JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

15 June 2005 *

In Case T-171/02,

Regione autonoma della Sardegna, represented by G. Aiello and G. Albenzio, avvocati dello Stato, with an address for service in Luxembourg,

applicant,

supported by

Confederazione italiana agricoltori della Sardegna,

Federazione regionale coltivatori diretti della Sardegna,

Federazione regionale degli agricoltori della Sardegna,

* Language of the case: Italian.

established in Cagliari (Italy), represented by F. Ciulli and G. Dore, lawyers,

interveners,

v

Commission of the European Communities, represented by V. Di Bucci, acting as Agent, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of Commission Decision 2002/229/EC of 13 November 2001 on the aid scheme which the Sardinia Region (Italy) is planning to implement for the restructuring of holdings in difficulty in the protected crops sector (OJ 2002 L 77, p. 29),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES
(Fourth Chamber, Extended Composition),

composed of H. Legal, President, V. Tiili, A.W.H. Meij, M. Vilaras and N.J. Forwood, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 1 July 2004,

gives the following

Judgment

Background to the dispute

1 By letter of 12 January 1998, the Italian authorities notified the Commission of a planned aid scheme provided for in Decision No 48/7 of the Giunta regionale della Sardegna (Regional Executive of Sardinia) of 2 December 1997, approving a 'Regional plan for the restructuring of holdings in the protected crops sector' (hereinafter 'the project'). The Commission received that notification on 15 January 1998.

2 The project initially involved an aid scheme for restructuring.

3 Sardinian small agricultural enterprises (SAEs) in difficulty were eligible under the scheme. The criteria for a 'difficulty' for the purpose of the project involved, for the

SAE concerned, first, an 'average operating loss of at least 25% of net profits over the last three marketing years', and secondly, 'debts in excess of 30% of operating capital, by reference to debts outstanding as at 31 December 1996'. According to the Italian authorities, approximately 500 Sardinian SAEs fulfilled those criteria.

4 To be able to benefit from the aid scheme, eligible firms had to comply with a number of conditions, including the 'submission of a restructuring plan showing how all production costs would be met under normal operating conditions and an operating profit achieved' and the 'liquidation of part of the operational activities, structures or assets as required to achieve the economic and financial equilibrium of the business'.

5 The sector in issue was that of protected agricultural crops. The products concerned were various species of greenhouse-cultivated vegetables, fruit, mushrooms, plants and flowers.

6 The proposed aid entailed, first of all, measures for restructuring the debt of eligible firms. Those measures were to be adopted either by the creditor banking institutions of the firm concerned (waiver of interest and of interest on arrears on debts outstanding as at 31 December 1996; waiver of interest on arrears on debts due between 1 January 1997 and the end of a rescheduling agreement), or by the regional authorities (assumption of part of the burden of the principal debt comprising debts outstanding as at 31 December 1996; subsidising interest on debts due or created after 31 December 1996). The regional authorities' share of the cost of those measures amounted to 75% of total debts comprising outstanding debts as at 31 December 1996, net of interest on arrears payable to creditor banking institutions. Those measures were fixed to last for a maximum of 15 years.

7 Secondly, the project envisaged a non-repayable contribution to a variety of production investment measures (installation of protection, ventilation, air conditioning, insulation, drainage and irrigation systems, and upgrading or replacement of outdated equipment). Those investment measures were described as 'essential' for restructuring. The regional authorities' share of the cost of those measures amounted to 75% of total eligible expenditure. Those measures were described as lasting 'for the normal time required for technical completion'.

8 Thirdly, the project provided for technical assistance, professional training and advice by the Ente regionale di sviluppo e assistenza tecnica in agricoltura (Regional office for development and technical assistance in the agricultural sector). Those measures were presented as 'ordinary activities' which '[did] not involve additional costs'. They were described as being of 'unlimited duration'.

9 The total amount of public resources involved in financing the aid scheme for restructuring was ITL 60 billion, approximately EUR 30 million. The maximum grant to each firm to benefit from the aid was limited in turn to ITL 600 million, approximately EUR 300 000.

10 Secondly, the project set out the declared intention of the Italian Republic to provide rescue aid for SAEs in temporary and serious financial difficulty 'capable of being allocated in the form of a guarantee or grant of loans of minimum amounts at standard rates or, in any event, calculated in terms of maintaining operational activities until the restructuring phase'.

11 By letter of 1 February 1999 the Commission notified the Italian Republic of its decision to initiate the formal investigation procedure provided for in Article 88 (2) EC. The Italian authorities received that letter on 4 February 1999.

12 By letter of 14 September 2001 the Italian authorities asked the Commission to adopt a decision within two months in accordance with Article 7(7) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1). The Commission received that letter on 17 September 2001.

13 On 13 November 2001 the Commission adopted Decision 2002/229/EC on the aid scheme which the Sardinia Region (Italy) is planning to implement for the restructuring of holdings in difficulty in the protected crops sector (OJ 2002 L 77, p. 29, hereinafter 'the Decision'), which was published on 20 March 2002.

14 The Decision declares in Article 1 that the project is incompatible with the common market and may not be implemented.

Procedure and forms of order sought by the parties

15 The Regione autonoma della Sardegna (hereinafter 'the applicant') brought the present action by application lodged at the Registry of the Court of First Instance on 6 June 2002.

16 The case was initially allocated to the First Chamber, Extended Composition, and subsequently to the Fourth Chamber, Extended Composition, the Judge-Rapporteur having been assigned to the Fourth Chamber as a result of changes in the composition of the Chambers of the Court with effect from 1 October 2003.

17 By application lodged at the Registry of the Court of First Instance on 8 August 2002, the Confederazione italiana agricoltori della Sardegna, the Federazione regionale coltivatori diretti della Sardegna and the Federazione regionale degli agricoltori della Sardegna applied for leave to intervene in the proceedings in support of the form of order sought by the applicant. That application for leave to intervene was served on the parties. They did not submit observations within the prescribed period.

18 By order of 9 December 2002 the President of the First Chamber, Extended Composition, of the Court of First Instance granted leave to intervene. The interveners lodged a statement in intervention at the Registry of the Court on 5 February 2003.

19 The parties presented oral argument and replied to the questions put to them by the Court at the hearing on 1 July 2004. On that occasion, the Commission withdrew its claim for the action to be dismissed as being inadmissible on the ground of delay. Formal note of this was taken in the minutes.

20 The applicant claims that the Court should:

— annul the Decision;

— order the Commission to pay the costs.

21 The interveners claim that the Court should:

— primarily, annul the Decision;

— alternatively, annul the Decision 'in so far as it does not provide that aid up to the sum of EUR 100 000 per holding is lawful';

— order the Commission to pay the costs.

22 The Commission claims that the Court should:

— dismiss the action;

— order the applicant to pay the costs and the interveners to bear their own costs as well as the costs incurred by the Commission as a result of their intervention.

Law

A — *Claim for annulment of the Decision in its entirety*

23 In support of its claim for the annulment of the Decision in its entirety, the applicant, supported by the interveners, essentially invokes eight pleas as follows:

— breach of the first paragraph of point 4.1 of Information from the Commission of 19 September 1997 concerning Community guidelines on State aid for rescuing and restructuring firms in difficulty (97/C 283/02) (OJ 1997 C 283, p. 2; hereinafter 'the Guidelines');

— breach of Article 88 EC;

— excessive duration of the administrative procedure;

— misapplication of the principle of protection of legitimate expectations;

— breach of Article 253 EC;

— failure to act diligently;

— breach of Article 87(3)(c) EC and of the Guidelines;

— breach of Article 7(4) of Regulation No 659/1999.

24 Further, the interveners request that the Court 'additionally reject, as appropriate, the application of unlawful provisions in accordance with Article 241 EC', and essentially invoke four further pleas as follows:

— infringement of the right to be heard;

— breach of Article 87(2)(b) EC;

— breach of Article 158 EC and Declaration No 30 on island regions, annexed to the Final Act of the Treaty of Amsterdam;

— breach of Council Directive 72/159/EEC of 17 April 1972 on the modernisation of farms (OJ, English Special Edition 1972 (II), p. 324) and of 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).

25 Those two sets of pleas must be considered in turn.

1. *Pleas common to the applicant and to the interveners*

(a) Plea relating to breach of the first paragraph of point 4.1 of the Guidelines

Arguments of the parties

26 According to the applicant, supported by the interveners, the Commission did not respect the usual two-month period which it laid down for itself in the first paragraph of point 4.1 of the Guidelines for the monitoring of planned aid schemes for restructuring small and medium-sized enterprises (SMEs).

27 The Commission contests that plea.

Findings of the Court

28 The first paragraph of point 4.1 of the Guidelines states, in particular, that the Commission 'will be prepared to authorise' plans for schemes of assistance for the rescue or restructuring of SMEs or SAEs and 'will do so within the usual period of two months from the receipt of complete information, unless the scheme qualifies for the accelerated clearance procedure, in which case the Commission is allowed 20 working days'.

29 Those terms must be construed in the context of the procedural provisions laid down in the Treaty for the monitoring of State aid. The guidelines which the Commission may adopt in order to clarify the practice that it intends to follow in that area cannot depart from the provisions of the Treaty (Case 310/85 *Deufil* v *Commission* [1987] ECR 901, paragraph 22, and Case C-382/99 *Netherlands* v *Commission* [2002] ECR I-5163, paragraph 24).

