

JUDGMENT OF THE COURT (Third Chamber)

23 February 2006 *

In Joined Cases C-346/03 and C-529/03,

REFERENCES to the Court under Article 234 EC by the Tribunale di Cagliari, Sezione civile (Italy), by decisions of 29 April and 20 October 2003, received at the Court on 6 August and 19 December 2003 respectively, for a preliminary ruling in the proceedings

Giuseppe Atzeni and Others (C-346/03),

Marco Scalas,

Renato Lilliu (C-529/03)

v

Regione autonoma della Sardegna,

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, A. La Pergola, J.-P. Puissochet, S. von Bahr (Rapporteur) and A. Ó Caoimh, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 February 2005,

after considering the observations submitted on behalf of:

- Mr Atzeni and Others, by G. Dore and F. Ciulli, avvocati,
- Mr Scalas and Mr Lilliu, by G. Dore, F. Ciulli and A. Miglior, avvocati,
- the Regione autonoma della Sardegna, by A. Camba and S. Trincas, avvocatessa,
- the Commission of the European Communities, by V. Di Bucci, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 28 April 2005,

gives the following

Judgment

- 1 The references for a preliminary ruling concern the validity of Commission Decision 97/612/EC of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agriculture sector (OJ 1997 L 248, p. 27) ('the contested decision').

- 2 Those references were made in the context of two sets of proceedings between, first, Mr Atzeni and Others ('Atzeni and Others'), and secondly Mr Scalas and Mr Lilliu ('Scalas and Lilliu'), and the Regione autonoma della Sardegna ('the Regione') concerning the reimbursement required by the latter of aid previously paid to the parties concerned and the suspension of payment of additional aid.

National legal framework and the aid granted

- 3 Article 5 of Regional Law No 44 of 13 December 1988 ('Law No 44/88') had established a scheme of aid to agricultural undertakings whose financial situation had been affected by adverse circumstances in the form of loans at reduced rates of interest in order to enable them to restore their liquidity. Those loans were to be used to consolidate the short-term liabilities of the undertakings concerned and were for a maximum term of 15 years.

- 4 The Regional Executive (Giunta regionale) determined the practical arrangements for granting the aid and in particular the adverse circumstances which justified the Region's measure, the sectors involved, the amount of the loan in relation to the degree of indebtedness, and the term of the loan.

- 5 Since 1988 the Regional Executive has decided on four occasions to grant aid in the form of loans at reduced rates ('the four aid measures') pursuant to Article 5 of Law No 44/88.

- 6 On 30 December 1988 the first aid measure was adopted in favour of agricultural products produced in greenhouses. The adverse circumstance justifying the Regione's measure was the fall in prices of those products. The only condition set for granting the aid related to the undertaking's short-term indebtedness, which had to be greater than 75% of the value of its gross output in the year under consideration.

- 7 On 27 June 1990 a second aid measure related to forestry holdings which were not yet ready for commercial felling. The aid was aimed at paying off and/or consolidating those undertakings' debts falling due before 30 June 1990 which resulted from investments, plantation management, bank drafts, employee wages, rent and amounts owing to suppliers. The short-term indebtedness had to be equal to or greater than 75% of the gross output of the undertaking concerned in the year under consideration. The term of the loan was fixed at 13 years, including a three-year pre-redemption period.

- 8 On 20 November 1990, a third aid measure was aimed at rabbit farmers who had lost at least 20% of their animals as the result of a disease in the region in the spring of 1990. The loans at reduced interest rates over a term of 15 years, including a

three-year pre-redemption period, could cover up to two annual or four half-yearly repayments on existing long-term loans and an amount equal to the holding's financial requirements for one year.

- 9 The fourth aid measure, decided upon on 26 June 1992, extended to all agricultural undertakings because of the increasingly unfavourable market conditions and the problems caused by weather conditions. The recipients' short-term indebtedness had to be at least equal to 51% of their gross production in 1991. The duration of the loan was 15 years, including a three-year pre-redemption period. The calculation of the indebtedness took into account the loans with a term of less than 12 months in existence in 1991, even if they had since been repaid, and the repayment instalments on multi-annual financing falling due or paid in 1991 or else falling due in previous years and not paid.

