

# COMMISSION

## COMMISSION DECISION

of 16 December 2003

### on the aid scheme implemented by Italy for natural disasters

(notified under document number C(2003) 4328)

(Only the Italian text is authentic)

(2004/307/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the aforementioned provisions <sup>(1)</sup>, and having regard to those comments,

Whereas:

#### I. PROCEDURE

- (1) By letter dated 22 February 1993, registered on 26 February 1993, the Italian Permanent Representation to the European Union notified the Commission under Article 88(3) of the Treaty of a Sicilian draft law providing for aid measures designed to help farmers affected by natural disasters and for amendments to existing aid schemes in the agriculture sector. The draft law was registered under State aid number N 126/93.
- (2) Supplementary information was requested by the Commission by letter dated 17 March 1993. In the absence of any reply from the Italian authorities, by letter dated 15 June 1993, the Commission invited the Italian authorities to provide the information requested within 15 days from the date of the letter. An additional reminder was sent by the Commission by letter dated 20 August 1993.
- (3) In reply to the reminders above, the Italian authorities transmitted an incomplete reply by letter dated 16 September 1993, registered as received on 26 September 1993. By letter dated 14 October 1993, the Commission invited the Italian authorities to submit a complete reply to the questions requested in its letter of 17 March 1993.
- (4) The Italian authorities replied by letter of 14 February 1994, registered on 22 February 1994.
- (5) From the reply sent by the Italian authorities by the letter of 14 February 1994, it emerged that the draft aid measures notified by the Italian authorities on 22 February 1993 had meanwhile been adopted as Regional Law No 6 of 12 January 1993 <sup>(2)</sup> (hereinafter Regional Law 6/93) and that the newly-adopted law also contained additional measures not initially notified to the Commission under Article 88(3) of the Treaty. The Commission therefore decided to transfer the aid to the register of non-notified aids under number NN 31/94.

<sup>(1)</sup> OJ C 295, 10.11.1995, p. 5.

<sup>(2)</sup> Norme per consentire alle aziende agricole danneggiate da eccezionali avversità naturali l'accesso ai benefici della legge 30 gennaio 1991, n. 31. Rifinanziamento della legge regionale 25 marzo 1986 n. 13 nonché anticipazioni dell'intervento dello Stato per le finalità del D.M. 21 dicembre 1987, N. 524 in applicazione del Regolamento CEE n. 857/84' *Gazzetta Ufficiale della Regione Siciliana*, 16 January 1993. (Provisions to enable agricultural undertakings affected by exceptional weather events to benefit from the aids provided for by Law No 31 of 30 January 1991; Refinancing of regional law No 13 of 25 March 1986 as well as advanced payments on the aids to be provided by the National Government in accordance with Ministerial Decree No 524 of 21 December 1987 implementing Regulation (EEC) No 857/84).

- (6) By telex of 30 March 1994, the Commission asked the Italian authorities to submit the final text of Regional Law 6/93 and asked for additional information.
- (7) Having received no reply to the abovementioned letter, by letter dated 21 June 1994 the Commission sent a reminder to the Sicilian authorities, asking them to provide the requested information.
- (8) The Italian authorities replied to the Commission's reminder by letters of 14 July 1994 and 14 September 1994, registered on 16 September 1994.
- (9) By letter dated 2 March 1995, the Commission informed Italy that it had no objections to raise with respect to the aid measures provided for by Articles 5 and 7 of Regional Law 6/93 in that they did not constitute aid within the meaning of Article 87(1). The Commission also raised no objections with respect to the refinancing of the aid provided for by Articles 9 and 15(3) et seq. of Regional Law (Sicily) No 13/86 <sup>(3)</sup>. However, the Commission also informed Italy that it reserved the right to examine that aid under Article 87(1) of the Treaty upon the adoption of general criteria for the assessment of aid awarded in the form of short-term subsidised loans.
- (10) The Commission also informed Italy in the same letter of its decision to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of Articles 1 and 6 of Regional Law 6/93 and the Italian national legislation providing for aid to support agriculture in the case of natural disasters.
- (11) The Commission explained that it had decided to initiate the proceedings under Article 88(2) of the Treaty not only with respect to Articles 1 and 6 of Law 6/93 but also with respect to the Italian national legislation on natural disasters because it was in practice impossible to assess the compatibility of Articles 1 and 6 of Law 6/93, providing for aid to farmers affected by natural disasters, with the applicable Community provisions on the subject without taking into account the national legislation on the matter to which Law 6/93 made constant reference and whose cumulation with the aids under scrutiny could not be excluded <sup>(4)</sup>.
- (12) In order to be able to proceed with the assessment of Regional Law 6/93 and undertake the evaluation of the national legislation on natural disasters, when opening proceedings the Commission asked the Italian authorities to provide the following instruments which had not been notified to the Commission under Article 88(3) of the Treaty:
  - all legal texts adopted up to then concerning, amending or implementing National Law No 590 of 15 October 1981 'Nuove norme per il Fondo di solidarietà nazionale' which was the national framework law on natural disasters to which Law 6/93 made reference and in conjunction with which Law 6/93 needed to be assessed,
  - all legal texts adopted up to then concerning, amending or implementing Decree Law 367 of 6 December 1990 co-ordinated with Conversion law No 31 of 30 January 1991 concerning 'Urgent measures in favour of agricultural and livestock undertakings affected by the exceptional drought in the 1989-1990 agricultural year' <sup>(5)</sup> in respect of which Articles 1 and 6 of Law 6/93 provided for specific derogations and provisions,

<sup>(3)</sup> See note 2

<sup>(4)</sup> More specifically, in opening the proceedings, the Commission stated that even though to a certain extent it was possible to 'isolate' the assessment of Articles 1 and 6 of Law 6/93 from that of the national legislation on which the law was based, in practice it was not possible to ignore the links existing between the regional text and the national legislation on natural disasters quoted in the regional law of which the latter was at the same time a refinancing and an amendment. In fact in the first place, the two national texts provided for additional aid measures which, on the basis of the information available at the time might be cumulated with the regional measures. Secondly, the conditions for benefiting from the regional law were to be found in the national texts. In the absence of any information on these aspects the Commission therefore concluded that on the basis of the information available it was not in a position to verify the conformity of the regional aid measures with the Community criteria on aids to compensate farmers for damage caused by natural disasters.

<sup>(5)</sup> Decreto Legge 6 dicembre 1990, n. 367 (in Gazzetta Ufficiale - serie generale - n. 285 del 6 dicembre 1990), coordinato con la legge di conversione 30 gennaio 1991, n. 31 (nella stessa Gazzetta Ufficiale alla pag. 3) recante: 'Misure urgenti a favore delle aziende agricole e zootecniche danneggiate dalla eccezionale siccità verificatasi nell'annata agraria 1989-1990'.

- the text of Law No 185 of 14 February 1992 'Nuova disciplina del Fondo di solidarietà nazionale' which was, and still is, the Italian national framework law on natural disasters; all the legal instruments amending, supplementing and implementing that law,
  - the text of national Law No 198 of 13 May 1985 <sup>(6)</sup> in respect of which Articles 1 and 6 of Law 6/93 provided for derogations and provisions and the text of any legal instruments amending, supplementing and implementing that law,
  - with respect to the abovementioned acts, any information defining the scope of the measures contained therein, the criteria for the grant of aid and the powers of the central government, regions and autonomous provinces as regards the grant of aid.
- (13) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* <sup>(7)</sup>. The Commission invited interested parties to submit their comments.
- (14) By letter dated 12 April 1995, the Italian national authorities submitted their comments on the opening of the procedure related to the national legislation on natural disasters and sent the Commission the texts of all the national laws requested when the procedure opened. The Italian national authorities left it up to the Sicilian regional authorities to send their comments on Regional Law 6/93. No comments were sent by the Sicilian authorities.
- (15) By letter of 19 April 2000, the Commission asked Italian authorities to provide additional information on the national legislation on natural disasters and on Regional Law 6/93. In the case of Regional Law 6/93, the Commission reiterated some of the questions already asked in previous requests for additional information to the Italian authorities but to which they had not replied. In the same letter <sup>(8)</sup>, the Commission drew the attention of the Italian authorities to the need to provide clear answers to such questions, failing which the Commission would be obliged to take a decision on the basis of the information available at that time.
- (16) By letter dated 20 November 2000, the Italian authorities provided the information requested by the Commission in its letter of 19 April 2000 with respect to the national legislation on natural disasters. With respect to Regional Law 6/93, they explained that it was for the Sicilian regional authorities to submit the information requested. No information has reached the Commission in this respect.
- (17) By letter dated 29 January 2001, the Italian authorities also transmitted the texts of two additional instruments relating to Law 185/92: Ministerial Decree No 100460 of 18 March 1993 implementing Article 6 of Law 185/92 and Presidential Decree No 324 of 17 May 1996. In the same letter, the Italian authorities stated that Decree No 100460 of 18 March 1993 had never been implemented in practice.
- (18) On 13 November 2002, Commission decided to split the case under assessment into three parts: State aid C 12/A/95, involving all aid to compensate damage caused by natural disasters granted by Italy on the basis of Law No 185 of 14 February 1992 up to 31 December 1999; State aid C 12/B/95, involving all aid granted by the Italian authorities on the basis of Law No 185 of 14 February 1992 from 1 January 2000; State aid C 12/C/95, involving Articles 1 and 6 of Regional Law No 6 of 12 January 1993 and the other national legislation mentioned therein.

<sup>(6)</sup> 'Interventi per i danni causati dalle eccezionali calamità naturali e da avversità atmosferiche nei mesi di dicembre 1984 e gennaio 1985. Nuova disciplina per la riscossione agevolata dei contributi agricoli di cui alla legge 15 ottobre 1981, n. 590' Italian Official Gazette No 118 of 21 May 1985 (Measures to compensate damage caused by the exceptional weather events of December 1984 and January 1985. New provisions for easier access to the contributions provided for by Law No 590 of 15 October 1981). Gazzetta Ufficiale No 118 of 21 May 1985.

<sup>(7)</sup> OJ C 295, 10.11.1995.

<sup>(8)</sup> Commission letter VI/10837 of 19 April 2000.

- (19) By letter of 10 July 2003, the Commission notified Italy of its decision C(2003) 2048 final of 9 July 2003 on State aid C 12/A/95, concerning aid to compensate damages for natural disasters granted by Italy on the basis of Law No 185 of 14 February 1992 up to 31 December 1999.
- (20) By letter of 7 August 2003, the Italian authorities pointed out that since the error in the Italian version of point 11.5 of the Community Guidelines on State aid in the agriculture sector<sup>(9)</sup> (hereafter referred to as the Guidelines) had misled the beneficiaries, the same reasoning contained at recital 129 of the decision on aid C 12/A/95, concerning the non recovery of incompatible aids for insurance policies, should be applied also to the corresponding aid in case C 12/B/95.
- (21) By letter of 23 September 2003, the Italian authorities notified a draft law designed to repeal Law 185/1992 and to replace it with a new Law complying with point 11 of the Community Guidelines on State aid in the agriculture sector (aid N 449/2003).
- (22) By letter of November 2003, registered as received on 24 November 2003 (and as included in the fax sent on 25 November 2003) the Italian authorities provided additional information and clarifications on the application of Law No 185/1992 from 1 January 2000.
- (23) The current decision concerns only the State aid granted by Italy on the basis of Law No 185/92 from 1 January 2000, namely the aid examined under State aid C 12/B/95. The aid granted by Italy on the basis of Law No 185/92 before 1 January 2000 and that granted on the basis of Articles 1 and 6 of Regional Law No 6/93 and the other national laws referred to therein, which are examined in the context of State aid C 12/A/95 and State aid C 12/C/95, are the subject of separate decisions.