30 In order to monitor new aid which the Member States plan to grant, Article 88 EC distinguishes between a preliminary examination phase and a formal investigation procedure.

31 The preliminary examination phase provided for in Article 88(3) EC is intended merely to allow the Commission a sufficient period of time for reflection and investigation so that it can form a prima facie opinion on the draft plans notified to it, thus enabling it to conclude either that they do not constitute aid, or that they are compatible with the common market or even that any doubts in that regard make a detailed investigation essential (Case 120/73 *Lorenz* [1973] ECR 1471, paragraph 3, and Case C-204/97 *Portugal* v *Commission* [2001] ECR I-3175, paragraph 34). Given the interest of the Member State concerned in being informed of the position quickly, the process is, in principle, of an urgent nature and is, on that basis, subject to a mandatory two-month period that runs from the receipt by the Commission of complete notification (*Lorenz*, cited above, paragraph 4, and Case C-334/99 *Germany* v *Commission* [2003] ECR I-1139, paragraphs 49 and 50).

32 The formal investigation procedure provided for in the first subparagraph of Article 88(2) EC is essential where the Commission is unable to satisfy itself after the preliminary examination phase that a plan does not constitute aid or that, despite constituting aid, it is compatible with the common market. The aim of the procedure is therefore to enable the Commission to be fully informed of all the facts of the case by carrying out all the requisite consultations, as it is under a duty to do,

before reaching its final decision, as well as to protect the rights of potentially interested third parties by allowing them to make their views known (Case 84/82 *Germany* v *Commission* [1984] ECR 1451, paragraph 13; Case 323/82 *Intermills* v *Commission* [1984] ECR 3809, paragraph 17; and *Portugal* v *Commission*, cited in paragraph 31 above, paragraph 33).

33 It follows that a planned aid scheme for restructuring SMEs can be authorised by the Commission within the period referred to in the first paragraph of point 4.1 of the Guidelines only if, at the end of the 'usual period of two months', that is, the period allowed for its preliminary examination, the Commission forms the view either that the measures envisaged do not constitute aid, or that they constitute aid which is undoubtedly compatible with the common market. If, on the other hand, the Commission is unable to reach such a conclusion, it is obliged to initiate the formal investigation procedure.

34 That interpretation is also confirmed by the description of the period of 20 working days which is laid down in the Communication to the Member States on the accelerated clearance of aid schemes for SMEs and of amendments of existing schemes (92/C 213/03) (OJ 1992 C 213, p. 10), to which the Guidelines refer. It is clear from the wording of the second and final paragraphs of that communication that even where a planned aid scheme satisfies all the conditions required in order for the period of 20 working days to apply, the Commission undertakes only 'in principle' not to object after that period has expired, thus reserving its full powers to 'decide', that is, where appropriate to adopt a decision to initiate the formal investigation procedure and, at the end of that procedure, a final positive, conditional or negative decision.

35 Thus, since the first paragraph of point 4.1 of the Guidelines refers only to the period applicable to the preliminary examination phase provided for in Article 88 EC, as interpreted by the Court of Justice, this plea, which was intended to stand alone, must be dismissed and the plea relating to breach of Article 88 EC must be examined.

(b) Plea relating to breach of Article 88 EC

Arguments of the parties

36 According to the applicant, the Commission staggered its requests for additional information instead of grouping them together and, for that reason, misinterpreted the purpose of the preliminary examination phase provided for in Article 88(3) EC, which is of an urgent nature, particularly where, as in this case, a plan relates to firms in difficulty.

37 According to the interveners, the Commission decided to initiate the formal investigation procedure provided for in the first subparagraph of Article 88(2) EC after the two-month period laid down for that purpose had expired, and therefore it related to what was consequently an existing aid scheme.

38 The Commission disputes those arguments.

Findings of the Court

39 The applicant's arguments, which concern the progress of the preliminary examination phase, and those of the interveners, which concern the circumstances in which the decision to initiate the formal investigation procedure was taken, must be assessed in the light of the principles established before Regulation No 659/1999 came into force. That happened on 16 April 1999, when the formal investigation procedure was already pending.

40 First, as has been noted in the examination of the previous plea, the preliminary examination phase is subject to a mandatory two-month period that runs from the receipt by the Commission of complete notification. In order for a notification to be regarded as complete it is sufficient for it to contain, either in its original form or once the Member State concerned has replied to the Commission's requests, the information needed to enable the Commission to form a prima facie opinion of the compatibility of the project which has been notified to it (Case C-99/98 *Austria* v *Commission* [2001] ECR I-1101, paragraph 56).

41 It follows that, whilst the Commission cannot prevent the two-month period from running its course while it demands information which is not needed to enable it to form a prima facie opinion (*Austria* v *Commission,* cited in paragraph 40 above, paragraphs 61 to 65), it is, on the other hand, pursuant to the purpose of Article 88 (3) EC, entitled to engage in a dialogue with the Member State concerned with a view to enabling the latter to complete its notification if the necessary information does not appear in it (Joined Cases 91/83 and 127/83 *Heineken Brouwerijen* [1984] ECR 3435, paragraphs 17 and 18; Case C-301/87 *France* v *Commission* [1990] ECR I-307, paragraphs 27 and 28; Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855, paragraph 44; Case T-73/98 *Prayon-Rupel* v *Commission* [2001] ECR II-867, paragraph 99).

42 In the present case, having received the Italian authorities' initial notification on 15 January 1998, the Commission considered that it did not have all the particulars needed to form a prima facie opinion. By fax of 9 March 1998, it asked the Italian Republic to provide it with an initial set of additional information within four weeks. The Commission's services also met with the applicant's representatives on 4 June 1998. By fax of 19 June 1998, the Commission asked the Italian authorities to confirm in writing the information supplied at that meeting and to provide it, within four weeks, with the information requested on 9 March 1998. The applicant replied to those requests by letter of 27 August 1998, which the Italian authorities passed to the Commission on 10 September, and which the latter received on 15 September.

The Commission took the view that it still did not have all the particulars needed. By fax of 19 October 1998, it asked the Italian Republic to provide it with a second set of additional information within four weeks. The applicant replied to that request by letter of 12 November 1998, which the Italian authorities passed to the Commission on 16 November 1998, and which the latter received on 19 November 1998.

43 More than 10 months thus passed between the date on which the Commission received the initial notification and the date on which that notification was complete.

44 However, it must be concluded from examining the correspondence exchanged at that time, first, that the initial notification, consisting of five pages, contained only an incomplete and imprecise description of the project scheme for restructuring aid that was envisaged by the Italian Republic and, in particular, of its eligibility criteria, of the measures required to be included in the restructuring plan to be submitted by each firm that was to benefit from it and of the individual aid that could be granted to them. Furthermore, it provided in general terms for the grant of rescue aid. The Italian authorities later withdrew that grant but only informed the Commission of that fact by a letter sent on 10 September 1998.

45 Second, by letters dated 19 June and 19 October 1998, the Commission did indeed raise certain new or supplementary questions, but it also repeated questions which had been put on 9 March 1998, to which replies were only sent by letter of 10 September 1998. In particular, with each letter, the Commission renewed its request to be supplied with the economic documentation missing from the notification, the need for which had been pointed out at the meeting on 4 June 1998. The applicant itself acknowledges that it was with the aim of 'clarifying the scope and effects' of the project that 'the Commission and the Italian authorities engaged in extensive correspondence' during the preliminary examination phase.

46 Lastly, the project was of some importance as it aimed to resolve the difficulties of approximately 500 firms, approximately one quarter of the SAEs operating in the greenhouse crops sector in Sardinia, and of a certain complexity as it envisaged implementing an aid scheme consisting of various financial measures which had to be funded either by the regional authorities or by the banking institutions which had made loans to the firms in question, as well as various investment measures for the benefit of the latter.

47 Accordingly, the Commission rightly sought to obtain from the Italian authorities, through successive requests, the information needed to form a prima facie opinion. When a Member State submits an incomplete and imprecise notification and is then slow to produce the additional information and clarification properly requested by the Commission, the regional authorities of that Member State cannot be allowed to base their argument on the resulting delay.

48 Secondly, the conversion of new aid into existing aid is subject to two conditions which are sufficient and necessary; the first is that the Commission must not initiate the formal investigation procedure within two months of receipt of the complete notification, and the second is that the Member State concerned must give the Commission prior notice of implementation of its plan (*Lorenz,* cited in paragraph 31 above, paragraphs 4 and 6, and *Austria* v *Commission,* cited in paragraph 40 above, paragraph 84).

49 In the present case, it is sufficient to note that the Italian Republic gave the Commission no notice of implementation, with the result that one of the two conditions required for the conversion of the project to an existing aid scheme was lacking, that it therefore remained new aid and that, as a result, the Commission was entitled to decide to initiate the formal investigation procedure in relation thereto (see, on that point, Case T-187/99 *Agrana Zucker und Stärke* v *Commission* [2001] ECR II-1587, paragraph 39).

50 The plea must therefore be dismissed in its entirety.

(c) Plea relating to the excessive duration of the administrative procedure

Arguments of the parties

51 Having taken the view that the administrative procedure lasted an excessively long time, the applicant, supported by the interveners, argues that there was a failure to observe a reasonable timescale and that the fundamental requirement of legal certainty was not adhered to.