- 10 The aid obtained under this fourth measure could be used to cover operating loans at reduced interest rates, debts on medium-term loans, except those granted for the purchase of agricultural machinery, and repayments on multi-annual reduced-rate loans granted by the Regione in relation to losses suffered in natural disasters.

The procedure before the Commission of the European Communities

- 11 By letter of 1 September 1992, the Italian Republic notified to the Commission, under Article 93(3) of the EC Treaty (now Article 88(3) EC), Regional Law No 17 of 27 August 1992 ('Law No 17/92').

- 12 Article 12 of Law No 17/92 amended Article 5 of Law No 44/88, which had not been notified to the Commission.
- 13 By letter of 1 August 1994, the Commission informed the Italian Republic of its decision to initiate the procedure laid down in Article 93(2) of the Treaty in respect of Article 5 of Law No 44/88 and the four aid measures.
- 14 The Italian Government submitted comments in letters of 30 January, 25 August and 1 December 1995.
- 15 The Commission adopted the contested decision on 16 April 1997.

The contested decision

- 16 In Article 1 of the of the contested decision, the Commission found that the aid granted by the Regione under Article 5 of Law No 44/88 and the four aid measures was illegal in that it had not been notified to the Commission at the planning stage and that it was incompatible with the common market under Article 92(1) to (3) of the EC Treaty (now, after amendment, Article 87(1) to (3) EC).
- 17 In Article 2 of the contested decision, the Commission stated that the Italian Republic was required to abolish that aid within two months from the date of

notification of that decision and to adopt the measures necessary to recover the amounts previously paid out within six months of the same date.

The main proceedings and the questions referred for a preliminary ruling

- 18 Following adoption of the contested decision, the Regional Council repealed Article 5 of Law No 44/88 and on 18 December 1997 adopted the decrees ordering revocation of the previously-granted aid ('the December 1997 decrees').

Case C-346/03

- 19 On 23 January 2002, Atzeni and Others, owners of agricultural undertakings, brought proceedings before the Tribunale di Cagliari (Cagliari District Court) seeking a ruling, principally, that the December 1997 decrees were not applicable and that the Regione should pay them the amounts of the aid still to be paid out under the four aid measures.

- 20 In the alternative, Atzeni and Others sought a declaration that the Regione had infringed Community legislation governing State aid, as well as various principles, including those of transparency and sound administration. They also asked that the Regione be ordered to compensate them for the damage caused, first, by the failure to inform them of the commencement of the procedure provided for in Article 93(2) of the Treaty and the adoption of the contested decision, and second the communication to them of the December 1997 decrees only on 16 November 2001.

21 The national court found it necessary to refer a question to the Court on the legality of the contested decision, which is the basis of the December 1997 decrees. In those circumstances, the Tribunale di Cagliari decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

[Is the contested decision vitiated by] the following defects:

- (a) lack of competence of the Commission to adopt the contested decision inasmuch as it infringes the combined provisions of Articles [38, 40 and 43 of the EC Treaty (now, after amendment, Articles 32 EC, 34 EC and 37 EC), and 39, 41, 42 and 46 of the EC Treaty (now Articles 33 EC, 35 EC, 36 EC and 38 EC)];
- (b) infringement of the rules which govern the procedure provided for in Article [93(1) of the Treaty];
- (c) infringement of the rules which govern the procedure provided for in Article [93(2) and (3) of the Treaty];
- (d) failure to provide a statement of reasons as required by Article [190 of the EC Treaty (now Article 253 CE)] in conjunction with Article [93(3) and 92(1) of the Treaty];
- (e) infringement and misapplication of Council Regulation No 797/85 on improving the efficiency of agricultural structures;

- (f) infringement of and failure to observe “practice for aid to farms in difficulty” and the “Community guidelines on State aid for rescuing and restructuring firms in difficulty”?

