegedly given rise to the debts,

— the fact that it was difficult to calculate the amount of debt to be repaid made it impossible to determine to what extent recipients would effectively be contributing to the restructuring,

— the waiving of interest on arrears by the credit institutions could also constitute State aid, since the possibility cannot be ruled out that some of them might be public institutions or institutions under public control;

(e) *with regard to the nature of the recipients:*

since the recipients could include limited companies, the Commission could not rule out the possibility that some firms covered by the measure might not meet all the requirements for being regarded as an SME which are set out at 3.2.4 of the Community guidelines on State aid for rescuing and restructuring firms in difficulty <sup>(3)</sup>,

<sup>(3)</sup> See footnote 2.

(f) with regard to a possible 'Degendorf' effect':

the Commission had asked the competent authorities to ensure that none of the potential recipients of aid under the notified scheme had already received restructuring aid, non-notified aid or incompatible aid whose recovery had been requested; the competent authorities replied, by letter of 16 November 1998, that the Region had never granted restructuring aid and that the regional authorities could give an assurance that, where an applicant had received incompatible aid the recovery of which had been requested but had not yet taken place, the amount of incompatible aid would be deducted from the aid granted under the plan. On the basis of this reply, the Commission could not rule out the possibility that aid might be granted under the plan to recipients who had received incompatible aid whose recovery the Commission had requested. Now then, as established by the Court of Justice, failure to repay unlawful aid constitutes an essential factor which is lawfully taken into account when examining the compatibility of new aids <sup>(4)</sup>.

### III. COMMENTS BY THE ITALIAN AUTHORITIES, REACTION OF THE COMMISSION AND REPLY OF THE ITALIAN AUTHORITIES

- (27) By letter dated 9 June 1999, recorded as received on 15 June 1999, the Italian authorities reacted to the doubts expressed by the Commission regarding the compatibility of the notified scheme with the common market.

*With regard to the state of financial difficulty of the firms*

- (28) The Italian authorities stated first of all that the debts taken into consideration for determining the state of difficulty of the firms would be those brought about by an accumulation of instalments which had fallen due and had not been paid owing to the operating losses incurred over the years (regarded as short-term debts in that they had to be dealt with at once, failing which the firm would receive a formal notice), as well as verifiable debts towards insurance institutions and private individuals. Accordingly, these were debts resulting from the normal exercise of economic activities, such as investment by the holder which was to be depreciated in the long term.
- (29) On the question of the assets, the Italian authorities stated in their letter of 9 June 1999 that the state of financial difficulty of the holdings was determined in particular by comparing the level of debt to the net assets. Under Article 2424 of the Italian Civil Code, the net assets of a holding are made up of its capital and its reserves <sup>(5)</sup>. Accordingly, in its letter of 7 December 1999, the Commission asked the Italian authorities what contribution in terms of net assets the beneficiaries under the scheme would be required to make. In their letter of 8 February 2001, the Italian authorities replied that they planned to request a contribution only if this was absolutely essential to ensuring that the holding reached economic and financial equilibrium and did not compromise efficiency.
- (30) Lastly, on the matter of self-certification in the absence of accounts which could determine operating losses and the level of debt, the Italian authorities claimed that this procedure was perfectly in keeping with the national legislation applicable <sup>(6)</sup>, adding that severe penal sanctions were applicable in the event of a false declaration. Accordingly, in its letter of 7 December 1999 (ref. VI/051291), the Commission asked the Italian authorities whether they could undertake to have the statements of potential recipients under the scheme verified by a third party/independent body. In their letter of 8 February 2001, the Italian authorities communicated the text of the law referred to above, indicating that the administration is required to verify the declarations concerned, possibly by means of sample

<sup>(4)</sup> Judgment of the Court of Justice in Case C-355/95 P. *Textilwerke Degendorf GmbH (TWD) v Commission and Germany*, ECR I-2549, paragraph 25 of the grounds of judgment.

<sup>(5)</sup> Under this According, the constituent components of the net assets are, generally speaking, capital, the share-issue premium reserve, revaluation reserves, the legal reserve, the reserve in connection with portfolio shares, the statutory reserves, other reserves to be entered separately, deferred profits (or losses) and profits (or losses) for the financial year.