52 The Commission contests that plea.

Findings of the Court

53 It is a general principle of Community law that the conduct of an administrative procedure should be of reasonable duration (Case T-190/00 *Regione Siciliana* v *Commission* [2003] ECR II-5015, paragraph 136). Further, the fundamental requirement of legal certainty, which precludes the Commission from being able to postpone the exercise of its powers indefinitely, means that the Court has to assess whether the progress of the administrative procedure indicates excessively belated action on the part of that institution (Joined Cases C-74/00 P and C-75/00 P *Falck and Acciaieriedi Bolzano* v *Commission* [2002] ECR I-7869, paragraphs 140 and 141, and Case T-109/01 *Fleuren Compost* v *Commission* [2004] ECR II-127, paragraphs 145 to 147).

54 In the present case, it is apparent from the progress of the preliminary examination phase, described in paragraph 42 above, that more than 12 months passed between receipt by the Commission of the initial notification on 15 January 1998, and receipt by the Italian Republic on 4 February 1999 of the letter giving notice of the decision to initiate the formal investigation procedure.

55 However, more than eight months of that period may be accounted for by the time that passed between the despatch to the Italian Republic of an initial request for additional information on 9 March 1998, and receipt by the Commission on 19 November 1998 of the last of the information sought. The applicant acknowledged in its written submissions that the intervening exchange of correspondence had served to clarify the wording and scope of the project. It also conceded at the hearing that the extended time taken for that exchange was to a large extent due to the lateness and incomplete nature of its replies to the questions put by the Commission. In view of those points and the circumstances described in paragraphs 44 to 46 above, it cannot be held that the preliminary examination phase lasted an unreasonably long time, or that the Commission acted too slowly.

56 Since the entry into force of Regulation No 659/1999 on 16 April 1999, the formal investigation procedure is subject to an indicative period of 18 months, which may be extended by common agreement between the Commission and the Member State concerned according to Article 7(6) of that regulation. That regulation applies to any administrative procedure pending before the Commission when it came into force, with the exception of those of its provisions to which particular implementation rules apply (Case T-369/00 *Département du Loiret* v *Commission* [2003] ECR II-1789, paragraphs 50 and 51). That provision therefore applies in the present case.

57 As the period of 18 months provided for in Article 7(6) of Regulation No 659/1999 is indicative only, it is necessary to consider whether it is apparent from the progress of

the formal investigation procedure that the Commission failed to take a reasonable amount of time or acted too slowly. The chronology of that procedure is as follows:

— 4 February 1999: receipt by the Italian Republic of the Commission's letter of 1 February 1999 informing it of the decision to initiate the formal investigation procedure and inviting it to submit comments within one month;

— 15 June 1999: receipt by the Commission of the comments of the Italian Republic;

— 3 July 1999: publication of Commission Information 1999/C 187/02 on an invitation to submit comments (OJ 1999 C 187, p. 2);

— 7 December 1999: despatch by the Commission, and receipt by the Italian Republic, of a request for additional information, to be provided within four weeks;

— 4 July 2000: receipt by the Commission of a request for 'deferment of the time-limit for closure of the procedure' sent by the Italian Republic at the applicant's request;

— 11 July 2000: grant by the Commission of a two-month extension for provision of the information requested on 7 December 1999;

— 9 February 2001: receipt by the Commission of the information requested on 7 December 1999;

— 17 September 2001: receipt by the Commission of a request for adoption of a final decision within two months in accordance with Article 7(7) of Regulation No 659/1999, sent by the Italian Republic at the applicant's request;

— 15 November 2001: notification of the Decision to the Italian Republic.

58 That chronology shows that 17 months, less than the indicative period of 18 months laid down in Article 7(6) of Regulation No 659/1999, elapsed between initiation of the formal investigation procedure and the request for an extension of that period, and that a total of 33½ months elapsed before the procedure was closed.

59 That total period is attributable mainly to the failure to observe the one-month period given to the Italian Republic to submit its comments (which was exceeded by three and a half months), the period of four weeks to provide the additional information requested by the Commission (exceeded by six and a half months prior to the request for an extension) and the extension of two months to collate and supply that information (exceeded by almost five months). Whilst it was in the Italian Republic's interest to comply with those deadlines, although it was not bound to do so, the Italian Republic nevertheless remains responsible for the time which elapsed as a result of its conduct (see, on that point, Case C-305/89 *Italy* v *Commission* [1991] ECR I-1603, paragraph 30, and *Regione Siciliana* v *Commission*, cited in paragraph 53 above, paragraph 138).

60 Furthermore, although the six months which elapsed between receipt of the comments submitted by the Italian Republic (on 15 June 1999) and the despatch by the Commission of a request for additional information (on 7 December 1999) and the nine months which elapsed between receipt of that information (on 9 February 2001) and adoption of the Decision (on 13 November 2001) seem significant, they are not, however, excessive, particularly given the circumstances described in paragraphs 46 and 59 above and the numerous doubts as to the compatibility of the project with the common market which were expressed by the Commission in its decision to initiate the formal investigation procedure. The Commission cannot therefore be accused of having made the procedure last an excessively long time.

61 The plea must therefore be dismissed.

(d) Plea relating to the failure to comply with the principle of protection of legitimate expectations

Arguments of the parties

62 The applicant maintains that it acquired a legitimate expectation that the project was compatible with the common market because of the significant correspondence between the Italian Republic and the Commission in the course of the administrative procedure as well as the exceptional duration of that procedure. The interveners take the view that such a legitimate expectation arose because of the Commission's silence over a period of seven months from receipt of the last of the information requested of the Italian Republic in the course of the formal investigation procedure.

63 The Commission contests that plea.

Findings of the Court

64 In principle, and save in exceptional circumstances, a legitimate expectation that aid is lawful cannot be invoked unless that aid has been granted in compliance with the procedure laid down in Article 88 EC (Case C-5/89 *Commission* v *Germany* [1990] ECR I-3437, paragraphs 14 and 16).

65 In order for aid to have been granted in compliance with the procedure laid down in Article 88 EC, that procedure, which is suspensory in nature, must have been brought to a close. Consequently, where the formal investigation procedure has been initiated in accordance with the first subparagraph of Article 88(2) EC, it must subsequently have been closed by means of a positive decision in accordance with Article 7(1) and (3) of Regulation No 659/1999. Therefore, it is only once such a decision has been adopted by the Commission, and the period for bringing an action against that decision has expired, that a legitimate expectation as to the lawfulness of the aid concerned can be pleaded (Case T-126/99 *Graphischer Maschinenbau* v *Commission* [2002] ECR II-2427, paragraph 42).

66 In the present case, assuming that the applicant, which is not a trader but the regional authority which devised the planned aid scheme, is entitled to plead a legitimate expectation, the project was clearly never the object of a positive decision and none of the factual arguments pleaded by the parties constitutes an exceptional circumstance which might have allowed the applicant to expect, even before the Decision was adopted, that the Commission considered or would consider that project to be compatible with the common market.

67 First of all, the correspondence exchanged in the course of the administrative procedure remained within the limits of dialogue enabling the Commission to obtain from the Italian Republic the information needed to form a prima facie opinion (see paragraphs 41 to 47 and 55 above), and then the additional information requested on the effects of the project on the market (see paragraph 59 above). Furthermore, reading that correspondence shows that, in its letters, which were passed to the applicant by the Italian Republic, the Commission was always careful to express serious doubts about certain aspects of the project and to reserve its definitive assessment, as it pointed out at the hearing, and which was not disputed.

68 Secondly, the administrative procedure was not unreasonably protracted, as examination of the previous plea has shown. Even less is its duration exceptional, therefore.

69 Thirdly, although it is true that after receiving the last of the information requested, the Commission remained silent for seven months until the Italian Republic asked it to make a decision within two months pursuant to Article 7(7) of Regulation No 659/1999, that silence could not be construed as an implied approval on the part of that institution, because it was still under an obligation to close the formal investigation procedure by means of a decision in accordance with Article 7(1) of that regulation.

70 The plea must therefore be dismissed.

(e) Plea relating to breach of Article 253 EC

Arguments of the parties

71 The applicant and the interveners maintain that the Decision is in breach of Article 253 EC inasmuch as it contains an inadequate statement of reasons as regards the description of the economic sector in question and the examination of the effects of the project on trade between Member States and on competition.

72 The Commission contests that plea.

Findings of the Court

73 The statement of reasons for a measure must be appropriate to that measure and must disclose clearly the reasoning followed by the institution which adopted it in such a way as to enable the persons concerned to understand the basis for it and the court to review the justification for it, without being required to go into all the relevant facts and points of law, since the question of compliance with Article 253 EC is assessed by taking the wording of that measure into account as much as its legal and factual context (Case 2/56 *Geitling* v *High Authority* [1957 and 1958] ECR 3, at p. 15, and Case C-42/01 *Portugal* v *Commission* [2004] ECR I-6079, paragraph 66).

74 Where a decision is adopted by the Commission in relation to the monitoring of State aid, even if the very circumstances in which aid is granted are sufficient to show that the aid is capable of affecting trade between Member States and of distorting or threatening to distort competition, the Commission must at least set out those circumstances in the statement of reasons for that decision (Joined Cases 296/82 and 318/82 *Netherlands and Leeuwarder Papierwarenfabriek* v *Commission* [1985] ECR 809, paragraph 24, and Case C-372/97 *Italy* v *Commission* [2004] ECR I-3679, paragraph 71).