Case C-529/03

- 22 On 31 July 2002, Scalas and Lilliu, representing 389 persons, brought proceedings before the Tribunale di Cagliari seeking a ruling, principally, that there was no obligation to reimburse the aid granted by the Regione under the four aid measures or, in the alternative, that the Regione be ordered to compensate for the losses suffered by the farmers concerned.
- 23 The Tribunale di Cagliari decided to stay the proceedings and to ask the Court to examine the legality of the contested decision in the light of the six points raised in Case C-346/03 and referred to in paragraph 21 of this judgment, and also of three questions referred for a preliminary ruling, which can be formulated as follows:
- ‘(1) Does the contested decision undermine the principle of the protection of legitimate expectations, having regard to the time which elapsed between the following four stages, namely the publication of Law No 44/88 in 1988, the commencement of infringement proceedings in 1994, the adoption of the contested decision in 1997 and the notification of the demand for reimbursement to the farmers in November 2001?
- (2) Does the contested decision contain an insufficient statement of reasons in stating that the aid in question ‘is such as to distort competition and affect trade between Member States’ without examining the actual form of each aid granted

or taking account of the fact that the economic and social conditions in Sardinia prevent local operations from disturbing or threatening to disturb competition in the Member States, or taking into account the serious unemployment situation in the region, or giving a valid reason for excluding the aid intended to remedy the effects of natural disasters or other exceptional occurrences?

- (3) Does the contested decision also contain insufficient reasons in classifying the aid granted as ‘operating aid’ relating to short-term debts, without taking into account the fact that they are intended to restructure existing long-term debt which has not been repaid due to repeated difficulties owing to factors external to the undertaking such as exceptional weather conditions?

²⁴ By order of 6 May 2004, Cases C-346/03 and C-529/03 were joined for the purposes of the oral procedure and the judgment.

The request to have the oral procedure reopened

²⁵ By letter of 19 September 2005, Atzeni and Others, and also Scalas and Lilliu, requested the Court to reopen the oral procedure pursuant to Article 61 of the Rules of Procedure. They gave as grounds for their request the complexity of the main proceedings and their disagreement with the Opinion of the Advocate General.

26 It must be pointed out in this regard that the Court may, of its own motion, on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure, if it takes the view that it lacks sufficient information or that the case should be decided on the basis of an argument which has not been debated between the parties (see Case C-309/99 *Wouters and Others* [2002] ECR I-1577, paragraph 42, and Case C-210/03 *Swedish Match* [2004] ECR I-11893, paragraph 25).

27 In the present case, Atzeni and Others and Scalas and Lilliu have not put forward any ground which would justify reopening the oral procedure and the Court, having heard the Advocate General, takes the view that it has all the information necessary to answer the questions referred. Consequently, the request to have the oral procedure reopened must be dismissed.

The questions

Preliminary remarks

28 By its questions, reproduced in paragraphs 21 and 23 of this judgment, the Tribunale di Cagliari asks the Court essentially about the validity of the contested decision in the light of the following points, which cover those raised in those questions:

- the legal basis of the contested decision and the effect thereof on the Commission's competence to adopt that decision (Case C-346/03, point (a));

- incorrect application of Article 93(1) of the Treaty relating to existing aid (Case C-346/03, point (b));

- excessively lengthy procedure undermining the proper conduct thereof and the aid recipients' legitimate expectations (Case C-346/03, point (c), and Case C-529/03, first question);

- insufficient reasons and errors of assessment as to the compatibility of the four aid measures with the common market (Case C-346/03, points (d), (e) and (f), and Case C-529/03, second and third questions).

²⁹ The Tribunale di Cagliari also inquires as to the admissibility of the questions referred for a preliminary ruling. Given the remarks of the national court and the observations submitted by Scalas and Lilliu and the Commission on this point, it is appropriate to begin by examining that issue.

The admissibility of the questions referred for a preliminary ruling

³⁰ The issue of the admissibility of the questions referred for a preliminary ruling arises because Atzeni and Others already brought an action for annulment of the contested decision on 25 January 2002 before the Court of First Instance of the European Communities. By order of 29 May 2002 in Case T-21/02 *Atzeni and Others v Commission*, not published in the ECR, the Court of First Instance dismissed the action as inadmissible because it had been brought after the time-limit, without, however, ruling on a second ground of inadmissibility raised by the Commission, relating to the applicants' lack of standing to bring proceedings before the Court of First Instance. If they had had standing to bring proceedings but had

merely failed to bring their action within the prescribed time-limits, the present references for a preliminary ruling, relating to the validity of the contested decision, would be inadmissible before this Court.