<sup>(6)</sup> Law No 127 of 15 May 1997 on emergency measures for speeding up administrative work and decision-making and control procedures, and the detailed implementing rules concerned.

checks. In order to dispel the doubts the Commission still had regarding the random nature of the checks, the Italian authorities stated in that letter that the declarations of all potential recipients would be verified.

*With regard to restoration of the potential recipients' viability*

- (31) In their letter of 8 February 2001, the Italian authorities undertook to reduce the rate of aid planned for investment in the recipient firms to 50 % in less-favoured areas and 40 % in other areas, in accordance with the provisions of the Community Guidelines for State aid in the agriculture sector (<sup>7</sup>). They also updated the information used for determining the production levels the firms in difficulty had to attain in order to return to viability, specifying the method of calculation (comparison between the average unit cost and the market price in the two cases envisaged — current and after implementation — after establishing the market price on the basis of the figures provided by a cooperative). According to that model, an increase in production means an increase in income.

*With regard to the avoidance of undue distortions of competition*

- (32) In their letter of 9 June 1999, the Italian authorities stated that the restructuring scheme for firms in difficulty would not affect the formation of prices for the products concerned. In support of this statement, they put forward a graph showing the trend of prices of several varieties of products in 1997/1998. In their letter of 7 December 1999, the Commission departments asked on what data the claim that the restructuring measures would not affect the formation of prices was based. The graph provided did not in fact constitute sufficient proof, since the price trend concerned a period in which no aid had yet been paid. In their letter of 8 February 2001, the Italian authorities then replied that price formation would in no way be affected since demand for the products concerned by the scheme was generally stable.
- (33) As regards market outlets (linked to the stability of demand referred to in recital 32), the Italian authorities claimed in their letter of 9 June 1999 that Sardinian products would benefit from promotional activities planned by the Ministry of Foreign Trade and the Ministry for Agricultural Policy with a view to increasing exports of quality fruit and vegetables to the rest of the Community, to central and eastern Europe and to the rest of the world. As they saw it, the floriculture sector did not feature any overcapacity and, in this connection, they referred to an MGP part-financed by the Commission which was aimed at developing flower-growing and restructuring the greenhouse sector. In their letter of 7 December 1999, the Commission departments concerned pointed out that the abovementioned measure was aimed at encouraging the disposal of floricultural products (cut flowers) precisely because the sector featured overcapacity. Accordingly, they again invited the Italian authorities to conform to 3.2.2(ii) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty, or to ask for the application of 3.2.5 thereof. Under the latter provision, the Commission can waive the application of the requirement of a reduction in capacity in a branch of the agricultural sector which is in surplus in the case of measures targeted on any particular category of products or operators, where the totality of decisions taken in favour of all beneficiaries over any consecutive 12-month period does not involve a quantity of product which exceeds 3 % of the total annual production of such products in that country (the geographical references can be transposed from the national to the regional level). In their letter of 8 February 2001, the Italian authorities did not react to these comments by the Commission, and referred to market research which pointed to the existence of market outlets for the productions concerned, but covered 1995-1997. The conclusions of that research were as follows:
- production and wholesale prices had been rising during the period under consideration,
  - wholesale prices were generally higher than producer prices,
  - wholesale prices varied less than producer prices,
  - production under glass featured higher prices than did production in the open air.

<sup>(7)</sup> OJ C 28, 1.2.2000, p. 2.

*With regard to the principle that aid has to be in proportion to the restructuring costs and benefits*