75 In the present case, recital 41 in the preamble to the Decision states that the intended aid encourages the production of fruit, vegetables and plants. In the light of recital 8, which lists different species of fruit, vegetables, plants and flowers cultivated in greenhouses by the Sardinian SAEs for whom the project was intended, those particulars adequately describe the economic sector concerned.

76 Recital 41 in the preamble to the Decision then sets out statistical information to show that Italy is the principal vegetable producer in the European Union and that Sardinia constitutes an important production area in Italy. It thus indicates why the project is liable to affect trade between Member States.

77 Similarly, recital 43 in the preamble to the Decision indicates that aid for restructuring firms in difficulty shifts the burden of structural change on to other more efficient firms and encourages a subsidy race. It also refers to points 1.1 and 2.3 of the Guidelines, which also deal with that issue. Thus it indicates why the project is liable to distort or threaten to distort competition.

78 Finally, recitals 51 and 54 in the preamble to the Decision, in which the compatibility of the project is assessed in the light of the condition laid down in point 3.2.2(ii) of the Guidelines of avoiding undue distortions of competition, complete that statement of reasons by setting out in more detail the risk that the project will have the effect of increasing production and affecting prices in the sector concerned.

79 It therefore appears that it was not impossible to identify from the statement of reasons for the Decision the sector in question and the effects or possible effects of the project on trade between Member States and on competition.

80 The plea must therefore be dismissed.

(f) Plea relating to the Commission's failure to act diligently

Arguments of the parties

81 The applicant, supported by the interveners, accuses the Commission of merely considering the possible effects of the project in the abstract. A genuine analysis would have led it to conclude that, taking into account the limited economic scale of the greenhouse-crop sector in Sardinia, the modest size of the eligible firms and the small amount of intended aid, the project did not affect trade and neither distorted nor threatened to distort competition.

82 The Commission contests that plea.

Findings of the Court

83 Although the plea formally relates to a failure to act diligently, examination of the merits shows that it concerns the essence of the Decision and not the circumstances of its adoption. Moreover the applicant confirmed at the hearing that it was claiming that the 'lack of diligence and of justification in regard to the assessment of the compatibility of the project' amounted to a 'fundamental defect' in that, if the Commission had 'taken into account the actual circumstances', it 'would have seen that it [was] impossible, in any event, for the project to distort free competition'.

84 In so far as the applicant expressly calls into question recitals 41 and 43 in the preamble to the Decision concerning the categorisation of the project, analysis of the plea shows that it relates either to an error of law in that Article 87(1) EC requires the Commission to determine the actual effect of the project on trade between Member States and on competition, or an error of assessment in that the conditions for the application of Article 87(1) EC to trade between Member States and to competition were not met in the present case.

85 However, the Commission is not required to determine the actual effect of planned aid or of an aid scheme but only to examine whether the project is liable to affect trade between Member States and distort or threaten to distort competition (Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087, paragraph 49, and Case C-372/97 *Italy* v *Commission,* cited in paragraph 74 above, paragraph 44). In the present case, the Commission had therefore not erred in law in examining the effect of the project on trade between Member States or on competition in the manner indicated in relation to the previous plea.

86 Further, neither the relatively small amount of aid envisaged nor the modest size of the eligible firms in itself precludes a planned aid scheme from being liable to affect trade between Member States and to distort or threaten to distort competition (Case 730/79 *Philip Morris* v *Commission* [1980] ECR 2671, paragraphs 11 and 12; Case C-142/87 *Belgium* v *Commission* [1990] ECR I-959, paragraph 43; and Case C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraph 53). The same applies to the limited scale of the economic sector concerned (Case C-280/00 *Altmark Trans and Regierungspräsidium Magdeburg* [2003] ECR I-7747, paragraph 82, and Case C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraph 60).

87 Other factors can also be taken into account, such as the particular degree of exposure to competition in the economic sector in which the eligible holdings operate (Case 259/85 *France* v *Commission* [1987] ECR 4393, paragraph 24, and Case C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraph 54). The agricultural sector, and the fruit and vegetable sector in particular, is exposed to intense competition. In particular, its structure, which is characterised by a large number of small-scale operators, is such that the creation of an aid scheme that is available to a large number of them, as in the present case, can have an impact on competition even where individual grants of aid under that scheme are small (Case C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraph 57). The arguments put forward by the applicant and by the interveners do not therefore, by themselves, establish an error of assessment in that regard.

88 From that point of view, the plea must therefore be dismissed.

89 In so far as the applicant states that it disputes the assessment of the compatibility of the project having regard to Article 87(3)(c) EC, the plea is understood to relate to a manifest error of assessment in that the project would not adversely affect trading conditions to an extent contrary to the common interest. The application of that

provision also presupposes the need to take into consideration the effect of a State measure on trade between Member States and on competition (Case C-169/95 *Spain* v *Commission* [1997] ECR I-135, paragraph 20), as the Guidelines also state in the second paragraph of point 2.4 and in point 3.2.2(ii).

90 From that point of view, the plea is the same as the following plea, and will be examined jointly with it.

(g) Plea relating to breach of Article 87(3)(c) EC and the Guidelines

Arguments of the parties

91 According to the applicant, supported by the interveners, the examination of the compatibility of the project with the common market, undertaken in the light of Article 87(3)(c) EC in relation to aid to facilitate the development of certain economic activities or of certain economic areas, and in the light of the Guidelines, is flawed by reason of errors of law and manifest errors of assessment.

92 In addition, the interveners argue that the Commission infringed points 3.2.3, 3.2.4 and 3.2.5 of the Guidelines.

93 The Commission submits that those arguments should be dismissed in their entirety.

Findings of the Court

94 Under Article 87(3) EC the Commission has a wide discretion (*Philip Morris* v *Commission*, cited in paragraph 86 above, paragraph 17, and Case C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraph 83).

95 None the less, in order to exercise that discretion, it may adopt rules of guidance such as the Guidelines which apply in the present case, so long as those rules do not depart from the provisions of the Treaty. Where such a measure has been adopted, the Commission is governed by it (*Deufil* v *Commission*, cited in paragraph 29 above, paragraph 22; Case C-313/90 *CIRFS and Others* v *Commission* [1993] ECR I-1125, paragraph 36, and *Netherlands* v *Commission*, cited in paragraph 29 above, paragraph 24).

96 It is therefore for the Court to check that the Commission has observed the rules which it adopted (Case T-35/99 *Keller and Keller Meccanica* v *Commission* [2002] ECR II-261, paragraph 77).

97 However, since the wide discretion conferred upon the Commission, clarified, where appropriate, by the guidance rules adopted, involves complex economic and social appraisals having to be carried out in a Community context, the Court has limited control over these. It confines its review to determining whether the rules governing procedure and the requirement for a statement of reasons have been complied with, whether the facts are accurately stated and whether there has been any manifest error of assessment or any misuse of powers (*Philip Morris* v *Commission*, cited in paragraph 86 above, paragraph 24; Case C-56/93 *Belgium* v *Commission* [1996] ECR I-723, paragraph 11; Case T-110/97 *Kneissl Dachstein* v *Commission* [1999] ECR II-2881, paragraph 46).

98 In that context, the applicant and the interveners criticise, first of all, the overall assessment of the project (recital 45 in the preamble to the Decision); secondly, the assessment of the definition of firm in difficulty for the purpose of the project in the light of the first paragraph of point 2.1 of the Guidelines (recital 46 in the preamble to the Decision); thirdly, the failure to assess the compatibility of the project in the light of the special rules laid down in points 3.2.3, 3.2.4 and 3.2.5 of the Guidelines; and, fourthly, its assessment in the light of the general rules laid down in point 3.2.2 of the Guidelines (recitals 48 to 58 in the preamble to the Decision).

— Overall assessment of the project

99 According to the applicant, the Commission could not base the Decision on the fact that implementing the restructuring aid scheme notified to it by the Italian Republic was liable, given the automatic nature of the measures which the project entailed, to result in the grant of individual aid measures to SAEs which were not in difficulty and which were not, therefore, eligible for them.

100 Given that argument, it must first be examined whether the Commission can sustain such an argument in support of a decision declaring a planned aid scheme for restructuring firms in difficulty to be incompatible with the common market and, second, an assessment must be made as to whether the Commission could sustain such an argument in support of the Decision in the present case.

101 Under Article 87(3) EC and at the end of the procedure laid down in Article 88 (2) EC, the Commission may declare, by means of a positive or conditional decision, that a planned aid scheme is compatible with the common market. The Member State concerned can then dispense with notifying the Commission of individual aid measures taken pursuant to that scheme, subject, where appropriate, to the

conditions and obligations imposed by the Commission in that respect. The latter has a wide discretion in the matter (Case C-47/91 *Italy* v *Commission* [1994] ECR I-4635, paragraph 21, and Case C-321/99 P *ARAP and Others* v *Commission* [2002] ECR I-4287, paragraph 72).

102 When it assesses the description of such a project and its compatibility with the common market, the Commission is entitled to confine itself to examining its general characteristics, as they appear from the complete notification, without being required to examine each particular case in which it applies (Case 248/84 *Germany* v *Commission* [1987] ECR 4013, paragraph 18; Case C-75/97 *Belgium* v *Commission* [1999] ECR I-3671, paragraph 48; *Italy and Sardegna Lines* v *Commission*, cited in paragraph 41 above, paragraph 51; Case C-351/98 *Spain* v *Commission* [2002] ECR I-8031, paragraph 67, and Case C-278/00 *Greece* v *Commission* [2004] ECR I-3997, paragraph 24).

