JUDGMENT OF THE COURT (Fourth Chamber)

20 May 2010 *

In Case C-138/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Tribunale ordinario di Palermo (Italy), made by decision of 23 January 2009, received at the Court on 15 April 2009, in the proceedings

Todaro Nunziatina & C. Snc

v

Assessorato del Lavoro, della Previdenza Sociale, della Formazione Professionale e dell'Emigrazione della regione Sicilia,

* Language of the case: Italian.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, K. Schiemann, P. Kūris (Rapporteur) and L. Bay Larsen, Judges,

Advocate General: N. Jääskinen,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 3 March 2010,

after considering the observations submitted on behalf of:

— l'Assessorato del Lavoro, della Previdenza Sociale, della Formazione Professionale e dell'Emigrazione della regione Sicilia, by G. Palmieri, acting as Agent, assisted by F. Arena, avvocato dello Stato,

— Todaro Nunziatina & C. Snc, by G. Bentivegna, avvocato,

— the European Commission, by D. Grespan, acting as Agent,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Commission Decision SG (95) D/15975 of 11 December 1995 relating to Regional Law No 27 of the Region of Sicily of 15 May 1991 providing for measures to promote employment (State aid NN 91/A/95) ('the 1995 Decision') and of Commission Decision 2003/195/EC of 16 October 2002 on the scheme by which Italy plans to aid employment in the Region of Sicily – C 56/99 (ex N 668/97) (OJ 2003 L 77, p. 57), and the validity of those decisions.

2 That reference has been made in the course of proceedings between Todaro Nunziatina & C. Snc ('Todaro Nunziatina'), an undertaking established in Sicily (Italy), and the Assessorato del Lavoro, della Previdenza Sociale, della Formazione Professionale e dell'Emigrazione della regione Sicilia, (Regional Ministry for Employment, Social Security, Vocational Training and Emigration for the Region of Sicily; 'the amministrazione') concerning payment of the sum of EUR 45 320,64, together with statutory interest, due under the subsidies provided for in Article 10 of Regional Law No 27 of the Region of Sicily of 15 May 1991 providing for measures to promote employment (*GURS* No 25 of 18 May 1991; 'Law 27/91').

Legal context

Community legislation

3 Article 1(c) 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) provides:

'For the purpose of this Regulation:

…

(c) "new aid" shall mean all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid.'

4 In the 1995 Decision, the Commission of the European Communities did not raise any objections to the aid measures proposed in Law 27/91, as it took the view that those measures were compatible with the EC Treaty. In that decision, moreover, the Commission requested the Member State concerned to notify the Law at issue again in the event of refinancing of that aid beyond 1997.

5 In recital 10 in the preamble to Decision 2003/195, the Commission noted that 'Article 11(1) of Regional Law No 16/97 [of the Region of Sicily of 27 May 1997 authorising expenditure for the use of the provisions entered in the general funds of the budget of the Region for the financial year 1997 (*GURS* No 27 of 31 May 1997; "Law 16/97")] concerns the financing in 1997 and 1998 of an aid scheme (NN 91/A/95) instituted by Article 10 of [Law 27/91], which the Commission authorised on 14 November 1995, and which was to have expired at the end of 1996'.

6 Article 1 of Decision 2003/195 provides:

'The aid scheme which Italy plans to implement under Article 11(1) of the Sicilian Regional Law No 16 of 27 May 1997 is incompatible with the common market.

The scheme may accordingly not be implemented.'

National legislation

7 Articles 9 to 11 of Law 27/91 provide for a number of forms of aid designed to stimulate employment in Sicily.

8 Article 10 of Law 27/91 provides, inter alia, that:

'1. The Regional Minister for Employment, Social Security, Vocational Training and Emigration shall be authorised, also in the context of the agreements under Article 8 of Regional Law No 35 of 8 November 1988, to provide undertakings operating in the fields of … craftsmanship, tourism and the environment, and employers entered on the professional registers which recruit workers under training and work-experience contracts pursuant to Article 3 of Decree Law No 726 of 30 October 1984, converted by Law No 863 of 19 December 1984, and on the basis of projects with prior approval from the Commissione regionale per l'impiego (Regional Employment Board) with contributions to remuneration amounting to:

(a) 30 % of the remuneration due under collective agreements, for the duration of the training and work-experience contract. This shall rise to 50 % in the event that the workers are recruited for projects that conform to the agreements set out in Article 8 of Regional Law No 35 of 8 November 1988, or in the cases provided for in Article 9(2) above;

(b) 50 %, 40 % and 25 % of the remuneration due under collective agreements, for the first, second and third years respectively, in the event that workers recruited on training and work-experience contracts are retained under open-ended contracts. The assistance shall rise to 65 %, 50 % and 50 % for the first, second and third years respectively, in the cases provided for in Article 9(2) above.