31 It follows from the requirements of legal certainty, and more specifically those deriving from the principle of the force of *res judicata*, that it is not possible for a recipient of aid, forming the subject-matter of a Commission decision adopted on the basis of Article 93 of the Treaty, who could have challenged that decision and who allowed the mandatory time-limit laid down in this regard by the fifth paragraph of Article 173 of the Treaty (now, after amendment, the fifth paragraph of Article 230 EC) to elapse, to call in question the lawfulness of that decision before the national courts in an action brought against the measures taken by the national authorities for implementing that decision. To accept that in such circumstances the person concerned could challenge the implementation of the decision in proceedings before the national court on the ground that the decision was unlawful would in effect enable the person concerned to overcome the definitive nature which the decision assumes as against that person once the time-limit for bringing an action has elapsed (see Case C-188/92 *TWD Textilwerke Deggendorf* [1994] ECR I-833, paragraphs 17 and 18).

32 The Court notes that, in the circumstances giving rise to the judgment in *TWD Textilwerke Deggendorf*, the Commission's decision addressed to the Member State concerned made explicit reference to the recipient of the individual aid in question and that State had communicated the decision to the recipient, stating that it could bring an action for annulment thereof.

33 In the main proceedings here, by contrast, the contested decision, addressed to the Italian Republic, concerns aid schemes intended for categories of persons defined in a general manner and not explicitly identified recipients. Nor was the decision notified by the Italian Republic to Atzeni and Others or to any other recipients of the aid in question.

34 Thus, unlike the circumstances giving rise to the judgment in *TWD Textilwerke Deggendorf*, it was not self-evident that an action for annulment brought against the contested decision brought by the recipients of the four aid measures would have been admissible. Accordingly, the Court finds that the references for a preliminary ruling are admissible.

The legal basis of the contested decision and the effect thereof on the Commission's competence to adopt that decision

Observations submitted to the Court

35 Scalas and Lilliu maintain that the competition rules, in particular those laid down in Articles 92 and 93 of the Treaty, are not applicable to the agricultural sector. Referring to Article 42 of the Treaty, they state that those rules are applicable only in so far as determined by the Council of the European Union. Council Regulation No 26 of 4 April 1962 applying certain rules of competition to production of and trade in agricultural products (OJ, English Special Edition 1959-1962, p. 129), adopted on the basis of Article 42 of the EEC Treaty (now Article 42 of the EC Treaty), provides only for a very restricted application of the Treaty provisions on State aid in the agricultural sector. It follows that the Commission was not competent to initiate the procedure referred to in Article 93(2) of the Treaty or to adopt the contested decision cancelling the aid granted.

36 The Commission maintains that all of the rules of the Treaty on State aid in Articles 92 and 93 of the Treaty apply to the four aid measures:

- the aid to the rabbit farmers is subject to those rules under Regulation (EEC) No 827/68 of the Council of 28 June 1968 on the common organisation of the market in certain products listed in Annex II to the Treaty (OJ, English Special Edition 1968 (I), p. 209);

- the aid to forestry holdings fall directly within the scope of those rules;

- the aid to greenhouse production and the aid to indebted agricultural undertakings must comply with those rules, either because it relates to products covered by a common organisation of markets and is subject to those rules under the regulation establishing that organisation, or because it comes within the scope of Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1) or the regulation which replaced it, namely Council Regulation (EEC) No 2328/91 of 15 July 1991 (OJ 1991 L 218, p. 1).

Reply of the Court

³⁷ It follows from the provisions of Article 42 of the Treaty that the rules governing competition are applicable to production of and trade in agricultural products, as defined in Article 38 of the Treaty, only to the extent determined by the Council.

³⁸ The Council has adopted various regulations.

³⁹ First, Regulation No 26 provides for the application of the provisions of the Treaty on State aid in the agricultural sector to be restricted to those contained in Article 93(1) and the first sentence of Article 93(3) of the Treaty. It follows that, in the case of products coming within the scope of that regulation, the Commission is not empowered to initiate the procedure provided for in Article 93(2) thereof. It can only submit its observations, not oppose the grant of the aid in question.