103 The opportunity which is given to the Member State concerned to give notice of a planned aid scheme and, once the Commission has approved it after examining its general characteristics, to dispense with notification of individual aid measures granted pursuant to that scheme, subject, where appropriate, to conditions and obligations imposed in that respect, cannot, as the Commission rightly maintains, justify the grant of individual aid measures which would have been declared incompatible if they had been the subject of an individual notification without negating the effect of the principle of incompatibility of aid set out in Article 87 EC. In particular, it cannot lead to individual aid measures being granted which, although consistent with one of the objectives of Article 87(3)(a) to (d) EC, would none the less not be necessary in order for that objective to be met (*Philip Morris* v *Commission*, cited in paragraph 86 above, paragraph 17; *Agrana Zucker und Stärke* v *Commission*, cited in paragraph 49 above, paragraph 74; *Graphischer Maschinenbau* v *Commission*, cited in paragraph 65 above, paragraph 34).

104 The Commission must therefore check that planned aid schemes submitted for its examination are set up in such a way as to ensure that the individual aid measures to be granted according to their provisions will be limited to firms which are actually eligible for them.

105 If that proves not to be the case, it is for the Commission, in the exercise of its wide discretion, to take that into account and to assess whether it is appropriate to adopt a conditional or negative decision, in so far as it can do so from the information available to it (see, to that effect, *Spain* v *Commission*, cited in paragraph 102 above, paragraph 87, and Case T-9/98 *Mitteldeutsche Erdöl-Raffinerie* v *Commission* [2001] ECR II-3367, paragraph 116).

106 In the present case, the question of whether the Commission could take the view that that was not the case is linked to the appropriateness of the definition of firms in difficulty for the purposes of the project, as is apparent from recital 46 in the preamble to the Decision. These two issues must therefore be considered together.

— Assessment of the definition of firms in difficulty for the purposes of the project, having regard to the first paragraph of point 2.1 of the Guidelines

107 The applicant and the interveners argue that recital 46 in the preamble to the Decision, which assesses the definition of firms in difficulty for the purposes of the project, is undermined by an error of law or, at the very least, a manifest error of assessment. The Commission, it is claimed, erred in law in departing from the Guidelines, the first paragraph of point 2.1 of which does not require that definition to be based on criteria which show that the situation of the firms seeking to benefit from the restructuring aid is continuously worsening. At the very least, it committed a manifest error of assessment in failing to conclude that the criteria selected for the project were adequate for the purpose of establishing that the firms concerned were in an economic situation that justified the grant of restructuring aid, notwithstanding the possible improvement in that situation at the end of the reference period.

108 The first paragraph of point 2.1 of the Guidelines makes it clear that the Commission regards as being in difficulty a firm which is unable to recover through its own resources or by raising the funds it needs from shareholders or borrowing. It puts forward various trend indicators for assessing how much a firm's situation is worsening, together with various specific indicators for assessing the particular gravity of that situation in certain cases.

109 It is quite clear from the wording of that point that the Commission did not depart from the Guidelines in pointing out, prior to the assessment of the definition chosen in the present case, the importance it usually attaches to indicators which show the gradual worsening of difficulties suffered by firms intended to benefit from a restructuring aid scheme. The argument relating to an error of law in that respect must, therefore, be dismissed.

110 Next, it is clear from reading recital 46 in the preamble to the Decision that, in support of its assessment that the definition of a firm in difficulty chosen by the Italian authorities in the present case led it to doubt the compatibility of the project with the common market, the Commission states, in essence, that the criteria used were unsuitable and unreliable because they were based on an average.

111 The first paragraph of point 2.1 of the Guidelines indicates that the importance which the Commission attaches to trend indicators does not necessarily make other kinds of indicator unsuitable, such as those based on an average as in the project. However, such indicators will, in any event, be suitable only if it is thereby possible to identify the genuine and demonstrable difficulties which the eligible firms have encountered. Failing that, the aid cannot be regarded as being required by those firms or necessary in order to meet the objective of Article 87(3)(c) EC.

112 In the present case, it cannot be regarded as manifestly wrong to have taken the view that the criteria chosen did not guarantee that the aid scheme would be available only to firms in difficulty within the meaning of the first paragraph of point 2.1 of the Guidelines. The applicant's and the interveners' allegations to that effect are not based on anything which could lead to the conclusion that a manifest error of assessment had been made in that regard.

— Failure to apply the rules in points 3.2.3, 3.2.4 and 3.2.5 of the Guidelines

113 The rules in points 3.2.3, 3.2.4 and 3.2.5 of the Guidelines, which the interveners claim the Commission failed to apply, are 'special provisions' subject to which the 'general conditions' set out in point 3.2.2 of the Guidelines apply, as stated in the first paragraph of that point.

114 First of all, the interveners consider that, since the Commission took formal note of the lack of overcapacity in the sector and waived the requirement of a reduction in capacity (recital 53 in the preamble to the Decision), it should have concluded that the project complied with point 3.2.3 of the Guidelines and, consequently, was compatible with the common market.

115 The second paragraph of point 2.4 of the Guidelines states, in particular, that where the firms involved in a plan for restructuring aid are located in an assisted area, the Commission will take regional considerations under subparagraphs (a) and (c) of Article 87(3) EC into account as stated in point 3.2.3 of the Guidelines. The latter, headed 'Conditions for restructuring aid in assisted areas', states, in particular, that where a proposed aid scheme for restructuring firms in difficulty concerns an

assisted or less-favoured area, the Commission is required to take that into account and, to that end, is authorised, notwithstanding structural overcapacity in the sector concerned, to apply flexibly the rule as to capacity reduction laid down in the Guidelines, if regional development needs justify it.

116 By contrast, it certainly does not follow that where the sector affected by a new aid plan appears not to be suffering overcapacity, and the Commission therefore waives the requirement of a capacity reduction by eligible firms, that plan should, for that reason alone, be regarded as being compatible with the common market.

117 On the contrary, the project must still satisfy the principle laid down in point 3.2.1 of the Guidelines, according to which a new aid plan for restructuring can be granted only in circumstances in which it can be demonstrated that the approval of restructuring aid is in the Community interest and, therefore, that it fulfils the conditions as to restoration of viability, avoidance of undue distortions of competition and proportionality which are set out in point 3.2.2 of the Guidelines. Although the Commission can show 'flexibility' in that respect, it cannot be 'wholly permissive', according to point 3.2.3 of the Guidelines (Case T-152/99 *HAMSA* v *Commission* [2002] ECR II-3049, paragraph 114).

118 In the present case, establishing that there did not appear to be overcapacity in the Sardinian greenhouse-crop sector did not therefore force the Commission to conclude that the project was compatible with the common market. The argument relating to an error of law on that point is, for that reason, unfounded.

119 Secondly, the interveners consider that, since all the firms eligible for the project were SAEs, the Commission should have applied point 3.2.4 of the Guidelines.

120 Point 1.2 of the Guidelines states that there are circumstances in which aid for restructuring may be justified; in particular it may be justified 'by wider economic benefits of the [SME] sector, and by the special needs of SMEs and of [SAEs]'. Point 3.2.4 of the same Guidelines, headed 'Aid for restructuring [SMEs]', states, specifically, that 'the Commission will not require aid for restructuring to meet the same strict conditions as aid for restructuring large firms, particularly as regards capacity reductions and reporting obligations'.

121 It follows that the Commission is required to apply the rules laid down in point 3.2.2 of the Guidelines flexibly when it examines the compatibility with the common market of an aid project for restructuring SMEs or SAEs in difficulty, such as the project in issue in the present case. The rules in question, although relaxed, therefore remain applicable.

122 Therefore, assessing the merits of the considerations which led the Commission to conclude that the project did not comply with those rules will determine whether the rules were applied flexibly, taking into account the beneficial economic role of the SAEs and their particular requirements (see paragraph 141 below).

123 Thirdly, the interveners maintain that the Commission could not refuse to assess the compatibility of the project in the light of point 3.2.5 of the Guidelines on the — in their view, irrelevant — ground that the Italian authorities had not asked for it to be applied.

124 The introductory paragraph of point 3.2.5 of the Guidelines, headed 'Provisions applicable only to aid for restructuring in the agricultural sector', states:

'The Commission, at the request of the Member State concerned, and as an alternative to the general provisions of [the Guidelines] concerning capacity reduction, will apply the following provisions for operators in the agricultural sector ...'

125 In the present case, recitals 33 and 52 in the preamble to the Decision, the accuracy of which is undisputed on this point, state that the Italian authorities did not at any time ask the Commission, which had drawn their attention to that option, to apply the rules laid down in point 3.2.5 of the Guidelines. Not only could the Commission therefore have confined itself to applying the rules in point 3.2.2 of the Guidelines, but it was obliged to do so. The argument based on an error of law on that point is, consequently, unfounded.

— Assessment of the project having regard to the rules in point 3.2.2 of the Guidelines

126 In order to be declared compatible with the common market in application of Article 87(3)(c) EC, a restructuring aid plan for a firm in difficulty must be linked to a restructuring programme designed to reduce or redirect its activities (see Joined Cases C-278/92, C-279/92 and C-280/92 *Spain* v *Commission* [1994] ECR I-4103, paragraph 67; Case C-17/99 *France* v *Commission* [2001] ECR I-2481, paragraph 45, and *Prayon-Rupel* v *Commission*, cited in paragraph 41 above, paragraph 70).