## II. DESCRIPTION

### Content of Law No 185/92

- (24) Law No 185 of 14 February 1992 is the Italian national framework law on natural disasters. The law, which is currently in force, provides for a comprehensive set of aid measures designed to compensate farmers for the damage to agricultural production or the means of agricultural production resulting from natural disasters, adverse weather conditions or animal diseases.
- (25) The resources to compensate farmers for the damage suffered as a result of these events are provided through a national fund known as the National Solidarity Fund (Fondo di solidarietà nazionale), which allocates to the individual regions the sums necessary to compensate farmers. The Fund was originally set up in 1970 with a view to establishing an automatic system designed to implement specific actions of active and passive defence in the agricultural sector without having to resort each time to individual financing laws (leggi di spesa).
- (26) The law, which consists of 12 Articles, provides for four basic types of aid measure:
1. aid to compensate farmers for the damage caused by natural disasters and adverse weather events;
  2. aid to combat animal diseases;
  3. aid in favour of active forms of defence against adverse weather events;
  4. aid towards the payment of insurance premiums (also defined as passive forms of defence).

<sup>(9)</sup> OJ C 28, 1.2.2000, p. 2. As corrected in OJ C 232, 12.8.2000, p. 17.

- (27) The law does not specify the actual rules for the award of aid. The detailed rules for implementing the law are explained, *inter alia*, in an explanatory circular (Circolare n. 7 — hereinafter the circular) sent by the Italian Ministry for Agriculture on 28 May 1992 to all Italian regions, the autonomous provinces of Bolzano and Trento, banks specialising in agricultural loans and a large number of professional associations operating in the agriculture sector. The Italian authorities sent the circular to the Commission immediately after the procedure under Article 88(2) of the Treaty was initiated. Law 185/92 cannot be read in isolation from the circular and so the assessment of the law cannot be separated from that of the circular.

**Aid to compensate farmers for the damage caused by natural disasters and adverse weather events (Articles 3, 4 and 5 of Law 185/92)**

- (28) Article 3 of Law 185/92 defines various types of assistance to the agricultural sector designed to favour the resumption of production following natural disasters or adverse weather events. Under the Article, the bodies which are entitled to benefit from these measures are individual agricultural undertakings or groups thereof located in areas which the competent regional authorities have declared affected by a natural disaster or exceptionally adverse weather conditions. It is therefore up to the regional authorities to ascertain the exceptional nature of the event and the actual damage it caused <sup>(10)</sup>.
- (29) Under Article 3 of Law 185/92 to be entitled to the aid, the undertakings concerned must have suffered production losses equal to at least 35 % of their gross saleable production, with the exclusion of livestock losses. The calculation of the damage may also include the losses due to previous natural disasters which hit the same holding and the same crop during the same marketing year. A subsequent legal provision which amended Article 3(1) of Law 185/92, Article 127(1) of Law 388/2000, clarified that the events which hit the same holding must not have been the object of previous compensation.
- (30) Law 185/92 does not specify the 'natural disasters and exceptionally adverse weather events' for which farmers may be compensated. In their letter of 20 November 2000, however, the Italian authorities specified that these events were identified in Circular No 7 of 28 May 1992. The standard form, attached to the circular, which is to be used by potential beneficiaries to report the losses suffered, mentions the following events: hail, ice, persistent rains, drought, heavy snowfalls, floods, sirocco winds, earthquakes, whirlwinds, frost, strong winds and sea storms. In their letter of 20 November 2000, the Italian authorities added that the events in question can only be considered

<sup>(10)</sup> Article 2 of Law No 185/92 provides that once the Regions have established, on the basis of technical reports made by the provincial public inspection services competent for agriculture, the areas which were hit by a natural disaster or by comparable exceptional adverse weather events and have assessed the damages, the Ministry of Agriculture, following verification of the effects of the event concerned, issues a Decree which declares the exceptional nature of the event and allows the grant of aid in favour of the affected undertakings which incurred damage equal at least to 35 % of their gross saleable production. According to the information provided by the competent authorities in their letter of November 2003 regarding the aids paid for natural disasters and comparable events from 1 January 2000, the technical elements for the evaluation of the exceptional nature of each weather event concerned (including the relevant meteorological information) and for the quantification of its consequential damages are contained in specific technical reports which are drafted by the provincial public inspection services competent for agriculture, on a case-by-case basis, following the event concerned. For each weather event, or group of weather events, which have resulted in damage equal at least to 35 % of the gross saleable production of the undertakings affected, after verification of the above regional inspection reports, the Ministry of Agriculture issues a Decree declaring the exceptional nature of the event concerned. As an example of the procedure described and of the data on the basis of which the exceptional nature of a weather event is declared, the national authorities sent a dossier regarding drought in Sicily (Agrigento) in the years 2001/2002. In the same letter the competent authorities indicated that, on the basis of the procedure described, from 2000 up to that date 370 Decrees of exceptional weather had been issued for the following Regions; they attached copies of the Decrees concerned (each Decree contains: an indication of the exceptional weather event concerned, the period during which the event took place, the affected area, and the type of aid provided for by Law 185/92 which could be granted). The Regions for which the Ministry of Agriculture issued the above decrees in the period 2000 to 2003 are as follows: Piedmont (28 decrees); Valle D'Aosta (one Decree); Lombardy (21 decrees); Liguria (15 decrees); Autonomous Province of Trento (12 Decrees); Autonomous Province of Bolzano (three Decrees); Veneto (20 Decrees); Friuli Venezia-Giulia (16 decrees); Emilia Romagna (26 Decrees); Tuscany (20 Decrees); Marche (13 Decrees); Umbria (20 Decrees); Lazio (nine Decrees); Campania (39 Decrees); Abruzzi (14 Decrees); Molise (nine Decrees); Apulia (31 Decrees); Basilicata (nine Decrees); Calabria 19 (Decrees); Sicily (36 Decrees); Sardinia (nine Decrees).

exceptional when they result in serious losses to gross saleable production of not less than 35 %. In their letter of November 2003, regarding the aid granted from 1 January 2000, the Italian authorities further explained that, for the provisions of Law 185/92 to be applicable in any case (and thus for the beneficiary to qualify for State aid), the following two conditions must apply:

- (a) no less than 35 % of the affected crop must have been damaged;
- (b) the damage to gross saleable production must be no less than 35 % <sup>(1)</sup>.

(31) Neither the law nor the circular explains the method by which gross saleable production is calculated. In their letter of 20 November 2000, the Italian authorities had explained that the calculation was carried out in the following steps.

(a) Normal gross saleable production:

- on the basis of the production features of the undertaking, the quantities which may be produced under normal circumstances (no damage) are estimated, net of the products re-employed in the farm. Their monetary value is thus calculated,
- ancillary revenues already received and to be received during the year are calculated, including income support (if any) <sup>(2)</sup>,
- the sum of the production value and of ancillary revenues gives the normal gross saleable production.

(b) Actual gross saleable production which can be obtained after the damage

- on the basis of the same production features of the undertaking the quantities obtainable after the event are calculated, along with the relevant monetary values,
- ancillary revenue and income support measures (if any) are calculated <sup>(3)</sup>,
- the sum of the production obtainable after the damage and ancillary revenues gives the actual gross saleable production after the damage.

(c) impact of the damage

- the ratio between the gross saleable production after the event producing the damage and the normal gross saleable production gives the actual damage as a percentage of gross saleable production.

(32) In their November 2003 letter on the aid granted from 1 January 2000, the Italian authorities said that their production evaluations were made on the basis of estimates which, according to economic literature, take as the reference basis for both production and prices data that had been collected over a period of not less than three years. The Italian authorities considered that this methodology therefore fully complied with the one indicated at point 11.3.2 of the Guidelines <sup>(4)</sup>, as the minimum threshold of damage to qualify for aid was 35 % (and not 30 % or 20 % as required by the Guidelines) and the average normal production was calculated on the basis of three years taking as a reference 'normal agricultural years' (i.e. years without any natural disasters or excessively abundant production).

<sup>(1)</sup> According to the information provided by the Italian authorities in the November 2003 letter, when the undertaking hit by the exceptional weather event grows only one type of crop and all the land belonging to it is affected in the same way, these two conditions (35 % damage to the crop and 35 % damage to the gross saleable production) coincide. On the other hand, when the undertaking hit by the exceptional weather event grows more than one type of crop, the affected crop (e.g. maize) must have suffered much higher damage than 35 % (e.g. 80 %), so that this damage, spread over the unaffected crops (e.g. vegetables), results in damage to the gross saleable production of not less than 35 %.

<sup>(2)</sup> In their letter of November 2003 the Italian authorities pointed out that as of 1 January 2001, following the amendments introduced by Article 127(1) of Law 388/2000, the gross saleable production for calculating damage does not include contributions or other payments granted by the EU.

<sup>(3)</sup> See the preceding footnote.

<sup>(4)</sup> See footnote 9.

- (33) With respect to the damage to infrastructure and land improvement works, the circular says that any damage which may be attributed to negligence, insufficient maintenance, natural deterioration, or normal seasonal conditions is not entitled to compensation through the Fondo di solidarietà nazionale. The exceptional nature of the event must be proven by irrefutable technical data substantiated by official weather detectors. They must be compared with the data of previous years over a sufficiently long and statistically significant period <sup>(15)</sup>.
- (34) According to the information submitted by Italian authorities in their letter of 20 November 2000, the calculation of the loss is made at the level of the individual holding and the calculation of the aid takes into account the normal costs not incurred by farmers.
- (35) In their November 2003 letter on the aid granted from 1 January 2000, the Italian authorities further explained that the aid was calculated on the basis of the damage to crops for which the incidence of the damage was at least 35 %. According to the Italian authorities, damage with an incidence lower than 35 % was not considered for compensation as it was regarded as a normal business risk. The Italian authorities also explained that, in compliance with point 11.3.6 of the Guidelines <sup>(16)</sup>, insured crops were considered 'undamaged' and that losses on insured crops were excluded from the calculation of the aid.
- (36) Under Article 3 of Law 185/92, the holdings which meet the requirements above may benefit from the following types of aids:

(a) 'First aid' measures

The Article generically speaks of 'first aid measures' as provided for by Article 1 of Law No 590 of 15 October 1981 and subsequent amendments.

On the basis of the information contained in the abovementioned circular, it is possible to infer that these aids are granted where significant damage has occurred and for specific situations of need requiring prompt intervention. This heading includes one-off contributions designed to partially cover the damage suffered by farmers and to pay for the costs incurred to reduce the damage to production, including transport costs, warehousing costs and processing costs. According to the circular sent by the Italian authorities to the regions, these measures include:

- a per hectare contribution in the case of crops which were partially or completely lost,
  - a contribution of up to 40 % of the damage suffered for the loss of live stock and up to 30 % for the destruction of dead stock,
  - a contribution up to ITL 5 million for urgent repairs to rural buildings <sup>(17)</sup>,
  - a contribution up to ITL 50 million for the restoration of infrastructure serving agricultural holdings,
  - a contribution up to 100 % of costs incurred for the collection, sheltering and feeding of the livestock only for the emergency period and for no longer than six months in any event,
  - a contribution of up to 90 % of costs incurred to offset the damage to production.
- (b) A contribution of up to ITL 3 million to direct growers and farmers whose main occupation is farming. This amount may be increased up to ITL 10 million for farms where damage has occurred to specialised protected crop facilities. The aid may reach 80 % of eligible expenditure and is designed to enable farmers to restore their working capital (*capitale di conduzione*). As an

<sup>(15)</sup> As indicated by the competent authorities in their November 2003 letter, regarding the aid paid from 1 January 2000, the assessment of the exceptional nature of the weather events giving rise to the payment of aid is based on technical data (including the relevant meteorological information) which are contained in the specific technical reports drafted by the provincial public inspection services competent for agriculture, on a case-by-case basis, after the events concerned.