- 40 Next, when regulations establishing a common market organisation were adopted, which was the case for most of the agricultural products within the meaning of Article 38 of the Treaty, those regulations provided that all of the rules of the Treaty on State aid in Articles 92, 93 and 94 of the EC Treaty (now Article 89 EC) were applicable, subject in some cases to certain limits. Consequently, only those agricultural products which are not subject to a common market organisation come within the scope of the provisions of the Treaty on State aid, the application of which is limited by Regulation No 26.
- 41 Lastly, various other regulations have been adopted, in particular Regulation No 797/85 containing provisions relating to the grant of State aid, which provide that aid measures which depart from the rules laid down in that regulation may nevertheless be permitted, provided that they are adopted in accordance with Articles 92 to 94 of the Treaty.
- 42 It is, accordingly, necessary to ascertain whether the products concerned by the four aid measures are agricultural products within the meaning of Article 38 of the Treaty and, if so, to what extent they are subject to the provisions of the Treaty governing State aid.
- 43 First of all, the aid to the forestry holdings is aimed at a sector, the forestry sector, which is not included in the list of agricultural products in Annex II to the Treaty and therefore does not relate to an agricultural product within the meaning of Article 38 of the Treaty. Accordingly, the aid to forestry holdings is not part of a specific scheme and is, therefore, subject in its entirety to the provisions of Articles 92 and 93 of the Treaty.
- 44 Next, the aid to rabbit farmers concerns an agricultural product which was subject to a common market organisation established by Regulation No 827/68. Article 5 of that regulation provides that Articles 92 and 93 of the Treaty are applicable without restriction to production of and trade in that product.

45 Lastly, the two other aid measures were aimed, first, at greenhouse production and, second, indebted agricultural undertakings and may therefore relate to a wide variety of agricultural products.

46 It has not been argued that those measures concerned agricultural products which are not subject to a common market organisation and, consequently, come within the scope of the provisions of the Treaty governing State aid, the application of which has been restricted by Regulation No 26.

47 More specifically, the aid to indebted agricultural undertakings is not aimed at specific products and is rather general aid to those undertakings. As such, it is likely to come within the scope of Regulation No 797/85, Article 31 of which, in any event, refers to the provisions of the Treaty governing State aid.

48 Consequently, in examining the four aid measures in the light of Articles 92 and 93 of the Treaty, the Commission did not find the contested decision on an incorrect legal basis and did not lack competence to adopt that decision.

The failure to apply Article 93(1) of the Treaty relating to existing aid

Observations submitted to the Court

49 Scalas and Lilliu state that the four aid measures are based not only on Law No 44/88 but also on an earlier law, dating from 1928, which is referred to in Law

No 44/88. Consequently, the Commission should not have examined those measures on the basis of the provisions of Article 93(3) of the Treaty, relating to new aid, but rather on those of Article 93(1) of the Treaty, applicable to existing aid schemes. Under the latter provisions, aid under the four measures at issue in the main proceedings could have continued to be lawfully paid until such time as the Commission adopted the contested decision and therefore should not be the subject of reimbursement.

50 The Commission submits that that argument is unfounded.

Reply of the Court

51 Measures taken after the entry into force of the Treaty to grant or alter aid, whether the alterations relate to existing aid or to initial plans notified to the Commission, must be regarded as new aid (see, to that effect, Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 48).

52 Consequently, the mere reference in Law No 44/88 to a law of 1928 in no way suffices to establish that the four aid measures are founded on that law of 1928 and are existing aid, since that law has been amended and supplemented subsequently.

53 In the present case, it is apparent from the information submitted to the Court that the four aid measures are based directly on Article 5 of Law No 44/88, which permits the grant of loans at reduced rates of interest to enable the liquidity of agricultural undertakings whose financial situation has been affected by adverse circumstances to be restored.

54 It follows that the aid at issue in the main proceedings is new aid and not existing aid and that the Commission did not make any error in not basing itself on the provisions of Article 93(1) of the Treaty.

The allegedly excessively lengthy procedure undermining the proper conduct thereof and the principle of the protection of legitimate expectations

Observations submitted to the Court

55 Scalas and Lilliu maintain that the Commission was unreasonably slow in its examination of the aid at issue in the main proceedings. The Commission should have conducted the assessment immediately when Law No 44/88 was communicated to it by letter of 1 September 1992. They submit that the Commission should have issued an opinion on the four aid measures within two months of receiving that letter and ordered the Italian Republic to suspend the aid payments immediately.