- (34) With regard to the aid ceiling of ITL 600 million (about EUR 300 000) per holding and the difficulty in determining the recipients' actual contribution to the restructuring, given the problems involved in calculating the amount of debt which had fallen due, the Italian authorities again explained what the public aid in the framework of restructuring would consist of, stressing that the contribution the recipients were required to make (25 % at least) was more than appropriate: the latter still had to pay their non-banking debts (compulsory insurance, their employees' remuneration, amounts owed for the supply of goods needed for maintaining production, and debts towards public and private insurance institutions). The Italian authorities added that up to 20 % of the principal of the debt incurred between 1 January 1992 and 31 December 1996 could be cancelled by the Region, provided the maximum percentage of public aid towards the restructuring (75 %) was not exceeded.
- (35) This differed from what had initially been communicated by the Italian authorities, since, as indicated in recital 17, the sum of the reduction in the principal and of the interest-rate subsidy on the multiannual loan (of up to 15 years) arising from the rescheduling of the residual debt of the firms was not to exceed 75 % of the debts which had matured on 31 December 1996. In the case of public aid within the framework of the restructuring of the firms, the Italian authorities widened the calculation base of the 75 % of aid to investments to be made in the framework of the restructuring.
- (36) The Italian authorities were asked about this change in the base used for calculating the public aid; the definitive reply they gave was that the public regional aid would consist of:
- (a) an outright grant for small-scale technological adjustment of the facilities needed for the restructuring of the holdings, the aid intensity being 50 % in less-favoured areas and 40 % elsewhere;
  - (b) cancellation of up to 20 % of the principal of the debt which had fallen due between 1 January 1992 and 31 December 1996;
  - (c) an interest-rate subsidy (of up to 30 % of the reference rate set by the central government for improvement loans) on the 15-year loan in connection with the rescheduling of the debt resulting from the residual debt referred to in (b), of the instalments which had fallen due in the period from 31 December 1996 until the date on which the new loan was contracted, as well as the debts which had yet to fall due.
- The sum of (a), (b) and (c) may not be more than 75 % of the total cost of restructuring (in other words, than an amount which also includes the cost of the investments which form part of the restructuring plan).
- (37) Regarding the waiving of the payment of interest on arrears by the credit institutions prepared to take part in the scheme, the Italian authorities explained, in their letter of 9 June 1999, that in the light of the assessment of the behaviour of the State-controlled banks in Commission Decision 97/81/EC on aid granted by the Austrian Government to Head Tyrolia Mares in the form of injections of capital<sup>(8)</sup>, the operation did not constitute State aid. In the case referred to, however, the waiving of the payment of the interest on arrears was not regarded as State aid because the decision had been taken by all the banks taking part in the operation (in other words by public and private banks alike). In its letter of 7 December 1999, the Commission asked the Italian authorities to indicate which public and private banks were prepared to forgo the payment of interest on arrears, and to specify whether all the banks taking part in the restructuring were prepared to waive their right to the payment concerned. In their letter of 8 February 2001, the Italian authorities communicated the list requested. Attached to the letter were some statements made by a number of banks confirming that they were willing to forgo payment of the interest on arrears, plus a statement to the effect that the banks which did not wish to provide such written confirmation had nonetheless given their approval.

<sup>(8)</sup> OJ L 25, 28.1.1997, p. 26.

*Regarding the nature of the recipients*

- (38) In their letter of 19 June 1999, the Italian authorities confirmed that only small firms covered by 3.2.5(b) of the Community guidelines on State aid for rescuing and restructuring firms in difficulty were eligible for the aid, in other words operators in the agriculture sector with no more than 10 annual work units. That group included limited companies which satisfied this criterion.

*Regarding a possible Deggendorf effect*

- (39) In response to the comments by the Commission (see recital 26(f)), the Italian authorities undertook to ensure that no firm would receive aid which had received illegal or incompatible aid in the past and had not repaid it.
- (40) By letter dated 14 September 2001, recorded as received on 17 September 2001, the Italian authorities asked that the Commission adopt a final decision within two months under Article 7(7) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty<sup>(9)</sup>.