<sup>(16)</sup> See footnote 9.

<sup>(17)</sup> These amounts are set out in Law No 185/92 and in the accompanying Circular; they do not take account of subsequent amendments.

alternative to this type of aid, farmers not having farming as their main occupation may qualify for five-year-long soft loans.

- (c) Soft-loans of a duration of five years to enable farmers to continue their operations during the year in which the event took place and the following year. The loan granted may also cover the loan instalments falling due the year in which the event took place, provided they are not extended for more than 24 months.
  - (d) Ten-years soft mortgages for the recovery, restoration and conversion of structures in the holdings which were damaged by the event, including damage to trees, greenhouses and road facilities on the holding. As an alternative to this measure, the holdings may benefit from grants of up to 80 % of the actual costs incurred in the case of small holdings, 65 % for medium-sized ones and 50 % for large holdings. The aid may be granted for the recovery and repair of premises, land, trees, repair and replacement of agricultural equipment, plants for the storage and processing of products; purchase of seeds and the restoration of stocks.
  - (e) Five-year soft loans for processing and marketing cooperatives and producer groups recognised under Community legislation which have suffered a fall in income due to a reduction in the products supplied by members who were affected by the events concerned. The reduction must be at least equal to 35 % of the average production supplied and marketed over the preceding two years. Only a reduction in the quantities supplied directly due to a decrease in production caused by a natural disaster or like event may be taken into account. Any reduction due to other factors such as changes in the operation of cooperatives, changes in the number of their members or different agricultural practices cannot be taken into account. Moreover, the aid cannot be granted to those cooperatives which purchase from market suppliers, other than their members, more than half of the overall amount processed. The amount of the soft loan may be up to the fixed operating costs and for no more than the percentage reduction in income.
  - (f) Special contributions for the storage of citrus fruit and for the distillation of apples and pears which cannot be marketed may be granted to cooperatives and groups of fruit and vegetables producers.
  - (g) The Regions may also provide up to 100 % aid for the restoration and repair of road networks and water works.
- (37) Article 3(2) of Law No 185/92, listing the type of aids allowed for agricultural undertakings, was entirely replaced as of 17 September 2002 <sup>(18)</sup>, by Article 1 of Decree Law No 200 of 13 September 2002 (Urgent assistance for the agriculture sector hit by exceptional weather events), as converted into Law No 256 of 13 November 2002. This measure is currently being examined by the Commission under Aid No NN 145/02 (ex N 636/02) and is not the subject of this Decision.
- (38) In addition to the measures above which are provided for by Article 3 of the Law, Article 4 provides for an extension of up to 24 months of the repayment period for operating, improvement and agricultural loans to the agricultural undertakings which qualify for the aid. The extended instalments benefit from a subsidised rate. Article 5 of the Law grants the same undertakings a partial exemption from the payment of social security contributions falling due within twelve months of the occurrence of the event. The reduction may vary between 20 % and 50 % of the amount due.

<sup>(18)</sup> Article 6 of the Decree Law establishes that its provisions enter into force from the day following its publication in the Italian Official Journal (16 September 2002).



**Aid to combat animal diseases (Article 6 of Law 185/92)**

- (39) Article 6 authorises producer consortia to support the income of stock farmers affected by animal diseases requiring the compulsory slaughter of the animals under Law No 218 of 2 June 1988. The contributions take account of the loss of production due to the waiting period imposed by the competent authorities. The State contribution may be up to 50 % of the costs actually borne by the support fund.
- (40) The Article does not define the actual arrangements for implementing the law, which are instead laid down in a Decree issued by the Ministry of Agriculture. At the Commission's request, the Italian authorities submitted the relevant Decree (DM No 100460 of 18 March 1993) which, they state, has never been implemented (see their fax of 31 January 2001, subsequently confirmed by their November 2003 letter).
- (41) The decree provides for aid measures for agricultural undertakings affected by foot-and-mouth disease, classical swine fever, African swine fever, vesicular stomatitis or pleuropneumonia. Only agricultural undertakings that are members of a 'consortium for the defence of production' and who report the number of animals they have by March 30 of each year, agree to pay their membership contribution and agree to satisfy all hygiene and sanitary provisions for the protection of the stock farm may benefit from the aid. The contribution may not exceed 40 % of the gross saleable production which could have been obtained from the slaughtered animals. For each year and livestock head, the decree fixes the value of the gross saleable production. The contribution (within the 40 % limit) takes into account the farm's fixed costs and whether the animal was registered in a stud book. The overall contribution is proportional to the waiting period of the farm which cannot be longer than six months for cattle and three months for pigs, sheep and goats. The State contribution is paid to the consortia only after approval of the final accounts upon presentation of the relevant applications to the competent regional authorities. As an alternative, the consortia may decide to take out insurance contracts on the basis of Article 9(1)(b) of Law No 185/92.

**Active forms of defence against adverse weather events (Article 8 of Law 185/92)**

- (42) A contribution up to 80 % of eligible expenditure may be provided to invest in initiatives — even pilot ones — to actively protect <sup>(19)</sup> holdings (crops) against adverse weather events. A case in point is the installation of special nets against hail. The beneficiaries of the measures are protection consortia which are also responsible for the actual implementation of the projects. Aid at a rate of 50 % may also be granted for the running and maintenance of the equipment installed thanks to earlier contributions. The active protection projects may be financed only if they prove to be economically viable compared to the corresponding forms of passive protection. It is up to the Ministry for Agriculture to establish the minimum thresholds below which active protection projects are not considered economically viable.
- (43) According to the information submitted by Italian authorities in their letter of 20 November 2000, and subsequently confirmed in their November 2003 letter, no initiative of this type has ever been undertaken since apparently no suitable technological solutions to counter the damage caused by either natural disasters or adverse weather conditions has yet been found.

**Insurance contracts (Article 9 of Law 185/92 as replaced by Presidential Decree No 324 of 17 May 1996)**

- (44) In their letters of 20 November 2000 and November 2003, the Italian authorities said that Article 9 of Law 185/92 on subsidized insurance schemes had been replaced by Presidential Decree (D.P.R) No 324 of 17 May 1996 (Regolamento concernente norme sostitutive dell'art. 9 della legge 14 febbraio 1992, n. 185, sull'assicurazione agricola agevolata) which was issued in order to bring the Italian legislation on subsidised insurance into line with Community provisions.

<sup>(19)</sup> As opposed to 'passive protection' represented by insurance schemes.

- (45) Under Article 1 of Decree 324/96, the defence consortia set up on the basis of Law 364 of 25 May 1970 and Law 590 of 15 October 1981, as amended by Law No 185/92, may, on behalf of their members (if those members do not act directly), take out insurance contracts to cover losses caused by adverse weather events or animal or plant diseases. The insurance contracts must be concluded with individual insurance companies or with insurance companies participating in consortia in accordance with Commission Regulation (EEC) No 3932/92<sup>(20)</sup>. The insurance companies must be authorised to cover instances of hail. Farmers may choose between three types of contracts<sup>(21)</sup>:
- (a) compensation for the damage caused to specific crops by hail, ice, frost and other adverse climatic events (individual climatic events affecting individual crops);
  - (b) compensation for the damage caused to a holding's facilities and specific crops by all adverse climatic events affecting the value of production beyond the normal business risk. The contract may also concern losses due to plant diseases, if strictly related to adverse weather events, and to animal diseases (several weather events affecting individual crops or structures). This type of contract may also include damage to quality;
  - (c) compensation for the damage caused to a farm's primary crops by all adverse weather events if the level of damage exceeds the normal business risk (various climatic events affecting more than one crop or structure).
- (46) As to the ordinary business risk, in their letter of 20 November 2000 the Italian authorities clarified that it is generally set at 10 % to 15 %.
- (47) Under Article 2 of Decree 324/96 and based on the clarifications provided by the competent authorities in their November 2003 letter, the State contribution to eligible insurance expenditure (that is established using parameters for each type of guarantee, product and municipality which are fixed yearly by Ministerial Decree on the basis of statistical insurance data) cannot exceed 50 % of the costs actually incurred for the payment of the premium (65 % in areas of high climatic risk, which are to be defined by Ministerial Decree). In their November 2003 letter, the competent authorities also indicated that the aid has never been granted for more than 50 % of the cost of the insurance premium in compliance with point 11.5.1 of the Guidelines, and that the increase for areas of high climatic risk had never been applied. In their letter of 20 November 2000, the Italian authorities had already stated that the State contribution to the actual costs sustained generally ranged between 30 % and 40 %. In those few cases where a regional contribution was also granted, as in the case of the Province of Trento, the overall public contribution never exceeded 65 %. In their November 2003 letter, the competent authorities said that, based on the information provided by the Regions, it appeared that only a few of them in the 2000 to 2003 period had granted a regional contribution for insurance premiums in addition to the State one. In these cases, however, according to the information received by the Ministry of Agriculture, the total aid was limited to 50 % of the costs incurred for the payment of the premium. When the aid was granted for insurance policies relating to natural disasters or like events (and therefore with an aid rate possibly higher than 50 %), this was done under a specific regional aid scheme approved by the Commission<sup>(22)</sup>.
- (48) In their November 2003 letter, the Italian authorities indicated that a subsequent amendment to the aid for insurance contracts had been introduced by Article 127(4) of Law No 388/2000, which introduced the possibility of granting aid for insurance policies which were concluded individually by producers not belonging to any group or association.

<sup>(20)</sup> Commission Regulation (EEC) No 3932/92 of 21 December 1992 on the application of Article 85 (3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector (O J L 398 of 31.12.1992, p.7).

<sup>(21)</sup> According to the information provided by the competent authorities in their letter of 20 November 2000, the types of contract which may benefit from public contributions are the same as those provided for Article 9 of Law No 185/92.

<sup>(22)</sup> See for example Italy/Sardinia, aid N 554/2000 approved by letter SG 2000/D109513 of 22 December 2000.

- (49) Besides the above provision, Article 127 also contains other provisions which, according to the information provided by the Italian authorities, have already been notified to the Commission <sup>(23)</sup> or have not yet been implemented <sup>(24)</sup>, and must therefore be notified before their implementation. This decision does not therefore concern Article 127 of Law No 388/2000 or its implementing provisions, and takes Article 127(4) into account only in so far as it has introduced the option of granting aid for insurance policies which are concluded individually by producers not belonging to any group or association.
- (50) Moreover it must be noted that Article 127 of Law No 388/2000 was amended from 17 September 2002 by Article 2 of Law Decree No 200 of 13 September 2002 (Urgent interventions in favour of the agriculture sector which was hit by exceptional weather events) <sup>(25)</sup>, subsequently converted into Law No 256 of 13 November 2002. This measure is currently being examined by the Commission under Aid No NN 145/02 (ex N 636/02) and is not the subject of this Decision.