127 Point 3.2.2 of the Guidelines, which lays down that requirement, stipulates, in particular, that the restructuring plan should fulfil three material conditions. It is essential, first of all, that it should restore the viability of the beneficiary firm within a reasonable timescale and on the basis of realistic assumptions (point 3.2.2(i)), secondly, that it should avoid undue distortions of competition (point 3.2.2(ii)) and, thirdly, that it should be in proportion to the restructuring costs and benefits (point 3.2.2(iii)).

128 As those conditions are cumulative, the Commission must declare a restructuring aid plan to be incompatible if even one of those conditions has not been satisfied (*France* v *Commission*, cited in paragraph 126 above, paragraphs 49 and 50; *Greece* v *Commission*, cited in paragraph 102 above, paragraphs 100 and 101, and *HAMSA* v *Commission*, cited in paragraph 117 above, paragraph 79).

129 Furthermore, in order to fulfil its duty to cooperate with the Commission, the Member State concerned must provide all the information necessary to enable the Commission to verify that the conditions for the derogation from which it seeks to benefit are satisfied (Cases C-364/90 *Italy* v *Commission* [1993] ECR I-2097, paragraph 20, and C-372/97 *Italy* v *Commission*, cited in paragraph 74 above, paragraphs 81 to 85).

130 Lastly, the Court must assess the legality of a Commission decision concerning State aid in the light of the information available, or which could have been available, to the Commission when the decision was adopted (Case 234/84 *Belgium* v *Commission* [1986] ECR 2263, paragraph 16, and Case C-277/00 *Germany* v *Commission* [2004] ECR I-3925, paragraph 39).

131 In the present case, the Italian authorities notified a planned aid scheme for restructuring around 500 SAEs. That project was required to ensure that the individual restructuring plans submitted by the SAEs seeking to benefit from the aid satisfied the conditions laid down in point 3.2.2 of the Guidelines. The Commission took the view, in recitals 48 to 58 in the preamble to the Decision, that that was not the case.

132 The applicant and the interveners maintain, first, that the assessment of the project in the light of point 3.2.2(i) of the Guidelines is flawed because of manifest errors of assessment.

133 It is apparent from the wording of point 3.2.2(i) of the Guidelines, headed 'Restoration of viability', that the condition combines two requirements. First, the restoration of viability must be based principally on internal factors and therefore only secondarily on external factors, provided that the latter appear to be realistic. Second, it must appear to be capable of being achieved within a reasonable timescale and to be durable.

134 As regards the first of those requirements, the Commission noted, in recitals 49 and 50 in the preamble to the Decision, that the restoration of viability was based in particular on two external factors: the first on the hypothesis that revenues had to increase because of promotional campaigns which it was assumed would create new outlets, and the second on the hypothesis that revenues would not decline because increased production would not affect prices. It took the view that the first of those hypotheses was not proven and the second not verifiable and, moreover, unrealistic.

135 According to the statements by the Italian authorities and the applicant, the project was based 'essentially on internal measures' which meant an increase in production

of almost 40% by the beneficiary firms and an increase in their revenues of more than 50%, and 'to a significant degree' on an external factor, the 'increasing demand for local products'.

136 The Decision, which deals with that external factor in recitals 49 and 50 in the preamble, might initially give the impression that the Commission omitted to examine the internal factors. However, it is apparent from a more careful reading that the Commission, implicitly but necessarily, recognised the significance and relevance of those factors. It is effectively only because the Commission had conceded that those factors might result in an increase in supply of around 40% that the Commission debated whether that increase could, in the absence of sufficient demand, involve a fall in prices and hinder the restoration of viability that it was supposed to ensure. That is why the Commission asked for economic information concerning the existence of outlets and the effect of production increases on prices, as it also confirmed at the hearing without being challenged.

137 However, the Italian authorities did not at any time supply precise information concerning outlets or, specifically, the promotional campaigns which they intended to organise, as they had stated to the Commission in the course of the administrative procedure. Clearly the Commission could not base its assessment on a mere claim (see, by analogy, Case C-372/97 *Italy* v *Commission,* cited in paragraph 74 above, paragraph 84).

138 Moreover, when questioned on that point at the hearing, the applicant admitted that the promotional campaigns were only 'hypothetical'.

139 Likewise, the Italian authorities never supplied conclusive information about the effect on prices of the production increases which they had described to the Commission. Essentially, in a letter dated 26 January 2001, they supplied the market

study requested by the Commission on 19 June 1998, 19 October 1998 and 7 December 1999. That study, which describes, in particular, an underlying and relative increase in the sale price of the 'salad' tomato and the red pepper in the province of Cagliari between 1995 and 1997, shows how the price of those two products could ultimately evolve in that province, all things being equal. On the other hand it could be argued, without manifest error, that it does not provide convincing information as to how the price of those products, and of the other products concerned, would evolve in the province of Cagliari and in the rest of Sardinia if the over 40% production increase expected in that region as a result of the project is taken into account.

140 When questioned on that point at the hearing, the applicant did not, moreover, dispute the unsatisfactory nature of that study and confined itself to explaining that other evidence had to be taken into account, such as the proposal's objectives of encouragement, rationalisation and specialisation by SAEs.

141 That argument cannot, however, be sustained. The Commission can fulfil its duty under point 3.2.4 of the Guidelines to display flexibility when determining whether a plan concerning SMEs or SAEs satisfies the condition as to restoration of viability laid down in point 3.2.2(i) of the Guidelines only if it has precise and conclusive data.

142 It appears therefore, first of all, that the Italian Republic failed to provide the information which would have enabled the Commission to satisfy itself that the project was capable of restoring the viability of eligible SAEs on the basis of realistic hypotheses, in spite of repeated requests by that institution, and, secondly, that the latter therefore had to resign itself to concluding, without committing a manifest error of assessment on that point, that the information available to it did not remove the doubts which it had in that regard.

143 Since it cannot be held that the Commission committed a manifest error of assessment in forming the view that it could not conclude from the information available to it that the project satisfied the condition as to the restoration of viability, and since the conditions laid down in point 3.2.2 of the Guidelines apply cumulatively (see paragraphs 127 and 128 above), the plea must be rejected, it being unnecessary to examine the arguments relating to the assessment of the project in the light of the other conditions set out in point 3.2.2 (*France* v *Commission*, cited in paragraph 126 above, paragraph 50; *Greece* v *Commission*, cited in paragraph 102 above, paragraph 101; *HAMSA* v *Commission*, cited in paragraph 117 above, paragraph 108).

(h) Plea relating to breach of Article 7(4) of Regulation No 659/1999

Arguments of the parties

144 According to the applicant, supported by the interveners, the Commission wrongly adopted a negative decision under Article 7(5) of Regulation No 659/1999 instead of a conditional decision under Article 7(4) of that regulation.

145 The Commission contests that plea.

Findings of the Court

146 Article 7 of Regulation No 659/1999, headed 'Decisions of the Commission to close the formal investigation procedure', provides, inter alia:

'1. Without prejudice to [the withdrawal of notification by the Member State concerned], the formal investigation procedure shall be closed by means of a decision as provided for in paragraphs 2 to 5 of this Article.

...

4. The Commission may attach to a positive decision conditions subject to which an aid may be considered compatible with the common market and may lay down obligations to enable compliance with the decision to be monitored (hereinafter referred to as a "conditional decision").

5. Where the Commission finds that the notified aid is not compatible with the common market, it shall decide that the aid shall not be put into effect (hereinafter referred to as a "negative decision").

6. Decisions taken pursuant to paragraphs 2, 3, 4 and 5 shall be taken as soon as the doubts referred to in Article 4(4) have been removed. The Commission shall as far as possible endeavour to adopt a decision within a period of 18 months from the opening of the procedure. This time limit may be extended by common agreement between the Commission and the Member State concerned.

7. Once the time limit referred to in paragraph 6 has expired, and should the Member State concerned so request, the Commission shall, within two months, take a decision on the basis of the information available to it. If appropriate, where the information provided is not sufficient to establish compatibility, the Commission shall take a negative decision.'

147 It will be recalled, in regard to the application of those provisions to the present case, that on 14 September 2001 the Italian Republic asked the Commission to adopt a decision in accordance with Article 7(7) of Regulation No 659/1999, and that on 13 November 2001 the Commission adopted the Decision, in which it took the view, essentially, that the information provided by the Italian Republic did not remove all the doubts which it had as to the compatibility of the project with the common market.

148 It follows from an examination of the plea relating to breach of Article 87(3)(c) EC and of the Guidelines that the assessment which led the Commission to conclude that the project did not satisfy the condition as to the restoration of viability laid down in point 3.2.2(i) of the Guidelines (recitals 49 and 50 in the preamble to the Decision) cannot be regarded as manifestly wrong (see paragraphs 132 to 142 above).

149 As the conditions set out in point 3.2.2 of the Guidelines apply cumulatively (see paragraphs 127, 128 and 143 above) and as the information provided by the Italian Republic is thus not sufficient to establish that the project is compatible with the common market, the Commission was entitled to adopt a negative decision in accordance with Article 7(7) of Regulation No 659/1999.

150 The plea must therefore be dismissed.

2. *The interveners' other pleas*

151 The fourth paragraph of Article 40 of the Statute of the Court of Justice provides that an application to intervene is to be limited to supporting the form of order

sought by one of the parties. Article 116(4) of the Rules of Procedure provides that the statement in intervention must contain, in particular, a statement of the form of order sought by the intervener in support of or opposing, in whole or in part, the form of order sought by one of the parties, as well as the pleas in law and arguments relied on by the intervener.