**IV. ASSESSMENT OF THE AID**

- (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. In the case at hand, the aid under scrutiny is likely to produce the effects described above. It encourages certain productions (fruit and vegetables and plants) and is likely to distort trade because of its relative size. For example, Italy, within which Sardinia constitutes a major production area, was the principal vegetable producer in the European Union in 1999, its output of 15 153 857 tonnes accounting for 28,7 % of total EU production (52 726 260 tonnes)<sup>(10)</sup>. The aid thus falls within the scope of Article 87(1) of the Treaty and must qualify for exemption in order to be declared compatible with the common market.
- (42) The exemptions applicable are described in the Community guidelines concerned. At present, aid for rescuing and restructuring firms in difficulty is governed by the Community guidelines adopted in 1999<sup>(11)</sup>. Under point 7.3 thereof, aid for rescuing and restructuring SMEs (individual aids or schemes) notified before 30 April 2000 must be assessed on the basis of the 1997 guidelines<sup>(12)</sup>. Since the restructuring plan was notified on 12 January 1998, its compatibility with the common market must be assessed on the basis of the 1997 guidelines.
- (43) By virtue of 1.1 and 2.3 of the 1997 guidelines (hereinafter the guidelines), State aid intended for rescuing and restructuring firms in difficulty falls within the scope of paragraph 1 of Article 87 (formerly Article 92) of the Treaty<sup>(13)</sup>, because, by its very nature, it tends to distort competition and affect trade between Member States, shifting the burden of structural change on to other more efficient firms and encouraging a subsidy race.

<sup>(9)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(10)</sup> In 2000 Italy produced 16 308 854 tonnes of vegetables. Since figures are not yet available for all the Member States, it is not possible to determine the percentage of EU production this quantity represents. It should be noted, however, that according to the figures that are available, Italy is the only Member State whose production rose appreciably between 1999 and 2000.

<sup>(11)</sup> OJ C 288, 9.10.1999, p. 2.

<sup>(12)</sup> See footnote 2.

<sup>(13)</sup> Paragraph 1 of the Article states 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 is, in so far as it affects trade between Member States, incompatible with the common market'.

- (44) As stipulated at 2.4 of the guidelines, 'The only basis for exempting aid for rescuing or restructuring firms in difficulty, apart from cases of natural disasters and exceptional occurrences which are exempted by Article 92(2)(b) of the Treaty [...] and, to the extent that Article 92(2)(c) is still applicable, aid in Germany that might be covered by this provision, is Article 92(3)(c) (, by virtue of which) the Commission has the power to authorise aid to facilitate the development of certain economic activities [...] where such aid does not adversely affect trading conditions to an extent contrary to the common interest'. In this case, since the notification was not intended to satisfy the requirements for application of the exemptions provided for in Article 87(2) of the Treaty, the only exemption which could be invoked in the framework of the assessment of the aid is that provided for in Article 87(3)(c) of the Treaty.
- (45) A number of conditions have to be met for this exemption to apply. Since this case concerns an aid scheme, the first element to be checked is its scope. This poses a problem because, instead of notifying a scheme in accordance with the rules laid down and stating general principles which would enable individual restructuring plans to be examined at a later stage, the Italian authorities submitted a single restructuring scheme applicable to all potential recipients and featuring a degree of automatic application, and definitions, such that the possibility cannot be ruled out that some firms might be eligible which do not meet the requirements applicable. In this respect, the most problematic definition is that of 'firm in difficulty'.

#### *Definition of firm in difficulty*

- (46) Point 2.1 of the guidelines lists the characteristics normally found in a firm in difficulty. The majority of them are of a type which increases in severity, viz. the level of losses or of debt. Since the criteria used by the Italian authorities are based on an average, they do not show the extent to which the situation of the companies concerned is worsening. For example, since the plan is established on the basis of an average, there is a possibility that the year following the two years chosen as a reference period will be positive, even though the average is still negative. Another important factor is that, in the case of the measures notified by the Italian authorities, losses have to be declared by the recipients themselves as required by Law No 127 of 15 May 1997 <sup>(14)</sup>. The Commission has taken note of the undertaking given by the Italian authorities to go beyond what is stipulated in the Law, and have all the statements of the potential recipients under the scheme verified. Nevertheless, since the potential recipients do not appear to keep accounts, it is difficult to see on what basis verification could take place; this applies generally to the criteria used by the Italian authorities to define the state of difficulty of the firms in the sector concerned. In the absence of a valid control base, the Commission cannot, therefore, rule out the possibility that companies which are not really in difficulty might benefit from aid under the restructuring scheme, and it therefore takes the view that the given definition of firm in difficulty is unsuitable.
- (47) In addition to the matter of the definition, for the exemption provided for in Article 87(3)(c) of the Treaty to apply in this case, a number of requirements set out at 3.2.2 of the guidelines must be met.