### III. ASSESSMENT

- (51) Article 87(1) of the EC Treaty provides 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.
- (52) Law No 185/92 provides for the grant of aid, through public resources, to specific agricultural undertakings which will undeniably be granted an economic and financial advantage as compared with other agricultural undertakings not receiving the same contribution. According to the case law of the Court of Justice, improvement in the competitive position of an undertaking as a result of State financial aid leads to possible distortion of competition compared with other competing undertakings not receiving such assistance <sup>(26)</sup>.
- (53) The measures affect trade between Member States in that there is substantial intra-Community trade in agricultural products as indicated by the table below, <sup>(27)</sup> which lists the overall value of agricultural imports and exports between Italy and the EU over the 1993 to 2001 period <sup>(28)</sup>.

(ECU/EUR million)

Totale agricoltura		
	EXPORT	IMPORT
1993	6 714	12 741
1994	7 360	13 390
1995	8 364	13 629

<sup>(23)</sup> NN 64/03 (ex N 618/02) (mutuality funds) and N 758/2002 (reinsurance fund).

<sup>(24)</sup> For example aid for insurance contracts covering the total production of the holding which may be damaged by all adverse climatic events.

<sup>(25)</sup> Article 6 of the Decree Law lays down that its provisions enter into force on the day following that of its publication in the Italian Official Journal (16 September 2002).

<sup>(26)</sup> See Case C-730/79 [1980] ECR 2671, grounds 11 and 12.

<sup>(27)</sup> Source: Eurostat.

<sup>(28)</sup> According to consistent case law, the condition of the effect on the trade is met since the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that aid strengthens the position of this company in relation to other competing companies in intra-Community trade, makes it possible to consider that this trade was affected. With regard to State aids in the agriculture sector it is settled case-law that, even when the overall amount of aid in question is small and it is divided among a large number of farmers, intra-Community trade and competition are affected (see Case C-113/2000 [2002] ECR I-7601, pointes 30 to 36 and 54 to 56; Case C-114/2000 [2002] ECR I-7657, points 46 to 52 and 68 to 69).

*(ECU/EUR million)*

Totale agricoltura		
	EXPORT	IMPORT
1996	9 191	14 525
1997	9 459	15 370
1998	9 997	15 645
1999	10 666	15 938
2000	10 939	16 804
2001	11 467	16 681

- (54) With respect to the above, it should however be recalled that the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition <sup>(29)</sup>.
- (55) The Commission therefore concludes that the measures are caught by the prohibition in Article 87(1) of the EC Treaty.
- (56) The prohibition in Article 87(1) is followed by exemptions in Article 87(2) and (3).
- (57) The exemptions listed in Article 87(2) (a) and (c) are manifestly inapplicable given the nature of the aid measure in question and its objectives. Indeed, Italy has not submitted that either Article 87(2) (a) or (c) is applicable.
- (58) Article 87(3)(a) is also inapplicable since the aid is not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.
- (59) With regard to Article 87(3)(b), the aid in question is not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.
- (60) This aid is not intended to achieve or suitable for achieving the objectives referred to in Article 87(3)(d).
- (61) Considering the nature of the aid under examination and its objectives the only exemptions which may be applicable are those provided for by Article 87(2)(b) and by Article 87(3)(c).

<sup>(29)</sup> Case 102/87 French Republic v Commission of the European Communities ECR [1988] 4067.

### Applicable provisions

- (62) The applicability of one of the abovementioned exceptions needs to be assessed in the light of the provisions applicable to the grant of State aid in the agriculture sector, namely the Community Guidelines for State aid in the agriculture sector <sup>(30)</sup> (hereinafter the Guidelines), which entered into force on 1 January 2000.
- (63) Point 23.3 of the Guidelines requires the Community to apply them with effect from 1 January 2000 to new notifications of State aid and to notifications which are pending on that date. Unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) 659/99 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty <sup>(31)</sup> will be assessed in accordance with the rules and the guidelines in force at the time the aid is granted.
- (64) Law 185/92 was never notified to the Commission and was therefore put into effect in breach of Article 88(3) of the Treaty. It therefore falls within the scope of Article 1(f) of Regulation (EC) No 659/99 and needs to be examined on the basis of the rules in force at the time the relevant aid was granted. Any aid granted on the basis of this law up to 31 December 1999 was assessed on the basis of the provisions applicable before the entry into force of the new Guidelines <sup>(32)</sup>. Any aid granted on the basis of the same law from 1 January 2000 must on the other hand be assessed on the basis of the new Guidelines.
- (65) As stated in paragraph 23 above, this decision concerns only the aid granted by Italy on the basis of Law 185 of 1992 from 1 January 2000 onwards. The aid granted on the basis of Law 185/92 before 1 January 2000 as well as the aid granted on the basis of Articles 1 and 6 of Regional Law 6/93 and other national laws referred to therein are assessed within the framework of State aid C 12/A/95 and State aid C 12/C/95 and are the subject of separate decisions.

### **Aid to compensate farmers for the damage caused by natural disasters and adverse weather events (Articles 3, 4 and 5 of Law 185/92)**

- (66) The Articles at issue provide for aid to compensate farmers for the damage suffered as a result of natural disasters or adverse weather conditions. If granted on or after 1 January 2000, this aid is assessed on the basis of point 11 (aid to compensate the damage caused to agricultural production or the means of agricultural production) of the Community Guidelines <sup>(33)</sup>. Under point 11.2 (Aid to make good the damage caused by natural disasters or exceptional occurrences) of the Guidelines the Commission has hitherto accepted that earthquakes, avalanches, landslides and floods may constitute natural disaster covered by Article 87(2)(b). Exceptional occurrences which have been accepted by the Commission as covered by Article 87(2)(b) include war, internal disturbances or strikes, and with certain reservations and depending on their extent, major nuclear or industrial fires and fires which result in widespread loss. Once the existence of a natural disaster or an exceptional occurrence has been demonstrated, the Commission will permit aid of up to 100 % to compensate for material damage. Compensation should normally be calculated at the level of the individual beneficiary and, in order to avoid over-compensation, any payments due, for example under insurance policies, should be deducted from the amount of aid. The Commission will also accept aid to compensate farmers for loss of income resulting from the destruction of the means of agricultural production, provided that there is no over-compensation.

<sup>(30)</sup> See footnote 9.

<sup>(31)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(32)</sup> Working document VI/5934/86, 10.11.1986. Rules governing the grant of national aids in the event of damage to agricultural production or the means of agricultural production and national aids involving the defraying of a proportion of the insurance premiums covering such risks.

<sup>(33)</sup> See footnote 9.

- (67) On the other hand, under point 11.3 (Aid to compensate farmers for losses caused by adverse weather conditions) of the Guidelines, the Commission has consistently held that adverse weather conditions such as frost, hail, ice, rain or drought cannot of themselves be regarded as natural disasters within the meaning of Article 87(2)(b) of the Treaty. However, because of the damage that such events may cause to agricultural production or the means of agricultural production, the Commission has accepted that such events may be likened to natural disasters once the level of damage reaches a certain threshold, which has been fixed at 20 % of normal production in the less-favoured areas and 30 % in other areas. Because of the inherent variability of agricultural production, the maintenance of such a threshold also appears necessary to ensure that weather conditions may not be used as a pretext for the payment of operating aid. In order to enable the Commission to assess such aid schemes, notifications of aid measures to compensate for damage caused by adverse weather conditions should include appropriate supporting meteorological information.
- (68) Where damage occurs to annual crops, the relevant threshold of loss of 20 % or 30 % should be determined on the basis of the gross production of the relevant crop in the year in question compared with the gross annual production in a normal year. In principle the gross production in a normal year should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions. The Commission will however accept alternative methods of calculation of normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields. Once the volume of loss of production has been determined, the amount of aid payable is calculated. In order to avoid over-compensation, the amount of aid payable should not exceed the average level of production during the normal period multiplied by the average price during the same period minus actual production in the year the event took place, multiplied by the average price for that year. The amount of aid should also be reduced by the amount of any direct aid payments.
- (69) As a general rule, the calculation of loss should be made at the level of the individual holding. This is particularly the case where aid is paid to compensate for damage caused by localised events. However, where the adverse weather conditions have affected a wide area in the same way, the Commission will accept that aid payments are based on average losses provided that these are representative and will not result in significant overcompensation of any beneficiary.
- (70) In the case of damage to the means of production the effects of which are felt over several years (for example the partial destruction of tree crops by frost), for the first harvest following the occurrence of the adverse event the percentage real loss in comparison with a normal year, determined in accordance with the principles set out in the previous paragraphs, must exceed 10 % and the percentage real loss multiplied by the number of years in which production is lost must exceed 20 % in the less-favoured areas and 30 % in other areas.
- (71) The Commission will apply the principles set out above by analogy in the case of aid to compensate for losses to livestock caused by adverse weather conditions.
- (72) In order to avoid over-compensation, the amount of aid paid should be reduced by any amount received under insurance schemes. Furthermore, normal costs not incurred by the farmer, for example because of the non-harvesting of the crop, should also be taken into account. However, where such costs are increased as a result of the adverse weather conditions, additional aid may be granted to cover these costs.
- (73) Aid to compensate farmers for damage to buildings and equipment caused by adverse weather events (for example damage to glasshouses caused by hail) will be accepted up to 100 % of actual costs, without any minimum threshold being applied.
- (74) As a general rule only farmers or the producer association to which a farmer belongs are entitled to benefit from the aids described in this section. In such cases, the amount of aid must not exceed the actual damage incurred by the farmer.

**Nature of the events covered by the law and level of damage giving right to compensation**

- (75) The Italian law refers generically to natural disasters and adverse weather conditions without mentioning any specific event. In this respect, the Commission asked the Italian authorities to specify the types of events which, under certain conditions, might entitle farmers to compensation. In their letter of 20 November 2000, the Italian authorities replied by stating that the events covered by the law had been identified in the explanatory circular letter sent to all the Regions concerned and to other parties. The standard form attached to the circular which was to be used by potential beneficiaries to report the losses suffered mention the following events: hail, ice, persistent rains, drought and heavy snowfalls, floods, sirocco winds, earthquakes, whirlwinds, frost, strong winds and sea storms.
- (76) Of these events, only floods and earthquakes fall within the definition of natural disasters provided for by Article 87(2)(b) of the Treaty and justify the grant of compensatory aid regardless of the level of damage caused. As to the others, the Guidelines mention only frost, hail, ice, rain or drought, and state that to be entitled to the aid the agricultural undertakings affected must have reported damage reaching at least the 30 % threshold calculated following the methodology described in the Guidelines. No mention is made in the Guidelines of heavy snowfalls, sirocco winds, whirlwinds, strong winds or sea storms, but the Commission has occasionally likened these events to those mentioned in the Guidelines<sup>(34)</sup>. The Italian law stipulates that, in the case of all the adverse weather events it covers, the affected agricultural undertakings are entitled to compensatory aid only if they report a loss of production of at least 35 % of gross saleable production.
- (77) Neither the law nor the explanatory memorandum explains how the losses are to be calculated. At the Commission's explicit request, the Italian authorities explained the method of calculation used in their letter of 20 November 2000 and in their letter of November 2003. As shown from the description in paragraphs 28 to 32 above, the method adopted by the Italian authorities to calculate the loss of production does not coincide totally with that proposed by the Commission.
- (78) In fact, whilst the Commission requires a 30 % (20 %) loss of normal production of the relevant crop calculated over a reference period of the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions, the Italian authorities require a 35 % loss of both the relevant crop and the gross saleable production of the year in which the event takes place. The Italian method does not therefore require the reference period of the 'previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions' on the basis of which, according to the Guidelines, normal production is calculated and it is based also on the calculation of the loss of 'gross saleable production'. According to the Guidelines, the Commission will however accept alternative methods of calculating normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields.
- (79) In their November 2003 letter on the aid granted from 1 January 2000, besides clarifying that for the provisions of Law No 185/92 to be applicable (and thus for the beneficiary to qualify for State aid), the incidence of the damage on both the affected crop and on gross saleable production must not be lower than 35 %<sup>(35)</sup>, the Italian authorities also indicated that their evaluations regarding

<sup>(34)</sup> See for example: N 173/2001 (Italy-Sardinia); C12/A/95 (Italy). For all the exceptional adverse weather events for which Italy granted compensation under Law 185/92 from 1 January 2000 and the relevant meteorological data, see footnote 10 above.