152 Those provisions give the intervener the right to set out arguments as well as pleas independently, in so far as they support the form of order sought by one of the main parties and are not entirely unconnected with the issues underlying the dispute, as established by the applicant and defendant, as that would otherwise change the subject-matter of the dispute (see Case 30/59 *De Gezamenlijke Steenkolenmijnen in Limburg* v *High Authority* [1961] ECR 1, at p. 18; Case C-155/91 *Commission* v *Council* [1993] ECR I-939, paragraph 24; Case C-501/00 *Spain* v *Commission* [2004] ECR I-6717, paragraphs 131 to 157; Joined Cases T-125/96 and T-152/96 *Boehringer* v *Council and Commission* [1999] ECR II-3427, paragraph 183).

153 It is thus for the Court, when determining the admissibility of the pleas put forward by an intervener, to determine whether they are connected with the subject-matter of the dispute, as defined by the main parties.

154 As regards proceedings initiated by a regional authority concerning the compatibility with the common market of an aid scheme for the restructuring of an economic sector that has been proposed by that authority, there can be no question that the firms liable to benefit from that scheme and their representatives are by their nature in a position in which they can usefully complement the applicant authority's case, particularly in regard to the difficulties which the aid is intended to resolve and the effect which it may have. The connection of their pleas to the subject-matter of the dispute must not therefore be narrowly assessed.

155 However, where it appears that an action, the admissibility of which is in question, must in any event be dismissed on the merits, it is open to the Court to rule on the merits at the outset for the purposes of procedural economy (see, to that effect, Case C-23/00 P *Council* v *Boehringer* [2002] ECR I-1873, paragraph 52, and Case C-233/02 *France* v *Commission* [2004] ECR I-2759, paragraph 26). Similarly, where it appears that a plea of dubious connection to the subject-matter of the dispute is in any event to be dismissed as inadmissible for another reason or because it is unfounded, it is open to the Court to dismiss that plea without ruling on the issue whether the intervener went beyond the parameters of its role in support of the form of order sought by one of the main parties (see, for example, Case C-118/99 *France* v *Commission* [2002] ECR I-747, paragraphs 64 and 65).

156 The pleas put forward by the interveners in the present case must be examined in the light of those principles.

(a) Plea relating to infringement of the right to be heard

Arguments of the parties

157 In essence, according to the interveners, the Commission may have infringed the right to be heard, which is one of the procedural guarantees enshrined in Article 88 (2) EC. It cannot be established from the Decision whether other Member States submitted comments, as interested parties, on the compatibility of the project with the common market. If that proved to be the case, it should be noted that the Italian Republic was not given the opportunity to respond to them.

158 The Commission, which did not respond to that plea in its written submissions, argued at the hearing that, overall, the pleas put forward by the interveners were largely inadmissible on the ground that they did not correspond to those of the applicant.

Findings of the Court

159 It follows from a reading of the Decision, the accuracy of which on that point is not disputed by the interveners, that the plea, which is, moreover, submitted on a speculative basis, has no foundation in fact. It is stated in recital 4 in the preamble to the Decision that the Commission received no comments from interested parties during the formal investigation procedure.

160 Interested parties, according to the definition given in Article 1(h) of Regulation No 659/1999, include in particular any Member State except for one which plans to grant or has granted new aid and qualifies, on that basis, as a Member state concerned.

161 It can thus be deduced from the Decision that no Member State, acting as an interested party, submitted comments on the compatibility of the project with the common market of which the Commission could have notified the Italian Republic.

162 Accordingly, the plea must be dismissed without it being necessary to rule on its admissibility as regards its connection to the subject-matter of the dispute or the possibility that the potential beneficiaries of an aid scheme could invoke an infringement of the right to be heard which the Member State concerned is entitled to exercise in the procedure laid down in Article 88(2) EC.

(b) Plea relating to breach of Article 87(2)(b) EC

Arguments of the parties

163 The interveners argue that, by refusing to apply it, the Commission was in breach of Article 87(2)(b) EC as regards making good the damage caused by natural disasters or exceptional occurrences.

164 The Commission did not respond to that plea in its written submissions but argued generally at the hearing that the pleas relied upon by the interveners were largely inadmissible on the ground that they do not correspond to those of the applicant. The applicant considered that those pleas did not change the subject-matter of the dispute in any way.

Findings of the Court

165 The plea is manifestly unfounded. Article 87(2)(b) EC is an exception to the general principle of the incompatibility of aid with the common market and must, as such, be strictly interpreted, with the result that only damage caused directly by natural disasters or exceptional occurrences can justify application of that provision (*Greece* v *Commission*, cited in paragraph 102 above, paragraph 81). Furthermore, as has already been pointed out above, the Court must assess the legality of a Commission decision concerning State aid in the light of the information available, or which could have been available, to the Commission when the decision was adopted.

166 In the present case, an examination of the correspondence exchanged in the course of the administrative procedure shows that the Italian authorities never stated, let alone demonstrated, to the Commission that the project set up aid designed to make good the damage referred to in Article 87(2)(b) EC. On the contrary, they always presented it as being intended to set up an aid scheme for restructuring firms in difficulty. As such, it had to be analysed in the light of the Guidelines, which, in the first paragraph of point 2.4, expressly exclude aid referred to in Article 87(2)(b) EC from their ambit.

167 Furthermore, the applicant confirmed at the hearing that although the occurrences which it described as disastrous were, among other factors, such as the island nature of Sardinia, the cause of the Sardinian SAEs' difficulties, the project did seek to 'go beyond mere compensation' for those occurrences alone.

168 The Commission cannot therefore be criticised for having taken the view, in recital 44 in the preamble to the Decision, that the project was not proposing to grant aid under Article 87(2)(b) EC and, consequently, for having ruled out the application of that provision (see, to that effect, *Italy* v *Commission*, cited in paragraph 129 above, paragraph 20; Case C-113/00 *Spain* v *Commission* [2002] ECR I-7601, paragraphs 68 and 69; and *Germany* v *Commission*, cited in paragraph 130 above, paragraph 40).

169 Accordingly, the plea must be dismissed without it being necessary to rule on whether it is connected to the subject-matter of the dispute.

(c) Plea relating to breach of Article 158 CE and Declaration No 30 on island regions, annexed to the Final Act of the Treaty of Amsterdam

Arguments of the parties

170 The interveners complain that the Commission breached Article 158 EC and Declaration No 30 by failing to take into consideration in the Decision the fact that the project aimed to meet the objectives of those instruments. They refer, in particular, to decisions in which the Commission has taken into account the delay in economic and social development that is linked to island status.

171 The Commission takes the view that that plea must be dismissed as inadmissible on the ground that it was not raised by the applicant and is unfounded in any event. The applicant argued at the hearing that that plea did not change the subject-matter of the dispute in any way.

Findings of the Court

172 The plea, although distinct from those raised by the applicant, is admissible. The applicant raised a plea relating to breach of Article 87(3)(c) EC and the Guidelines. Where it assesses a plan for new aid for restructuring firms in difficulty that concerns an assisted or less-favoured area, the Commission takes Article 158 EC into account as described in the second paragraph of point 1.3 and in point 3.2.3 of the Guidelines. Therefore, if, as the interveners maintain, the Commission did not take any account of the fact that the project aimed to meet the objectives of Article 158 EC, it is bound to have been in breach of Article 87(3)(c) EC and the Guidelines.

173 As to the merits, it must be pointed out that the first paragraph of Article 158 EC provides that, in order to promote its overall harmonious development, the Community is to develop and pursue its actions leading to the strengthening of its economic and social cohesion; the second paragraph provides that, in particular, the Community is to aim at reducing disparities between the levels of development of the various regions and the backwardness of the least favoured regions or islands, including rural areas.

174 When the Commission examines whether a proposed aid scheme for restructuring firms in difficulty may be declared to be compatible with the common market in accordance with the exemption in Article 87(3)(c) EC, it is, as has previously been pointed out, required by point 3.2.3 of the Guidelines to take account of the objectives of Article 158 EC and the regional effects of a plan for new aid intended for a specific sector.

175 However, the mere fact that a plan for new aid aims to meet the objectives of a Treaty provision other than the exemption in Article 87(3) EC being relied upon by the Member State concerned does not in itself mean that the plan satisfies the conditions for that exemption to apply (see, to that effect, Case 47/69 *France* v *Commission* [1970] ECR 487, paragraph 13, and Joined Cases C-261/01 and C-262/01 *Van Calster and Others* [2003] ECR I-12249, paragraph 47).

176 On the contrary, in the present case, the conditions laid down in point 3.2.2 of the Guidelines remain applicable, albeit flexibly, and the preceding examination of the pleas shows that the Commission, being required to make a decision within two months on the basis of the information in its possession, was able to reach the view that the Italian Republic had not supplied conclusive evidence to establish that the project satisfied those conditions and, having regard to the doubts existing in that respect, was able to close the investigation by means of a final negative decision.

177 That conclusion is not undermined by the fact that in certain decisions adopted previously in relation to the monitoring of State aid, the Commission took account of information relating to island status, which the interveners did not, however, specify further. The legality of a Commission decision declaring that new aid does not fulfil the conditions under which the exemption in Article 87(3)(c) EC applies must be assessed solely in the context of that article, and not in the light of the Commission's earlier decision-making practice, assuming that is established (see, by analogy, Joined Cases C-57/00 P and C-61/00 P *Freistaat Sachsen and Others* v *Commission* [2003] ECR I-9975, paragraphs 52 and 53).