#### *Restoration of viability*

- (48) The first of the requirements set out at 3.2.2 is that the restructuring plan must restore the long-term viability and health of the firm within a reasonable timescale and on the basis of realistic assumptions as to its future operating conditions. Moreover, the improvement in viability must mainly result from internal measures contained in the restructuring plan and may only be based on external factors such as price and demand increases over which the firm has no great influence, if the market assumptions made are generally acknowledged.

<sup>(14)</sup> See footnote 6.

- (49) In the case under scrutiny, the plan appears to be based in particular on the hypothesis that promotional campaigns conducted by the Ministry of Foreign Trade and the Ministry for Agricultural Policy will create outlets by encouraging exports of vegetables to the rest of the Community, to central and eastern Europe and to the rest of the world. There is, however, no guarantee that the campaigns will produce the expected results in terms of outlets. Moreover, regarding the period needed to restore viability, there is a clear contradiction between the stated aim of restoring the viability of the firms concerned within three years and the admission by the Italian authorities themselves that 'the normal period of effectiveness is 10 years'. In the context of the restructuring of companies, 10 years certainly cannot be regarded as a reasonable period.
- (50) A second factor in the hypothesis of the Italian authorities is prices. The conclusions of the market survey point to a price increase in the period under consideration (1995-1997). The reference period chosen does not, however, make it possible to determine current price trends. The Italian authorities have on several occasions stated that the plan, which provides for increased profits based on a rise in production, would in no way affect the way in which the prices of the products concerned are formed. However, since the information provided invariably concerned the past, that claim could not be verified. It is hard to believe that marketing substantially larger quantities of products will have no effect on the formation of prices, especially in view of the considerable increase in production (of the order of 35 % to 40 %) mentioned by the Italian authorities. Accordingly, there are fears that the scheme may have an adverse effect on prices and that the reference level of production used by the Italian authorities for restoring the viability of the recipient holdings is unrealistic, both in terms of size and because it does not take account of the fact that prices might fall as a result of the marketing of larger quantities of products, thus casting doubt on the prospects for restoring the viability of the companies concerned.

*Avoidance of undue distortions of competition*

- (51) Another requirement imposed on aid for restructuring is that measures are taken to offset as far as possible adverse effects on competitors. Such measures must bring about an irreversible reduction in or closure of capacity among recipients of the aid where there is structural overcapacity in the sector concerned. Where there is no structural overcapacity, the Commission does not normally require a reduction in capacity, but there must be evidence that the aid will be used only for restoring viability and will not enable the recipient to increase production capacity during the implementation of the restructuring plan, except to the extent necessary to restore viability, in other words without unduly distorting competition.
- (52) On the matter of a possible reduction in capacity, the Italian authorities pointed out that all the beneficiaries under the scheme would be small agricultural enterprises within the meaning of 3.2.5(b) of the guidelines, in other words operators with no more than 10 annual work units. In this connection, the Italian authorities could, as the Commission had proposed, have asked for the application of the special provisions of the guidelines concerning the agricultural sector. Since they did not do so (see recital 33), the Commission had to assess the aid scheme in the light of the general conditions set out at 3.2.2.
- (53) In the case at hand, the Commission notes, on the basis of the most recent information available, that irrespective of which point of the guidelines is applied in this respect, structural overcapacity no longer exists or appears to exist in the sectors of activity covered by the restructuring scheme. The Commission does not, therefore, deem it necessary to require a reduction in production capacity on the part of the recipients.
- (54) In the absence of a request to reduce capacity, it is a question of demonstrating that the investment concerned is to be used only for restoring the viability of the firm, without distorting competition. In this respect, there is a major risk that the investment will distort competition, since it will be aimed at increasing production. The consequential impact on prices would directly affect the profits and, therefore, the activities of competing firms.