<sup>(35)</sup> According to the information provided by the Italian authorities in their November 2003 letter, when the undertaking affected by the exceptional weather event grows only one type of crop and all the land belonging to it is affected in the same way, these two conditions (35 % damage to the crop and 35 % damage to the gross saleable production) coincide. On the other hand, when the undertaking affected by the exceptional weather event grows more than one type of crop, the affected crop (e.g. maize) must have suffered much higher damage than 35 % (e.g. 80 %), so that this damage, spread over the unaffected crops (e.g. vegetables), results in damage to the gross saleable production of not less than 35 %.

production were made on the basis of estimates which, according to economic literature, take as a reference basis for both production and prices data collected over a period of not less than three years. According to the Italian authorities, this methodology therefore fully complies with the one indicated at point 11.3.2 of the Guidelines <sup>(36)</sup>, as the minimum threshold of damage to qualify for aid is 35 % (and not 30 % or 20 % as required by the Guidelines) and the average normal production is calculated on the basis of three years taking as a reference 'normal agricultural years' (i.e. years without any natural disasters or excessively abundant production).

- (80) Since the purpose of the reference period is to make sure that the resulting calculation is actually representative and is not based on abnormally high yields, it needs to be established that the absence of the reference period of 'the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions' does actually make the Italian method of calculation scarcely representative of average normal production, so opening the way to abuse and distortion. To this end, it should be noted that the method used by the Italian authorities is based on the level of production which can be obtained by the farm under normal conditions, i.e. in the absence of damage to the farm. The method takes account of the specific production features of the farm, net of the percentage of production which is re-employed in the farm. The production level is therefore calculated on 'objective' parameters (namely the surface of the farm, the inputs used) which are typical of the specific production unit concerned and which cannot be affected by external seasonal factors capable of modifying the level of production which can on average be obtained in that farm.
- (81) Moreover the Italian authorities expressly indicated that their evaluations regarding production are made on the basis of estimates which, according to economic literature, take as a reference basis for both production and prices data collected over a period of not less than three years. The use of such estimates, which, according to the information provided, allows the calculation of the average normal production on the basis of three 'normal agricultural years' (i.e. years without any natural disasters or excessively abundant production), makes it therefore no longer necessary to resort to the reference period of 'the previous three years, excluding any year in which compensation was payable as a result of other adverse weather conditions' to have a representative value. The level of normal production which is obtained through this method cannot in fact be inflated by external factors giving abnormally high yields. Moreover, it is also to be considered that the loss is calculated at the level of the individual farm and not on the basis of an average applicable to more farms, a factor which could lead to an inaccurate representation of the damage suffered by the individual farms and might involve the risk of overcompensation.
- (82) Regarding the fact that the calculation of the damage may also include the losses due to previous natural disasters which hit the same holding during the same marketing year, as long as the events which hit the same holding have not been the object of earlier compensation, the Italian authorities in their letter of November 2003 clarified that this means that: 1. in order to activate the aid measure an adverse weather event must have caused, in any case, a loss of 35 % of the crop concerned (as only in this case the weather event may be considered exceptional); 2. the aid is paid only in relation to the loss suffered by the crop which reported a loss not lower than 35 %; 3. the losses due to earlier natural disasters which hit the same crops or other crops (losses which caused damage below 35 %) are counted only to establish the incidence of the damage on the gross saleable production and are not calculated in the total losses which are the object of the public assistance.
- (83) As the Italian authorities guaranteed in their letter of November 2003, the aid is therefore calculated only on the basis of the damage to crops for which the incidence of damage has not been lower than 35 %.
- (84) In the same letter the Italian authorities further said that, in compliance with point 11.3.6 of the Guidelines <sup>(37)</sup>, insured crops were considered 'undamaged' and the losses relating to insured crops were excluded from the calculation of the aid.

<sup>(36)</sup> See footnote 9.

<sup>(37)</sup> See footnote 9.



- (85) In the light of the information and clarifications provided by the Italian authorities and reported above, it may therefore be concluded that the method of calculation of the losses of production which Italy has applied to compensate farmers for the damage caused by adverse weather conditions can be considered to comply with the requirements of point 11.3 of the Community Guidelines for State aid to the agriculture sector, as the minimum threshold of damage to qualify for aid is 35 % (and not 30 % or 20 % as required by the Guidelines) of both the affected crop and the gross saleable production and the average normal production of the affected farm is calculated on the basis of three 'normal agricultural years' (i.e. years without any natural disasters or excessively abundant production).

### Intensity of the aid and risk of overcompensation

- (86) Under Community legislation, if the requirements of paragraphs 75 to 82 above are met, aid to compensate farmers for the damage incurred may reach 100 %. Under no circumstances can the aid granted exceed the losses actually incurred by farmers.
- (87) The Italian authorities have confirmed that the aid is calculated on the basis of the damage to crops for which the level of damage has been not lower than 35 % (as damage below 35 % is considered by them to fall within normal business risk), and that, in compliance with point 11.3.6 of the Guidelines<sup>(38)</sup>, the losses on insured crops are excluded from the calculation of the aid. In their letter of 20 November 2000, the Italian authorities had already confirmed that the normal costs not incurred by the farmer — by virtue of not harvesting the crop for example — had also been taken into account.
- (88) The law under examination lays down that the farmers affected by the event may have access to one or more of the types of aid described in the law itself, depending on the type of damage reported and the type of agricultural undertaking involved. The Italian authorities have clearly indicated that even though farmers may receive more than one type of aid, no overcompensation is ever possible. In their letters of 20 November 2000 and November 2003 they explained that the aid for damage to crops must be related to and not exceed: (i) the value of the financing invested in the production cycle (which is technically known as 'capitale di conduzione o anticipazione culturale' and which includes the expenditure incurred by the farmer to obtain the production: e.g. expenditure on fertilising, harvesting, parasite prevention, the purchase of technical means such as seeds and fertilisers etc.) and not recovered because of the loss of the product (as indicated by the Italian authorities, the aid is not related to the actual damage, which would also include the expected farm profit); and (ii) the additional costs, if any, to be sustained by the agricultural holdings to complete the production cycle. Aid for the restoration of farm facilities and premises covers only part of the cost. The authority paying out the aid must always check that the compensation does not exceed the damage incurred, since that would obviously be illicit enrichment. Equally, the authorities responsible for paying the aid must take account of any other public aid which might be granted for the same purposes as the law at issue.
- (89) Based on the above, it is possible to conclude that the aid to compensate farmers for damage caused by natural disasters and adverse weather conditions provided for by Articles 3 (before its amendment by Article 1 of Law Decree No 200 of 13 September 2002)<sup>(39)</sup>, 4 and 5 of Law 185/92 may

<sup>(38)</sup> See footnote 9.

<sup>(39)</sup> As indicated above, Paragraph 2 of Article 3 of Law No 185/1992, listing the types of aid allowed in favour of agricultural holdings, was entirely replaced from 17 September 2002 by Article 1 of Law Decree No 200 of 13 September 2002 (Urgent assistance for the agriculture sector which was hit by exceptional weather events), as converted into Law No 256 of 13 November 2002. This measure is currently being examined by the Commission under Aid No NN 145/02 (ex N 636/02) and is not the subject of this Decision.

be considered compatible with the common market under Article 87(2)(b) and Article 87(3)(c) of the Treaty as aid to make good the damage caused by natural disasters or comparable climatic events. With regard to the aid to be granted after the notification of this decision to Italy, the Italian authorities must notify on a case-by-case basis each weather event giving rise to compensation under Law No 185/92 and provide the appropriate supporting meteorological information, so as to enable the Commission to exercise its control in accordance with points 11.2.1 and 11.3.1 of the Community Guidelines for State aid to the agriculture sector <sup>(40)</sup>.

#### **Aid to cooperatives engaged in the processing and marketing of agricultural products (Article 3 of Law 185/92)**

- (90) Law 185/92 lays down that cooperatives engaged in the processing and marketing of agricultural products which have suffered a reduction in income due to a reduction in the products supplied by their members who were affected by the events concerned may also benefit from the aids provided for therein <sup>(41)</sup>. The reduction must be at least equal to 35 % of the average production supplied and marketed in the preceding two years.
- (91) Before the entry into force of the new Community Guidelines, Commission practice authorised this kind of aid to processing and marketing cooperatives <sup>(42)</sup>. The Commission's approach was based on the idea that owing to the reduction in production caused by the adverse weather event or natural disaster, farmers had to reduce the quantity of products supplied to the cooperatives of which they were members and which were responsible for the marketing of their production. Farmers who had been hit by a natural disaster were therefore penalised twice: first of all as a result of the loss of their crops and secondly as a result of the losses of the cooperatives of which they were members and to which they generally supplied their production. The latter in fact, due to the scarcity of supplies caused by the event, might operate at a loss on account of the fixed costs they have to pay. After the entry into force of the Community Guidelines, the Commission implemented this practice <sup>(43)</sup> in the light of point 11.3.8 of the Guidelines, which states that 'In principle aid under this section may only be paid to farmers or, alternatively, to a producers' organisation of which the farmer is a member, in which case the amount of aid should not exceed the actual loss incurred by the farmer.'
- (92) In their letter of November 2003 the Italian authorities indicated that the damage incurred by the cooperatives was passed on to its member producers. Therefore, when the aid for the damage was paid to the cooperative, the same aid was not allowed in favour of the member producer. Based on the explanations provided, the aid was calculated on the basis of the damage suffered by the producer, which in turn reduced the volume of products supplied and which was not offset by the income brought in by their marketing. The Italian authorities consider that the procedure for granting this aid complies with point 11.3.8 of the Guidelines, as the total aid paid (calculated as the sum of the aid paid direct to the producer and the aid paid to the cooperative on a producer's behalf in respect of expenditure incurred by him) does not exceed the actual loss incurred by the farmer.
- (93) In the light of the above considerations, there are no grounds for excluding from the benefits of the law processing and marketing cooperatives which have received these kinds of aid on behalf of their member producers rather than the aid going direct to the latter.

<sup>(40)</sup> Point 11.2.1 states that: '... the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis ...'. Point 11.3.1 states that: 'In order to enable the Commission to assess such aid schemes, notifications of aid measures to compensate for damage caused by adverse weather conditions should include appropriate supporting meteorological information'.

<sup>(41)</sup> Five-year soft loans, their amount being in proportion to the fixed operating costs and limited to the percentage reduction in income (see paragraph 36(c) of this Decision).

<sup>(42)</sup> See for example aids N 877/95 and N 435/95.