178 As regards the reliance placed on Declaration No 30, it is irrelevant. The Decision is a measure with individual import, the adoption of which falls within the scope of the Commission's responsibility to ensure that Article 87 EC is complied with and Article 88 EC implemented; it is not the exercise of Community legislative power involving the adoption of 'specific measures' 'where justified, in favour of [island] regions in order to integrate them better into the internal market on fair conditions' referred to in that declaration.

179 The plea must therefore be dismissed.

(d) Plea relating to infringement of Directives 72/159 and 75/268

Arguments of the parties

180 The interveners complain that the Commission did not refer to the provisions of Directives 72/159 and 75/268 in the Decision. The first of those directives provides for financial and investment aid, such as that in the present case, to be declared

compatible with the common market, while the second provides for the objectives of the common agricultural policy to be met in the least favoured agricultural areas. They are supplemented by Council Regulation (EEC) No 797/85 of 12 March 1985 on improving the efficiency of agricultural structures (OJ 1985 L 93, p. 1) which, in Article 18, also gives Member States the power to adopt specific regional measures, which could cover the measures envisaged by the project. The combination of those provisions allowed the Commission to rule out the use of the Guidelines and not to oppose the implementation of the project.

181 The Commission replies that the plea must be dismissed as inadmissible and, in any event, irrelevant. The applicant argued at the hearing that the plea did not change the subject-matter of the dispute in any way.

Findings of the Court

182 The Decision was adopted on 13 November 2001 at the end of a preliminary examination phase which was launched on 15 January 1998 and a formal investigation procedure initiated by decision which the Italian Republic received on 4 February 1999.

183 Directive 75/268 was repealed by Article 41(1) of Council Regulation (EC) No 950/97 of 20 May 1997 on improving the efficiency of agricultural structures (OJ 1997 L 142, p. 1), which entered into force on the seventh day following its publication in the *Official Journal of the European Communities* on 2 June 1997. Similarly, Regulation (EEC) No 797/85 was repealed by Article 40(1) of Council Regulation (EEC) No 2328/91 of 15 July 1991 on improving the efficiency of agricultural structures (OJ 1991 L 218, p. 1), which entered into force on the third day following its publication in the *Official Journal of the European Communities* on 6 August 1991. The interveners cannot therefore base any argument on those measures; furthermore, it is observed that they do not at any point invoke the measures which replaced them.

184 As regards Directive 72/159, the interveners confine themselves to arguing that Articles 8 and 14 'do not preclude the compatibility [of the project] and permit the Guidelines to be dispensed with' but they do not explain, let alone demonstrate, in what respect the Commission should, or at least could, have decided otherwise than it did. Moreover, the provisions mentioned do not refer to proposals for new aid for restructuring firms in difficulty that are notified to the Commission for examination in the light of Article 87(3)(c) EC, such as the project that is the object of the Decision. On the contrary, Article 8 of Directive 72/159 concerns 'a system of selective incentives to farms suitable for development' which 'Member States shall introduce' in order 'to encourage their operation and development under rational conditions' in the circumstances referred to in Articles 1 to 10 of that directive. Article 14 of that directive concerns '[a]ids for investments' which are prohibited or, by way of exception, authorised 'subject to ... Articles [87 EC to 89 EC]'.

185 Accordingly, the plea must be dismissed without it being necessary to rule on whether it is connected to the subject-matter of the dispute.

(e) The request that the Court 'reject, as appropriate, the application of unlawful provisions in accordance with Article 241 EC'

186 Arguments for that request, which can be interpreted as a plea in support of the action (order in Case C-289/99 P *Schiocchet* v *Commission* [2000] ECR I-10279, paragraph 25), must be made by its author, according to Article 116(4)(b) of the Rules of Procedure. An abstract statement, which is not clarified by sufficiently clear and precise information to enable the parties to respond to it and the Court to exercise its authority, does not fulfil that requirement (Joined Cases 19/60, 21/60, 2/61 and 3/61 *Fives Lille Cail and Others* v *High Authority* [1961] ECR 281, at p. 295, and the order in Case T-85/92 *De Hoe* v *Commission* [1993] ECR II-523, paragraph 20).

187 In the present case, the interveners do not plead, even summarily, the illegality of any Community measure. In particular, although they submit that some of the provisions of Regulation No 659/1999 are incompatible with the principle of legal certainty, they do not specify which are the provisions in question, nor do they expressly dispute the legality of those provisions.

188 In those circumstances, the plea does not meet the minimum presentational requirements laid down by the Rules of Procedure and must, therefore, be dismissed as being inadmissible, without it being necessary to rule on whether it is connected to the subject-matter of the dispute.

189 As the pleas in support of the form of order sought in relation to the annulment of the Decision in its entirety have all been dismissed, these must also be dismissed.

B — *Claim for partial annulment of the Decision, in so far as it does not provide that aid up to the sum of EUR 100 000 is lawful*

1. *Arguments of the parties*

190 In support of their claim for the partial annulment of the Decision, the interveners raise a single plea based on the misapplication of the de minimis rule.

191 The Commission takes the view that those submissions do not support those of the applicant which seeks the complete, rather than partial, annulment of the Decision, and must therefore be dismissed as inadmissible, that the plea in support is not

connected with the subject-matter of the dispute inasmuch as it is unconnected with the applicant's pleas, and must itself, therefore, be dismissed as inadmissible, and that that plea is in any event irrelevant since the de minimis rule is inapplicable in this case.

192 The applicant argued at the hearing that the interveners' alternative claims were included within its own claims and that the plea relied upon in support of those alternative claims did not change the subject-matter of the dispute in any way.

2. *Findings of the Court*

193 It follows from the fourth paragraph of Article 40 of the Statute of the Court of Justice and from Article 116(4) of the Rules of Procedure that, whilst an intervener cannot submit claims which go beyond those in support of which it makes its intervention (Case T-184/97 *BP Chemicals* v *Commission* [2000] ECR II-3145, paragraph 39), it can, on the other hand, support those claims only partly.

194 In the present case, the applicant sought the annulment of the Decision in so far as it is declared, in Article 1, that the project is incompatible with the common market. In seeking, in the alternative, the annulment of the Decision in so far as it does not limit that declaration of incompatibility to aid in the amount of EUR 100 000 or above, the interveners are not adding new claims to those of the applicant. Their alternative claims partly support those of the applicant in accordance with Article 116(4) of the Rules of Procedure, and are therefore admissible.

195 Next, as has already been pointed out above, the fourth paragraph of Article 40 of the Statute of the Court of Justice and Article 116(4) of the Rules of Procedure give the intervener the right to set out arguments as well as pleas independently, in so far as they support the form of order sought by one of the main parties and are not entirely unconnected with the issues underlying the dispute, as established by the applicant and defendant, as that would otherwise change the subject-matter of the dispute.

196 In the present case, the applicant relied upon a plea based, in essence, on the contention that the project involved small amounts of aid which would not affect trade between Member States within the meaning of Article 87(1) EC and would not adversely affect trading conditions to an extent contrary to the common interest within the meaning of Article 87(3)(c) EC (see paragraphs 81 to 90 above). For their part, the interveners raise a plea based on infringement of the de minimis rule.

197 The de minimis rule applies to the condition as to the effect on trade between Member States laid down in Article 87(1) EC and clarifies the way in which the Commission is to examine that condition, on the principle that a small amount of aid does not have an appreciable effect on trade between Member States (*Netherlands* v *Commission,* cited in paragraph 29 above, paragraphs 3 and 25).

198 The interveners' plea is therefore connected to the subject-matter of the dispute and is, as a result, admissible.

199 As to the merits, the de minimis rule does not apply to aid granted to firms operating in the agricultural sector, as the Guidelines state in the second paragraph of point 2.3 and in the first paragraph of point 3.2.5(c). In the present case, it is not disputed that the project involved granting aid to such firms. Therefore, it is

irrelevant to argue that that rule has been misapplied (*Spain* v *Commission*, cited in paragraph 168 above, paragraph 35, and *Greece* v *Commission*, cited in paragraph 102 above, paragraph 74).

200 The plea must therefore be dismissed, as must the claims for the partial annulment of the Decision.

201 Consequently, the application must be dismissed in its entirety.

Costs

202 Article 87(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Article 87(4) of the Rules of Procedure provides that the Court may order an intervener other than a Member State or an institution to bear its own costs.

203 In the present case, since the applicant has been unsuccessful, it must be ordered to pay the costs as applied for by the Commission, except for those incurred by the Commission as a result of the intervention. It must also be ruled that the interveners are to bear their own costs as well as the costs incurred by the Commission as a result of their intervention, in accordance with the Commission's application to that effect.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

hereby:

1. **Dismisses the application;**

2. **Orders the Regione autonoma della Sardegna to pay the costs, with the exception of those referred to in point 3 below;**

3. **Orders the Confederazione italiana agricoltori della Sardegna, the Federazione regionale coltivatori diretti della Sardegna and the Federazione regionale degli agricoltori della Sardegna to bear their own costs, in addition to those incurred by the Commission as a result of their intervention.**

Legal Tiili Meij

Vilaras Forwood

Delivered in open court in Luxembourg on 15 June 2005.

H. Jung H. Legal

Registrar President