56 Instead, the Commission first allowed two years to elapse before opening a formal investigation procedure in 1994, and then three years before adopting the contested decision in 1997. Thus over nine years lapsed between the start of the aid scheme in 1988 and the adoption of that decision and more than 13 years between the date of the start of that scheme and the notification, in November 2001, of the December 1997 decrees to the parties concerned. Scalas and Lilliu maintain that those delays undermined the principle of the protection of legitimate expectations.

57 The Commission submits that the complaints of tardiness made against it are unfounded and that the Italian Government is responsible for the various delays. On two occasions the Italian Government took five and six months to respond to the Commission's requests.

Reply of the Court

58 As regards the alleged procedural defect caused by the Commission's unreasonable delay in the examination of the four aid measures, the Court finds, first, that some of the delay may be attributed to the Italian Government.

59 Thus it was the Italian Government which failed to notify the Commission of Law No 44/88 before it was adopted and which allowed almost four years to elapse before informing the Commission of the adoption of that law.

60 It is also apparent from the information provided to the Court that the Commission was not in a position to rule on the validity of the aid scheme provided for by that law solely on the basis of an examination of the text thereof. The Commission required other information, which it requested from the Italian Government. On several occasions, the Italian Government was slow in responding to the Commission's requests, sometimes taking several months to do so.

61 Second, even though the Commission's procedure for examining Law No 44/88 and the four aid measures may appear to have been relatively lengthy, it should be borne in mind that until the adoption of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC

Treaty (OJ 1999 L 83, p. 1), the Commission was not bound by any specific time-limits. In the absence of any provision in that regard, the fundamental requirement of legal certainty nevertheless had the effect of preventing the Commission from indefinitely delaying the exercise of its powers (see Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaierie di Bolzano v Commission* [2002] ECR I-7869, paragraph 140).

62 As noted by the Advocate General in his analysis of the periods which elapsed in points 160 to 167 of his Opinion, examination of the course of the procedure has not revealed any delay such as to undermine that fundamental requirement. In particular, an initial two-year stage, from 1992 to 1994, was necessary in order to gather relevant facts, since the Italian Government had not taken the initiative to notify Law No 44/88 and the four aid measures. A second stage, which began in 1994, continued until the adoption of the contested decision in 1997. During that second stage, the Commission found it necessary on several occasions to seek clarifications from the Italian Government, as a result of, *inter alia*, the amendment of the Italian legislation in the last quarter of 1995.

63 As regards the alleged infringement of the principle of the protection of legitimate expectations, it is appropriate to bear in mind the Court's settled case-law in matters of aid.

64 In view of the mandatory nature of the monitoring of State aid by the Commission under Article 93 of the Treaty, undertakings to which aid has been granted may not, in principle, entertain a legitimate expectation that the aid is lawful unless it has been granted in compliance with the procedure laid down in that article. A diligent businessman should normally be able to determine whether that procedure has been followed (see Case C-24/95 *Alcan Deutschland* [1997] ECR I-1591, paragraph 25).

- 65 Where aid is paid without prior notification to the Commission, so that it is unlawful under Article 93(3) of the Treaty, the recipient of the aid cannot have at that time a legitimate expectation that its grant is lawful (see *Alcan Deutschland*, paragraphs 30 and 31, and Joined Cases C-183/02 P and C-187/02 P *Demesa and Territorio histórico de Álava v Commission* [2004] ECR I-10609, paragraph 45).
- 66 Consequently, since Law No 44/88 had not been duly notified to the Commission, the Sardinian farmers concerned could not have any expectation that the aid which had been granted to them was lawful, nor can the alleged slowness of the procedure have given them any such expectation.
- 67 It follows that it has not been demonstrated that there was any unreasonable delay sufficient to constitute a procedural defect or undermine the principle of the protection of legitimate expectations.

The alleged failure to state adequate reasons and the alleged error of assessment as to the compatibility of the aid with the common market

Preliminary remarks

- 68 The national court asks the Court to examine the validity of the contested decision in the light of, first, the obligation to state reasons and, second, the assessment of the compatibility of the aid at issue in the main proceedings with the common market. As regards the latter point, the national court asks whether the Commission carried out that assessment in accordance with, in particular, the provisions of Article 92(2)(b) and 3(a) of the Treaty, given, on the one hand, the Commission's practice in

that area at the time of the initiation of the procedure (hereinafter, in keeping with the expression used in the contested decision, ‘the specific Commission practice for aid to farms in difficulty’) and, on the other, the Community guidelines on State aid for rescuing and restructuring firms in difficulty (OJ 1994 C 368, p. 12) (‘the Guidelines’). The national court also asks whether the contested decision fails to comply with Regulation No 797/85.