<sup>(43)</sup> See for example: N 679/2001 (Italy-Bolzano); N 250/2002 (Italy-Bolzano); N 301/2002 (Italy-Trento).

- (94) Based on the above, it is possible to conclude that the aid provided for by Article 3 (before its amendment by Article 1 of Law Decree No 200 of 13 September 2002)<sup>(44)</sup>, of Law 185/92, designed to compensate cooperatives engaged in the processing and marketing of agricultural products for damage incurred as a result of adverse weather conditions, which complies with point 11.3.8 of the Guidelines and was granted to the cooperatives on behalf of their member producers instead of the aid which could have been granted direct to the latter, may be considered compatible with the common market in accordance with Article 87(2)(b) of the EC Treaty and Article 87(3)(c) respectively. With regard to the aid to be granted after the notification of this decision to Italy, the competent authorities must notify each individual aid separately, so as to allow the Commission to monitor these types of aid closely, on a case-by-case basis, in accordance with its practice<sup>(45)</sup>.

#### **Aid to combat animal diseases (Article 6 of Law 185/92)**

- (95) Article 6 of Law 185/92 generically authorises producer groups to take measures to support the income of farmholdings affected by an animal disease. The detailed arrangements for implementing this aid, which are not set out in the Article, are instead laid down in a Decree issued by the Ministry of Agriculture. In this respect, Law 185/92 does not provide for the grant of immediate and direct aid to the farmers concerned, a task which is instead left to the Decree. Article 6 of Law 185/92 does not accordingly constitute State aid within the meaning of Article 87(1) of the Treaty.

#### **Ministerial Decree No 100460 of 18 March 1993**

- (96) The Decree lays down the detailed arrangements for implementing the measures generically laid down in Article 6 of Law 185/92, and so falls within the scope of Article 87(1) of the Treaty.
- (97) Following the entry into force of the new Community Guidelines for State aid in the agriculture sector, in order for aid to combat animal diseases to be authorised under section 11.4 of the Guidelines, four conditions have to be fulfilled:
- (98) 1. the disease has to be a matter of public concern. Community or national provisions must exist, whether laid down by law, regulation or administrative action, to the effect that the competent national authorities should deal with the disease in question and the aid measure should be part of an appropriate programme at Community, national or regional level for the prevention, control or eradication of the disease concerned (point 11.4.2 of the Guidelines);
- (99) 2. the aid measure should be preventative or compensatory or a combination of both (point 11.4.3 of the Guidelines);
- (100) 3. the aid measure should comply with the relevant Community veterinary legislation (point 11.4.4);
- (101) 4. the aid rate should be no more than 100 % of the costs incurred and should not give rise to over-compensation (point 11.4.5).

<sup>(44)</sup> As indicated above, Article 3(2) of Law No 185/1992, listing the types of aid allowed for agricultural holdings, was entirely replaced from 17 September 2002 by Article 1 of Law Decree No 200 of 13 September 2002 (Urgent assistance for the agriculture sector hit by exceptional weather events), as converted into Law No 256 of 13 November 2002. This measure is currently being examined by the Commission under Aid No NN 145/02 (ex N 636/02) and is not the subject of this Decision.

<sup>(45)</sup> See footnote 43.

- (102) Moreover, under the new Guidelines, by analogy with point 11.2.2 thereof, in order to avoid overcompensation, any payments due, for example under insurance policies, should be deducted from the amount of aid.
- (103) The aid provided by the Ministerial Decree is granted only in the case of diseases for which a compulsory programme of eradication is provided for by Law No 218 of 2 June 1988 on measures to combat foot-and-mouth and other animal diseases (Misure per la lotta contro l'afta epizootica ed altre malattie epizootiche degli animali). The aid is provided for the waiting period imposed on the livestock farm by virtue of the slaughtering requirement, and in any event for no more than six or three months. The objective of the measure is compensatory since it is designed to compensate farmers for the loss of income suffered as a result of the compulsory slaughter of their animals under an eradication campaign. The measures appear to comply with the relevant Community legislation. No overcompensation appears possible as a result of the aid since the contribution cannot exceed 40 % of the gross saleable production which might have been obtained from the sale of the slaughtered animals.
- (104) In their letter of November 2003, the Italian authorities guaranteed that, should the measure be implemented in the future, they would check that no overcompensation could occur as a result of the cumulation of this aid measure with other public aid granted for the same purpose, and that any payments due under insurance policies would be deducted from the amount of aid.
- (105) In the light of the above, the aid measures provided for by Ministerial Decree 100460 may be deemed to comply with the applicable Community provisions in force. They can therefore be considered compatible with the common market in accordance with Article 87(3)(c) of the Treaty.

#### **Aid for the implementation of active defence projects (Article 8 of Law 185/92)**

- (106) Article 8 of Law 185/92 provides for an 80 % aid rate of eligible expenditure for investment on 'active defence' initiatives such as the building of anti-hail nets as well as a 50 % aid rate in respect of eligible expenditure on the operation and management of infrastructure created through such investment. The investment is intended to prevent the damage caused by adverse weather events or exceptional occurrences. According to the information provided by Italian authorities, this investment is to be viewed as an alternative to passive defence initiatives (insurance) when it proves to be more viable and economically appropriate than the latter.
- (107) Despite its purpose, the aid provided for by Article 8 cannot be assessed on the basis of the rules set out in point 11 of the Guidelines concerning aid to compensate for damage to agricultural production or the means of agricultural production. These rules in fact only cover *ex post* compensatory aid granted after the actual occurrence of the damage or loss or *ex ante* aid in the form of insurance premiums against such potential risks. The rules make no provision for aid for active defence initiatives such as the ones described by the Italian authorities in Article 8 of Law 185/92.
- (108) It follows that the aid provided for by this Article needs to be assessed in the light of the provisions applicable to aid for investment on farm holdings, i.e. investment in respect of primary production, which since 1 January 2000 is governed by point 4.1. of the Guidelines.
- (109) In particular point 4.1.1.1 of the Guidelines requires that the investment should pursue one or more of the following objectives: to reduce production costs, to improve and redeploy production, to increase quality, to preserve and improve the natural environment, hygiene conditions and animal welfare standards or to promote the diversification of farm activities. Aid for investment that does not pursue any of these objectives, in particular aid for simple replacement investment which in no way improves the conditions of agricultural production, cannot be considered to facilitate the development of the sector and does not therefore fall within the scope of the derogation provided for by Article 87(3)(c) of the Treaty.

- (110) In accordance with point 4.1.1.2, the maximum rate of public support, expressed as a volume of eligible investment, is limited to a maximum of 40 %, or 50 % in the less-favoured areas, as defined in Article 17 of the Rural Development Regulation <sup>(46)</sup>. However, in the case of investment undertaken by young farmers within five years of setting-up, the maximum aid rate is increased to 45 %, or 55 % in the less-favoured areas.
- (111) In accordance with point 4.1.1.3, investment aid may only be granted to agricultural holdings whose economic viability can be demonstrated by an assessment of the prospects <sup>(47)</sup> of the holding and where the farmer possesses adequate occupational skills and competence. The holding must comply with minimum Community environment, hygiene and animal welfare standards. However, where investment is undertaken in order to comply with newly introduced minimum standards regarding the environment, hygiene or animal welfare, aid may be granted in order to achieve these new standards.
- (112) In accordance with point 4.1.1.4, no aid may be granted for investment having as its objective increased production for which normal market outlets cannot be found. The existence of normal market outlets should be assessed appropriately in terms of the products concerned, the types of investment and existing and expected capacities. Any restrictions on production or limitations of Community support under the common market organisations must be taken into account. Where, under a common market organisation, restrictions on production or limitations of Community support exist at the level of individual farmers, holdings or processing plants, no aid may be granted for investment which would increase production beyond these restrictions or limitations.
- (113) In accordance with point 4.1.1.5, eligible expenditure may include: the construction, acquisition or improvement of immovable property; new machinery and equipment <sup>(48)</sup>, including computer software; general costs, such as architects', engineers and consultants' fees, feasibility studies, the acquisition of patents and licences, up to 12 % of the expenditure referred to above; land purchase, including legal fees, taxes and land registration costs. In accordance with point 4.1.1.8, the maximum expenditure eligible for support may not exceed the limit for total investment eligible for support set by the Member State in accordance with Article 7 of the Rural Development Regulation.
- (114) In accordance with point 4.1.1.9, the Commission will also apply the rules set out in this section by analogy to investments in primary agricultural production which are not made by farmers, for example where equipment is purchased for shared use by a group of producers.
- (115) The aid provided for by Article 8 of Law 185/92 is generically defined as 'active defence' investment, to be carried out as an alternative to passive defence initiatives (insurance). The Italian authorities were asked to describe and provide examples of the types of investments which might be covered by this definition. In their reply of 20 November 2000, the Italian authorities generically referred to anti-hail nets as the sole example of such investment. They also stated that in reality no investments of this type had ever been financed for lack of technologically suitable options.

<sup>(46)</sup> 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 (OJ L 160, 26.6.1999, p. 80); Regulation last amended by Regulation (EC) No 1783/2005 (OJ L, 21.10.2003, p. 70).

<sup>(47)</sup> Aid cannot be granted to undertakings in financial difficulties except where such aid satisfies the conditions laid down in the Community Guidelines on State aid for rescuing and restructuring firms in difficulty.

<sup>(48)</sup> The purchase of second-hand equipment may be regarded as eligible expenditure in duly substantiated cases when the four following conditions are met simultaneously: a declaration by the seller of the equipment confirms its exact origin and that the equipment has not already been the subject of national or Community assistance; the purchase of the equipment represents a particular advantage for the programme or project, or is made necessary by exceptional circumstances (no new equipment available on time, thus threatening proper execution of the project); reduction of the costs involved (and therefore of the amount of aid) as compared with the cost of the same equipment purchased new, while maintaining a good cost-benefit ratio; the second-hand equipment acquired must have the necessary technical and/or technological characteristics consistent with the requirements of the project.

- (116) The grant of the aid under examination is not subject to any of the conditions laid down in point 4.1.1 of the Guidelines as listed above. Moreover it should be recalled that Article 8 of Law 185/92 provides for an aid rate of up to 80 % for this kind of investment. The maximum aid rate authorised by the Commission for investment on primary production is 40 % in normal areas and 50 % in less-favoured regions within the meaning of Article 17 of Council Regulation (EC) No 1257/99. The 80 % aid rate provided for by the Italian authorities would therefore exceed the maximum aid rate authorized by the Commission.
- (117) The Commission therefore considers that the 80 % aid in favour of active defence investments provided for in Article 8 of Law 185/92 cannot benefit from any of the derogations to Article 87(1) of the EC Treaty and is therefore incompatible with the common market.
- (118) Article 8 of Law 185/92 also provides for a 50 % aid in respect of eligible expenditure on operating and maintaining the facilities and structures created as a result of the aid described in the previous paragraphs. In its letter of 19 April 2000, the Commission asked the Italian authorities to justify the grant of this contribution, apparently designed to cover operating costs which should normally be borne by the holdings as part of their normal day to-day activity. In their letter of 20 November 2000, the Italian authorities said that the proposed active defence measures were collective in character and had to be carried out by defence consortia or other bodies. The related costs should not be included as part of those borne by the individual holdings. The 50 % contribution was established by analogy with the aid towards the costs of insurance premiums.
- (119) The Italian authorities' reply confirms that the 50 % contribution would indeed be granted to cover the maintenance and operating costs of weather protection facilities constructed as a result of the investment described above. The fact that the contribution would be granted to and managed by the consortia is irrelevant since the final beneficiaries of the aid would still be the farmers benefiting from the active defence structures. The aid is therefore simply designed to relieve farmers of normal operating costs associated with the day-to-day running of their activities (including those involving the maintenance of farm structures and investment) for the duration of the aid. Aid towards the payment of costs which should normally be borne by farmers themselves are by definition operating aids<sup>(49)</sup>, i.e. aid which simply confers a short-term economic advantage. This aid has no structural effect on the development of the sector and cannot be considered to facilitate the economic development of certain economic activities or of certain economic areas. It can therefore be concluded that it cannot benefit from any of the derogations to Article 87(1) provided for by the Treaty and is therefore incompatible with the common market.
- (120) By letter of 20 November 2000, and subsequently their November 2003 letter, the Italian authorities confirmed that the aid for active defence provided for in Article 8 of Law 185/92 had never been implemented.