2. The measures referred to in paragraph 1 shall apply to workers recruited on training and work-experience contracts during the period between the first day of the month following that in which the present Law enters into force and 31 December 1996, subject to the condition that in the twelve months preceding such recruitment the undertakings have not reduced their workforce. The measures referred to in paragraph 1, relating only to the assistance under subparagraph (b), shall also apply in

those cases in which it has been ascertained within the abovementioned period that workers recruited on training and work-experience contracts before that period have been retained under open-ended contracts.

…'

9 Article 11(1) of Law 16/97 provides:

'For the purposes set out in Article 10 of [Law 27/91], further expenditure of ITL 82 000 million (item 33709) is authorised for the financial year 1997. The time-limit of 31 December 1999 laid down by Article 69 of Regional Law No 6 of 7 March 1997 shall also apply to the assistance referred to in Articles 9 and 10 of [Law 27/91], as subsequently amended and supplemented.'

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 It is apparent from the decision for reference that Todaro Nunziatina applied to the amministrazione for aid under Article 10(1)(a) and (b) of Law 27/91 for the recruitment of two workers on training and work-experience contracts, which were subsequently converted into open-ended contracts. For that purpose, it submitted six applications for subsidies relating to the period from 1 June 1996 to 30 September 1999.

11 As the amministrazione did not pay it the aid requested, Todaro Nunziatina brought proceedings against it before the Tribunale ordinario di Palermo (District Court, Palermo) seeking payment of the sum of EUR 45 320,64, plus statutory interest. The amministrazione opposes that claim, submitting, in essence, that it is not authorised to grant that aid by reason of Decision 2003/195.

12 In that context, the Tribunale ordinario di Palermo decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. In the light of the fact that the aid scheme (Ref. NN 91/A/95) established by the Region of Sicily in Article 10 of [Law 27/91] laid down a mechanism of assistance for a minimum of two, and a maximum of five, years (two years for workers recruited on training and work-experience contracts, plus a maximum of three years in cases where those contracts are converted into open-ended contracts), was it the intention of the [Commission], in [the 1995 Decision] authorising the scheme's implementation:

— to permit such a cumulative increase to the duration and financial amount of the assistance (two years + three years) or, on the other hand,

— to authorise, on a mutually exclusive basis, either the grant of assistance for workers recruited on training and work-experience contracts (for the two years' duration of such contracts) or the grant of assistance for those workers recruited previously on training and work-experience contracts which were subsequently converted into open-ended contracts (for the three years from that conversion)?

2. Should the time-limit of the financial year 1997 for the implementation of State aid, laid down by the [Commission] in the authorising decision approving the scheme established by Article 10 of [Law 27/91], be interpreted as referring to:

— the initial provision for expenditure on aid scheduled in any event to be paid in subsequent years (according to the various interpretations of authorised aid possible, which have been referred to), or rather

— the time-limit for the actual payment of assistance by the competent regional bodies?

3. Thus, for workers recruited on training and work-experience contracts, pursuant to Article 10 of [Law 27/91], for instance on 1 January 1996, and therefore before the time-limit for the period for implementing the State aid set out in [the 1995 Decision], was the Region of Sicily permitted – and indeed required – actually to implement the aid scheme in question for all of the years authorised (that is to say, two + three), and even where, as in the example mentioned, the implementation of the authorised scheme entailed the actual payment of the assistance until 31 December 2001 (that is to say, 1996 + five years = 2001)?

4. Was it the intention of the [Commission], by Article 1 of Decision 2003/195 …, which states: "The aid scheme which Italy plans to implement under Article 11(1)

of [Law 16/97] is incompatible with the common market. The scheme may accordingly not be implemented":

— to refuse authorisation of the "new" aid scheme established under Article 11 of [Law 16/97], because the Commission regarded that scheme as an "autonomous" system designed to extend the period for implementing the aid instituted by Article 10 of [Law 27/91] beyond the time-limit of 31 December 1996 to include even the costs of recruiting workers and/or converting contracts carried out in the years 1997 and 1998, or

— rather, by that decision, to prevent the Region from materially acquiring the financial resources, in order to prevent the actual payment of the State aid laid down in Article 10 of [Law 27/91], even for workers recruited and/or contracts converted before 31 December 1996?