*Aid in proportion to the restructuring costs and benefits*

- (55) One of the requirements to be met is that there should be proportionality between the costs and benefits of the restructuring. To ensure this proportionality, aid recipients normally have to make a significant contribution to the restructuring plan, using either their own resources or external commercial sources of financing. Given the Region's contribution towards the restructuring scheme (up to 75 % of the total), the Commission takes the view that the participation of the recipients towards the restructuring is not sufficiently significant. This is confirmed by the fact that when the Italian authorities were asked to provide additional information on contributions in the form of own funds by the recipients, they replied only that the parties concerned would be asked to contribute only if they had net assets and the contribution was absolutely essential to the financial balance of the firm and would not jeopardise its efficiency. Not only does this answer not shed any light on the effort that might be required of the firms concerned, it suggests that some of them might not be asked to contribute anything at all, thus testifying to a lack of proportionality between the contribution of the Region and that of the recipients.
- (56) The disproportion between the two is accentuated by the amount of aid which may be paid to each recipient: ITL 600 million (about EUR 300 000), since, according to information provided by the Italian authorities themselves, the scheme is intended for small agricultural enterprises, in other words operators with no more than 10 annual work units.
- (57) Moreover, still in the context of the assessment of this lack of proportionality, the Italian authorities claimed that the waiving, by the banks, of the payment of interest on arrears did not constitute State aid. In support of this argument, they referred to the Commission's assessment of the behaviour of the State-controlled banks in respect of the aid awarded by the Austrian Government to Head Tyrolia Mares (see recital 37). They then transmitted statements by four banks confirming that the latter were indeed willing to forgo payment of the interest on arrears, and added that the banks which did not feel able to provide such a written statement had nevertheless expressed their approval. The documents in question do not, however, prove there is an analogy between this case and that of the abovementioned Austrian company since, as indicated in recital 37 above, all the banks (in other words both the public and the private banks) would have had to waive their right to payment of the interest on arrears to justify the claim that the operation did not constitute State aid. In the case at hand, the statement by the Italian authorities that the banks which had not felt that they could confirm in writing that they were in agreement had nevertheless expressed approval does not constitute formal proof of the position of the banks concerned. Given that not all the banks had provided a written statement and it was therefore not possible to determine whether they were all willing to forgo payment of the interest on arrears, the Commission cannot rule out the possibility that public and private banks might not necessarily adopt the same position on this issue. In such a case the operation would constitute aid which would be impossible to quantify — because of the lack of information — and difficult to replace in the context of the restructuring since, when they drew up the plan, the Italian authorities started from the premiss that the operation did not constitute State aid and should not, therefore, be taken into account when calculating the 75 % of public aid.
- (58) Lastly, with regard to the Deggendorf effect referred to in recitals 26(f) and 39, the undertaking given by the Italian authorities that no firm which had previously received, and had not repaid, illegal or incompatible aid would benefit under the scheme serves to dispel the doubts expressed by the Commission in this respect in the context of the procedure.

**V. CONCLUSIONS**

- (59) Notwithstanding the explanations provided by the Italian authorities in response to the initiation of the procedure laid down in Article 88(2) of the Treaty, the Commission considers that the restructuring plan presented by the abovementioned authorities is based on an unsuitable definition of firms in difficulty, that the scenario of a return to viability of the firms concerned is unrealistic,

that there is a real risk of distortion of competition owing to the effects of the increase in capacity on prices and, therefore, on profits and on the activities of competitors, and that the aid is not in proportion to the costs and benefits of the restructuring. In the light of the above and in view of the fact that, in their letter of 14 September 2001, the Italian authorities asked the Commission, pursuant to Article 7(7) of Regulation (EC) No 659/1999, to adopt a final decision within two months on the basis of the information available, the Commission can only conclude that the aid scheme for restructuring which Sardinia is planning to implement does not qualify for exemption under Article 87(3)(c) of the Treaty and cannot, therefore, be declared compatible with the common market. Lastly, it should be noted that all the points set out above would have been equally valid had the scheme been assessed in the light of the 1999 Guidelines on State aid for rescuing and restructuring firms in difficulty,

HAS ADOPTED THIS DECISION:

*Article 1*

The aid scheme which the Sardinia Region (Italy) is planning to implement under the terms of the Decision No 48/7 of 2 December 1997 of the Regional Executive is incompatible with the common market.

The aid scheme may accordingly not be implemented.

*Article 2*

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

*Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 13 November 2001.

*For the Commission*

Franz FISCHLER

*Member of the Commission*

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