**Aid for the payment of insurance contracts (Presidential Decree 324 of 17 May 1996 on rules to replace Article 9 of Law 185/92)**

- (121) Article 9 of Law 185/92 lays down the conditions under which aid to cover the cost of insurance premiums may be granted by the Fondo di solidarietà nazionale.
- (122) In their letter of 20 November 2000, the Italian authorities said that Article 9 of Law 185/92 on subsidised insurance schemes had been replaced by a new Law in 1996, namely Presidential Decree 324 of 17 May 1996 (Regolamento concernente norme sostitutive dell'art. 9 della legge 14 febbraio 1992, n. 185, sull'assicurazione agricola agevolata).

<sup>(49)</sup> See Case T-459/93 (Siemens SA v Commission [1995] ECR II-1675) and point 3.5 of the Guidelines.

- (123) The Italian authorities said that the decree had been issued in order to bring Italian legislation on subsidised insurance into line with Community law. Decree 324/96 explicitly lays down the provisions relating to subsidised insurance contracts. The State contribution to these contracts may be up to 50 % of eligible costs, or 65 % in areas of high climatic risk.
- (124) In particular Article 1(2) of Decree 324/96 provides for three types of contracts, which may concern:
- (a) compensation for the damage caused to specific crops by hail, ice, frost and other adverse weather events (Article 1(2)(a));
  - (b) compensation for the damage caused to a holding's facilities and specific crops by all adverse weather events affecting production beyond the normal business risk. This type of contract may also include damage caused by plant diseases if directly associated with adverse weather conditions, damage to quality or damage caused by animal diseases (Article 1(2)(b));
  - (c) compensation for the damage caused to a farm's primary crops by all adverse climatic events capable of causing damage exceeding the normal business risk (Article 1(2)(c)).
- (125) No indication is given in Decree 324/96 as to the criteria which the various types of insurance contracts need to meet to be entitled to aid <sup>(30)</sup>. As to the ordinary business risk (which is mentioned in the contracts referred to in Article 1(2)(b) and (c) of the Decree), in their letter of 20 November 2000 the Italian authorities clarified that this was generally set at 10 % to 15 %. On the basis of this explanation and the wording of the Decree, it is therefore possible that all the contracts referred to in the Decree concern insurance that does not also cover risks of natural disasters within the meaning of Article (87)(2)(b) or comparable events. Moreover, its wording would suggest that all the types of contracts listed in Decree 324/96 could actually benefit from the 50 % aid rate (65 % in the case of high climatic risks) provided for therein.
- (126) Furthermore, the Decree refers solely to the maximum aid rate to be granted by the State for insurance premiums and does not say whether these are the maximum aid rates that may be granted for this type of assistance. The Decree makes no reference to any cumulation with assistance for the same purpose granted out of public funds at regional or provincial level. It cannot therefore be excluded that the 50 % (or 65 %) aid rate laid down in the Decree may go beyond the aid rates which, provided that also the other conditions for the grant of this type of aid were satisfied, could be acceptable under Community provisions.
- (127) Following the entry into force of the Guidelines, aid for insurance contracts is assessed on the basis of point 11.5 (aid towards the payment of insurance premiums) which states that as an alternative to the payment of *ex post* compensation for losses caused by natural disasters several Member States have established aid schemes to encourage farmers to obtain insurance cover against such events. In particular, under point 11.5.1, it is consistent Commission policy to allow aid of up to 80 % of the cost of insurance premiums to cover against losses caused by natural disasters and exceptional occurrences falling within the scope of point 11.2, and by adverse climatic events which can be regarded as natural disasters falling under point 11.3.

<sup>(30)</sup> As explained by the Italian authorities in their letter of 20 November 2000, the main difference between the three types of insurance contracts above lies in the fact that contracts under (a) above concern damage caused by individual weather events to individual crops; insurance contracts under (b) concern damage caused by a plurality of adverse events to individual crops or facilities, while insurance contracts under (c) concern damage caused by a plurality of events to more than one crop.

- (128) Where the insurance also covers other losses caused by adverse weather events, or losses caused by animal or plant diseases, the aid rate is reduced to 50 % of the cost of the premium. The Commission examines on a case-by-case basis other aid measures in connection with insurance against natural disasters and exceptional occurrences, in particular reinsurance schemes and other aid measures to support producers in particularly high risk zones.
- (129) Point 11.5.3 further establishes that aid for the payment of insurance premiums may not constitute a barrier to the operation of the internal market for insurance services. This would be the case, for example if the possibility of providing insurance cover was limited to a single company or group of companies or if a condition of the aid was that the insurance contract had to be taken out with a company established in the Member State concerned.
- (130) For a better understanding of these provisions, it is important to recall that according to the same Guidelines, adverse weather conditions such as frost, hail, ice, rain or drought could be regarded as a natural disaster within the meaning of Article 87(2)(b) of the Treaty only if they caused losses equal to at least 30 % (20 % in less-favoured areas) of normal production, calculated in accordance with the criteria contained in the Guidelines. According to the criteria above, insurance policies covering exclusively natural disasters within the meaning of Article 87(2)(b) and weather events such as frost, hail, rain, etc. which could be likened to natural disasters under Article 87(2)(b) would therefore be entitled to an 80 % aid rate. Any policy covering, in addition to the risks mentioned, other risks not meeting the criteria to be likened to natural disasters under 87(2)(b) could therefore benefit from a maximum 50 % aid rate. Policies covering exclusively weather events which could not be likened to natural disasters under Article 87(2)(b) are not eligible for aid <sup>(51)</sup>.
- (131) The contracts listed above and provided for by Article 1(2) of Decree 324/96 must therefore be analysed in the light of the provisions of point 11.5 of the Guidelines. Each type of insurance contract is separately assessed.

*Contracts under Article 1(2)(a).*

- (132) Under Article 1(2)(a) of Decree 324/96, compensation may be granted towards the payment of insurance contract premiums covering damage caused to specific crops by hail, ice, frost and other adverse weather events. Natural disasters or other exceptional occurrences under Article 87(2)(b) of the Treaty are not mentioned. As to adverse weather events, the Article does not say whether the insurance contracts at issue cover risks meeting the conditions for being likened to natural disasters under Article 87(2)(b) of the Treaty (minimum 30 % loss in normal areas; 20 % in less-favoured areas). Indeed the law does not specify a minimum level of damage triggering the insurance coverage specified. It follows that, under Article 1(2)(a), farmers may receive aid towards the payment of insurance premiums for insurance contracts covering any type of weather event, regardless of the level of losses actually incurred.
- (133) In its letter of 19 April 2000, in order to clarify this point, the Commission explicitly asked the Italian authorities to specify whether the aids provided for this type of contract concerned insurance schemes covering damage caused by hail, frost or other adverse weather event regardless of the level of damage caused by the event in question or whether there was a minimum threshold of damage triggering compensation. In their letter of 20 November 2000, the Italian authorities stated that, due to the liberalisation of the insurance market and the parties' freedom to make contracts, it was not possible for them to establish minimum thresholds of damage triggering compensation. From empirical observation of the contracts concluded between the parties it would seem that normally the minimum damage threshold is set at 10 % to 15 %.

<sup>(51)</sup> Under the rules previously applicable, these policies could qualify for a maximum 30 % degressive aid rate over a maximum period of 10 years. See the decision in Case C 12/A/95.



- (134) In the absence of a more specific reply and of further information on the issue from the Italian authorities, it appears that no specific condition was attached to the grant of aid under Article 1(2)(a) of Decree 324/96 which therefore could be possibly granted for any type of insurance covering adverse weather events, regardless of the actual level of damage incurred as a result of those events.
- (135) In the light of the information available, this kind of contract does not therefore meet the eligibility conditions for aid under point 11.5 of the Guidelines. In this respect, in so far as the insurance contracts do not also cover losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, and adverse climatic events which can be assimilated to natural disasters in accordance with point 11.3 of the Guidelines, no aid can be authorised. If the contracts also cover losses caused by the above events, aid can be granted up to 50 % of the cost of the premium.

*Contracts under Article 1(2)(b) and 1(2)(c)*

- (136) Articles 1(2)(b) and 1(2)(c) of Decree 324/96 concern insurance contracts covering damage caused by a combination of weather events affecting the value of production beyond 'ordinary level'. No reference is made to natural disasters or exceptional occurrences under Article 87(2)(b) of the Treaty. In order to see whether these insurance contracts meet the eligibility conditions for aid under point 11.5 of the Guidelines it is therefore necessary to see whether the adverse weather events they cover can be likened to natural disasters or exceptional occurrences under Article 87(2)(b).
- (137) In order to clarify this point, in its letter of 19 April 2000 the Commission asked the Italian authorities to specify the exact meaning of 'beyond ordinary level' which was not quantified either in the Law or in the circular. In their letter of 20 November 2000, the Italian authorities replied that 'beyond ordinary level' meant that damage could be compensated only when it exceeded a certain threshold equal to the farmer's ordinary risk, which had to be met by the farmer. According to the Italian authorities, normal business risk is generally set at 10 % to 15 % even though insurance contracts may provide for a higher business risk in order to contain costs. No specific provision is however made to this end in any document.
- (138) In the absence of more specific and further information on the issue from the Italian authorities, the weather events covered by the insurance contracts described under Articles 1(2)(b) and 1(2)(c) of Decree 324/96 cannot therefore be likened to natural disasters under Article 87(2)(b) as they do not appear to meet the conditions provided for to this end by point 11.3 of the Guidelines. In this respect, in so far as the insurance contracts do not also cover losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, or by adverse climatic events which can be assimilated to natural disasters in accordance with point 11.3 of the Guidelines, no aid can be authorised. If the contracts also cover losses caused by the above events, aid can be granted up to 50 % of the cost of the premium.
- (139) Decree 324/96 indicates that the State contribution for insurance premiums accounts for 50 % of the overall eligible expenditure, which is calculated as indicated above at paragraph 47. This contribution may be increased to 65 % in the case of areas of high climatic risk. No indication is given as to the maximum aid rate which could be paid as a result of the possible cumulation of the State contributions with other public aid.