Observations submitted to the Court

- ⁶⁹ Scalas and Lilliu maintain that the contested decision does not contain a sufficient statement of reasons because it does not refer to the manner in which the aid at issue in the main proceedings affected or threatened to affect competition. In particular, the decision’s analysis of the effects on competition is incomplete because it does not contain a description of the market.
- ⁷⁰ Nor does the contested decision contain sufficient reasons as to the impact on trade. Scalas and Lilliu state in this respect that, given the economic and social situation in Sardinia, there can be no question of trade being affected by that aid.
- ⁷¹ Scalas and Lilliu maintain that, in any event, that aid was compatible with Article 92(2)(b) and 3(a) and (c) of the Treaty. The Commission also misapplied the criteria derived from the specific Commission practice for aid to farms in difficulty and the Guidelines, which were, in any event, not binding. Moreover, the Commission misapplied Council Directive 72/159/EEC of 17 April 1972 on the modernisation of farms (OJ, English Special Edition 1972 (II), p. 324), Council Directive 75/268/EEC of 28 April 1975 on mountain and hill farming and farming in certain less-favoured areas (OJ 1975 L 128, p. 1) and Regulation No 797/85.

72 The Commission maintains that the contested decision fulfils all of the requirements for statements of reasons. As to the compatibility of the aid at issue in the main proceedings with the common market, it argues that the criteria for the disputed aid to be covered by the provisions of Article 92(2)(b) and (3) of the Treaty are not met.

Reply of the Court

73 Article 190 of the Treaty requires that the statement of reasons be appropriate to the act at issue and must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in question in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. Depending on the circumstances of each case, it is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of Article 190 of the Treaty must be assessed with regard not only to its wording but also to its context and all the legal rules governing the matter in question (see, inter alia, Case C-113/00 *Spain v Commission* [2002] ECR I-7601, paragraphs 47 and 48).

74 Thus, in the case of aid which was not notified to the Commission at the planning stage, in the statement of reasons for its decision the Commission is bound to refer at least to the circumstances in which aid has been granted where those circumstances show that the aid is such as to affect trade between Member States, but it is not bound to demonstrate the real effect of aid already granted. If it were, that requirement would ultimately favour Member States which grant aid in breach of the duty to notify laid down in Article 93(3) of the Treaty, to the detriment of those which do notify aid at the planning stage (Case C-113/00 *Spain v Commission*, paragraph 54).

75 In the present case, it is apparent from the contested decision that the Commission stated how the aid granted conferred an advantage on the recipients. The Commission also stated that, for agricultural products, any aid which favours domestic products may affect trade between Member States. Consequently, it stated the reasons for which it was of the view that the aid granted distorted competition and could affect trade between Member States. Since Law No 44/88 and the four aid measures had not been notified, it was not required to give a description of the market or explain in detail the trade flows for the products concerned between Member States.

76 The Commission also set out in detail, in parts IV and V of the contested decision, the reasons for which, in the light of the information provided by the Italian authorities, the conditions required for application of the derogations provided for in Article 92(2) and (3) of the Treaty were not met.

77 It follows that the complaint relating to failure to state adequate reasons must be rejected.

78 Next, the compatibility of the aid with the common market must be considered in the light of Article 92(2)(b) and (3)(a) and (c) of the Treaty.

79 Article 92(2)(b) of the Treaty provides that aid to make good damage caused by natural disasters or exceptional occurrences is compatible with the common market. Since this is an exception to the general principle that State aid is incompatible with the common market, that provision must be interpreted narrowly. The Court has held that only damage caused by natural disasters or exceptional occurrences may be compensated for under that provision. It follows that there must be a direct link

between the damage caused by the exceptional occurrence and the State aid and that as precise an assessment as possible must be made of the damage suffered by the producers concerned (judgment of 11 November 2004 in Case C-73/03 *Spain v Commission*, not published in the ECR, paragraph 37).

80 In the present case, no link has been demonstrated between the four aid measures and a natural disaster or exceptional occurrence. The Italian Republic has stated that some of the aid measures were to compensate for the difficulties relating to a crisis in the market concerned and high interest rates but, as the Commission noted in the contested decision, those phenomena are the expression of the market forces which must be faced by any business.

81 Weather problems, such as drought, are referred to by the Italian Republic only in a general manner. No specific severity in relation to the usual weather conditions has been demonstrated and no estimate has been given of the alleged losses suffered by the farmers due to such phenomena.

82 As regards the aid to the rabbit farmers, the very nature of the aid indicates that it was not reserved to farmers who had lost all of their animals, but was granted if the loss was at least 20% of the animals. Moreover, the Italian Republic has offered no proof of the existence of a link between the aid granted and the losses suffered.

83 It follows that it has not been demonstrated that the Commission made an error of assessment in the application of Article 92(2)(b) of the Treaty.

84 As regards the assessment of the validity of the aid in the light of the provisions of Article 92(3)(a) and (c) of the Treaty, relating to aid to promote or facilitate the economic development of certain regions or certain activities, it should be remembered that for the purposes of applying those provisions the Commission enjoys a wide discretion, the exercise of which involves assessments of an economic and social nature which must be made within a Community context, and that the Court, in reviewing whether that freedom was lawfully exercised, cannot substitute its own assessment for that of the competent authority but must restrict itself to examining whether the authority's assessment is vitiated by a manifest error or misuse of powers (see Case C-456/00 *France v Commission* [2002] ECR I-11949, paragraph 41).

85 As is apparent from the contested decision, the four aid measures were examined in the light of the criteria applicable under the specific Commission practice for aid to farms in difficulty. The Commission also indicated in that decision that the Guidelines had not yet entered into force and were not applicable. It nevertheless mentions that, in any event, the conditions laid down in those guidelines were not fulfilled.

86 In relying on the criteria applicable under the specific Commission practice for aid to farms in difficulty, which are not disputed by the Italian Republic, the Commission did not commit an error of law. The criteria were ones commonly applied by it at the date of the opening of the procedure under Article 92(2) of the Treaty.

87 Under those criteria, the aid at issue in the main proceedings had to meet three conditions, namely: to contribute to the financing of investments already made, not to exceed the rates generally allowed by the Commission and either be consequent upon a readjustment of the rate to offset variations in the cost of money, or be granted to farms which offer sufficient guarantees of economic recovery.

- 88 As is apparent from the contested decision and the observations submitted to the Court, the four aid measures do not fulfil those conditions. In the first place, the fact of having made investments was not a condition for the grant of aid. In the second place, even if in certain special cases the farmers who had received aid had made investments, it has not been demonstrated that the two other conditions were met. Consequently, it does not appear that the Commission made a manifest error of assessment or misused its powers in finding, at the end of its assessment, that the four aid measures were operating aid which could not improve permanently the conditions of the sector and region concerned.
- 89 As regards the Guidelines, Scalas and Lilliu maintain that they call for flexibility in the assessment of the compatibility of aid with the common market in the case of assisted regions such as Sardinia and that the Commission should have found that the four aid measures were compatible with the common market.
- 90 It is apparent from the information provided to the Court, however, that, even if it had been possible to apply the Guidelines, Scalas and Lilliu have not demonstrated through their general remarks that the conditions laid down in those guidelines were met.
- 91 Lastly, as regards the alleged misapplication of Regulation No 797/85 and Directives 72/159 and 75/268, the Court finds that the assessment of the compatibility of the four aid measures with the common market was not at all based on those texts. The contested decision merely refers to Directive 75/268 and Regulation No 797/85 in order to clarify the concept of 'less-favoured area'. Directive 72/159 is not referred to anywhere in that decision.

- 92 It follows that it has not been demonstrated that there was an error of assessment in the application of Article 92(3)(a) and (c) of the Treaty.
- 93 In the light of all the foregoing, the answer to the questions referred must be that examination of the contested decision has revealed no ground capable of affecting the validity of that decision.

Costs

- 94 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Examination of Commission Decision 97/612/EC of 16 April 1997 on aid granted by the Region of Sardinia, Italy, in the agricultural sector has revealed no ground capable of affecting the validity of that decision.

[Signatures]