- (140) In its letter of 19 April 2000 the Commission asked the Italian authorities to indicate the maximum aid rate which could be awarded. In their reply of 20 November 2000 the Italian authorities stated that the maximum State contribution was 50 %, or 65 % in areas of high climatic risk. In general State contributions ranged between 30 % and 40 %. In those cases where a regional contribution was paid (few, according to the Italian authorities), as in the case of the province of Trento, this was never above 25 % to 30 %, so the overall public contribution never exceeded 65 %. In their letter of November 2003 on the aid granted from 1 January 2000, the Italian authorities said that the 65 % aid rate for areas at high climatic risk had never been used. Moreover, the competent authorities said that the information provided by the regions indicated that only a few of them had granted a regional contribution for insurance premiums in addition to the State one in the period 2000 to 2003. In those cases, however, according to the information received by the Ministry of Agriculture, the total aid was limited to 50 % of the costs incurred for the payment of the premium. When the aid was granted for insurance policies relating to natural disasters or comparable events (and therefore with an aid rate possibly higher than 50 %), this was done under a specific regional aid scheme approved by the Commission <sup>(52)</sup>.
- (141) In recitals 135 and 138 the Commission concluded that, based on the information available, the types of contract laid down in Article 1(2)(a), (b) and (c) of Decree 324/96 (replacing Article 9 of Law 185/92) do not meet the eligibility conditions for aid under point 11.5 of the Guidelines since they allow farmers in principle to receive aid towards the payment of insurance premiums covering any type of weather event regardless of the level of damage triggering compensation, and that therefore aid towards the payment of the relevant insurance premiums could not be granted. However, given the lack of detailed information provided by the competent authorities, if these contracts covered also losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, and by adverse climatic events which can be assimilated to natural disasters in accordance with point 11.3 of the Guidelines, aid could be granted up to 50 % of the cost of the premium.
- (142) In the light of the above assessment the Commission therefore concludes that the aid towards the payment of insurance premiums granted by Italy on the basis of Presidential Decree 324 of 17 May 1996 (replacing Article 9 of Law 185/92), in so far as the insurance contracts do not also cover losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, and adverse climatic events which can be assimilated to natural disasters in accordance with point 11.3 of the Guidelines, are incompatible with the common market and cannot benefit from any of the derogations to Article 87(1) of the Treaty.

#### IV. CONCLUSIONS

- (143) From the above considerations, it follows that the aid measures provided for by Articles 3 (prior to its amendment by Article 1 of Decree-Law No 200 of 13 September 2002) <sup>(53)</sup>, 4 and 5 of Law No 185 of 14 February 1992 on the grant of aid for damage caused by natural disasters and comparable adverse weather conditions, can be considered compatible with the common market in accordance with Article 87(2)(b) and Article 87(3)(c) of the Treaty as aid designed to make good the damage caused by natural disasters and comparable adverse weather conditions.

<sup>(52)</sup> See for example Italy/Sardinia, aid N 554/2000 approved by letter SG 2000/D109513 of 22 December 2000.

<sup>(53)</sup> Article 3(2) of Law No 185/1992, listing the types of aid allowed in favour of agricultural undertakings, was entirely replaced as of 17 September 2002, by Article 1 of Decree-Law No 200 of 13 September 2002 (Urgent assistance in favour of the agriculture sector affected by exceptional weather events) as transposed into Law No 256 of 13 November 2002. This measure is currently being examined by the Commission under Aid No NN 145/02 (ex N 636/02) and is not the subject of this Decision.

- (144) With regard to the aid to be granted after the notification of this decision to Italy, the competent authorities must notify on a case-by-case basis each weather event giving rise to compensation under Law No 185/92 and provide the appropriate supporting meteorological information, so as to enable the Commission to exercise its control in compliance with points 11.2.1 and 11.3.1 of the Community Guidelines for State aid to the agriculture sector <sup>(34)</sup>. Moreover from the notification of this decision the Italian authorities will notify individually to the Commission any aid to processing and marketing cooperatives as provided for by Article 3 of Law No 185/92, as it is current Commission practice to examine these kinds of aid on a case-by-case basis.
- (145) The aid measures provided for by Article 6 of Law 185/92 as implemented by Ministerial Decree No 100460 of 18 March 1993 are compatible with the common market under Article 87(3)(c) of the Treaty.
- (146) The aid measures provided for by Article 8 of Law 185/92 cannot benefit from any of the derogations to Article 87(1) provided for by the Treaty and are therefore incompatible with the common market.
- (147) According to the information provided by the Italian authorities in their letter of 20 November 2000 <sup>(35)</sup> and in their letter of November 2003, the aid provided for by Article 8 of Law 185/92 has never been implemented and does not therefore need to be recovered. If the Italian authorities ever plan to grant the investment aid provided for by this Article, they must bring it into line with point 4.1.1 of the Community Guidelines. The aid for operating and maintaining the active defence facilities provided for by Article 8 of Law 185/92 must be abolished.
- (148) The aid provided for in Presidential Decree 324/96 (replacing Article 9 of Law 185/92) on aid to cover the costs of insurance premiums is incompatible with the common market if the insurance contracts do not also cover losses due to natural disasters and exceptional occurrences, falling within the scope of point 11.2, or adverse climatic events that may be regarded as natural disasters in accordance with point 11.3 of the Community Guidelines. If the insurance contracts also cover losses caused by the above events, aid can be granted up to 50 % of the cost of the premium. Aid exceeding 50 % (up to 80 %) can be granted only for insurance contracts which cover exclusively losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, and by adverse climatic events that may be regarded as natural disasters in accordance with point 11.3 of the Guidelines.
- (149) Incompatible and illegally granted aid must, in principle, be recovered (see also Article 14 of Council Regulation (EC) 659/1999). However, the Commission has come to the conclusion that in this case, under certain circumstances, recovery would be contrary to the general principles of Community law, in particular the principle of legal certainty, for the following reasons. The Commission has found an ambiguity relating to agricultural insurance in the Italian version of the Community Guidelines. The ambiguity, which does not occur in the other language versions, results from the fact that in Italian, the word 'anche' (also) is missing from the last sentence of point 11.5.1 of the Guidelines. That error in the Italian translation of the aforementioned Guidelines, makes the phrase read as follows: 'Where the insurance covers other losses caused by adverse climatic events, or losses caused by animal or plant diseases, the aid rate is reduced to 50 % of the cost of the premium'. This phrase may have created the impression with Italian operators that it is Commission practice to

<sup>(34)</sup> Point 11.2.1 states that: '...the Commission will continue to evaluate proposals to grant aid in accordance with Article 87(2)(b) on a case-by-case basis...'. Point 11.3.1 states that: 'In order to enable the Commission to assess such aid schemes, notifications of aid measures to compensate for damage caused by adverse weather conditions should include appropriate supporting meteorological information'.

<sup>(35)</sup> See paragraph 16.

approve aid rates of 50 % for insurance contracts which do not cover natural disasters, exceptional occurrences and adverse weather conditions as referred to in points 11.2 and 11.3 of the Guidelines and aid rates higher than 50 % for insurance contracts which cover those events. Under those circumstances, it is inappropriate to seek recovery of aid that was granted up to 50 % in respect of insurance contracts not covering also losses caused by natural disasters and exceptional occurrences, and by adverse weather conditions as referred to in points 11.2 and 11.3 of the Guidelines. The Commission will, however, publish a corrigendum of the Italian version of the Guidelines as soon as possible.

- (150) Recovery from the beneficiary would however appear inevitable where aid for insurance contracts not covering losses caused by natural disasters, exceptional occurrences, or adverse weather conditions, as referred to in points 11.2 and 11.3 of the Guidelines, had been granted at an aid rate above 50 %. In their November 2003 letter the Italian authorities indicated that, based on the information provided to them by the regions, in the period 2000 to 2003 only a few regions had granted a regional contribution for insurance premiums in addition to the State one and that in these cases the total aid was limited to 50 % of the costs incurred for the payment of the insurance premium. When aid in respect of insurance premiums was granted above 50 %, this could be done under specific aid schemes that had already been authorised by the Commission <sup>(56)</sup> in accordance with point 11.5 of the Community Guidelines,

HAS ADOPTED THIS DECISION:

#### *Article 1*

1. The aid measures designed to compensate farmers from damage caused by natural disasters provided for by Articles 3 (prior to its amendment by Article 1 of Decree-Law No 200 of 13 September 2002), 4 and 5 of Law No 185/92 are compatible with the common market in accordance with Article 87(2)(b) and 87(3)(c) of the EC Treaty.
2. The measures provided for by Article 6 of Law No 185/92 do not constitute aid within the meaning of Article 87(1) of the Treaty.
3. The aid measures provided for by Ministerial Decree No 100460 of 18 March 1993 are compatible with the common market in accordance with Article 87(3)(c) of the Treaty.
4. The aid for active defence measures against weather events provided for by Article 8 of Law No 185/92 are incompatible with the common market.
5. The aid towards the payment of insurance premiums provided for by Presidential Decree No 324 of 17 May 1996 (replacing Article 9 of Law 185/92) is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty, in so far as it complies with point 11.5 of the Guidelines for State aid to the agriculture sector (hereinafter referred to as the 'Community Guidelines'), i.e. in so far as the subsidised insurance contracts cover also losses caused by natural disasters and exceptional occurrences falling within the scope of point 11.2, and adverse climatic events which can be assimilated to natural disasters in accordance with point 11.3 of the Community Guidelines, and in so far as the aids for those contracts are granted up to 50 % of the cost of the premium.
6. The aid towards the payment of insurance premiums granted by the Italian authorities on the basis of Presidential Decree No 324 of 17 May 1996 (replacing Article 9 of Law 185/92) not complying with the provisions of point 11.5 of the Guidelines for State aid to the agriculture sector is incompatible with the common market.

<sup>(56)</sup> See for example Italy/Sardinia, aid N 554/2000 approved by letter SG 2000/D109513 of 22 December 2000.

*Article 2*

1. With effect from the notification of this Decision, Italy shall notify the Commission on a case-by-case basis of each weather event giving rise to compensation under Law No 185/92 and shall provide the appropriate supporting meteorological information, in compliance with points 11.2.1 and 11.3.1 of the Community Guidelines for State aid to the agriculture sector.
2. With effect from the notification of this Decision, Italy shall notify the Commission on a case-by-case basis of any aid to marketing and processing cooperatives provided for by Article 3 of Law No 185/92.
3. Italy shall amend its provisions on aid for insurance contracts in accordance with point 11.5 of the Community Guidelines on State aid for the agriculture sector, as amended, which in paragraph 1 reads as follows: (...) It is consistent Commission policy to allow aid of up to 80 % of the costs of insurance premiums to cover against losses caused by natural disasters and exceptional occurrences, falling within the scope of point 11.2, and by adverse climatic events which may be regarded as natural disasters in accordance with point 11.3. Where the insurance also covers other losses caused by adverse climatic events, or losses caused by animal or plant diseases, the aid rate is reduced to 50 % of the cost of the premium.
4. Italy shall amend its provisions on investment aids for active defence measures in accordance with point 4.1.1 of the Community Guidelines for State aid to the agriculture sector.
5. Italy shall abolish its provisions on operating aids for the operation and maintenance of active defence measures.
6. In accordance with Article 4 of Council Regulation (EC) No 1638/98 amending Regulation 136/66/EEC on the establishment of a common organisation of the market in oils and fats <sup>(57)</sup>, the aid provided by the Italian authorities under the legislation which is the subject of this decision must not be granted for additional olive trees planted on or after 1 May 1998. Restructuring measures that involve increasing the number of trees in existing olive groves similarly do not qualify for this assistance.

*Article 3*

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

*Article 4*

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 December 2003.

*For the Commission*  
Franz FISCHLER  
*Member of the Commission*

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<sup>(57)</sup> OJ L 210, 28.7.1998, p. 32. Regulation as amended by Regulation (EC) No 1513/2001 (OJ L 201, 26.7.2001, p.4).