5. If [Decision 2003/195] is to be interpreted along the lines of the first option in Question 4, is such a decision compatible with the Commission's interpretation of Article [87 EC] in determining similar cases relating to the exemptions from the costs of social-security contributions on training and work-experience contracts in Decision 2000/128/EC of 11 May 1999 [concerning aid granted by Italy to promote employment (OJ 2000 L 42, p. 1)] (… specifically referred to in the grounds of the decision of incompatibility of 2002) and in Decision 2003/739/EC of 13 May 2003 [on the aid scheme which Italy is planning to implement to promote employment in the Region of Sicily (OJ 2003 L 267, p. 29)] …?

6. If [Decision 2003/195] is to be interpreted along the lines of the second option in Question 4, what interpretation is to be given to the previous decision authorising the aid measures, taking into account the dual meaning that may be ascribed to the adjective "further", that is to say "further in relation to the budget as laid down

in the Commission's decision" or "further in relation to the provision for finance made by the Region only until the 1996 budget"?

7. Ultimately, which aid is to be regarded as lawful, and which as unlawful, according to the Commission?

8. Which of the parties to the present proceedings [Todaro Nunziatina or the amministrazione] has the burden of proving that the budget laid down by the Commission itself has not been exceeded?

9. Should the award of statutory interest to a company for late payment of assistance that is held to be lawful and admissible be taken into account in determining whether the budget originally approved by [the 1995 Decision] has been exceeded?

10. If the award of such interest is relevant in determining whether that budget has been exceeded, what measure of interest is to be applied?'

The questions referred

Admissibility of the second, fifth and eighth questions

Admissibility of the fifth question

– Observations submitted to the Court

13 The Commission takes the view that this question concerns the validity of Decision 2003/195. The Commission understands the national court as seeking to ascertain whether that decision is compatible with the interpretation of Article 87 EC which the Commission followed in Decisions 2000/128 and 2003/739. In that regard, the Commission points out that the fifth question has no bearing on the resolution of the dispute in the main proceedings.

14 Todaro Nunziatina submits that the question is irrelevant for the purposes of the ruling in the main proceedings, inasmuch as Decisions 2000/128 and 2003/739 concern situations which differ from that in the main proceedings.

– Findings of the Court

15 The question seeking determination of the validity of Decision 2003/195 was referred by the national court.

16 In that regard, it should be borne in mind that the Court may decide not to give a preliminary ruling on the validity of a Community act where it is quite obvious that that determination, requested by the national court, bears no relation to the actual facts of the main action or its purpose (Case C-222/04 *Cassa di Risparmio di Firenze and Others* [2006] ECR I-289, paragraph 75 and the case-law cited).

17 Decision 2003/195 examines the compatibility, in regard to Article 87 EC et seq., of Article 11(1) of Law 16/97 concerning the refinancing for 1997 and 1998 of an aid scheme instituted by Article 10 of Law 27/91, which was approved by the 1995 Decision.

18 By contrast, Decision 2000/128 examines the compatibility, in regard to Article 87 EC et seq., of a package of aid measures to promote employment implemented by the Italian Republic at national level, other than those referred to in Decision 2003/195, and accepts that those aid measures are in part compatible with the common market.

19 Furthermore, Decision 2003/739 also examines, in the light of Article 87 EC et seq., the refinancing, for the period 2000 to 2006, of an aid scheme to promote employment in the Region of Sicily approved by the Commission on 25 February 1998 and based on Regional Law 30/97, which provided for aid, in the form of a total exemption from charges for a maximum period of six years, for job creation, whether or not connected with investment.

20 Thus, it must be held that the national court has not supplied any explanation with regard to the differing interpretations of Article 87 EC allegedly reflected in the abovementioned Decisions 2000/128 and 2003/739.

21 In any event, the Commission's decision-making practice in other cases, such as Decisions 2000/128 and 2003/739, cannot affect the validity of Decision 2003/195, which can be assessed only in the light of the objective rules of the Treaty.

22 Accordingly, the fifth question must therefore be declared inadmissible.

Admissibility of the second and eighth questions

– Observations submitted to the Court

23 Todaro Nunziatina takes the view that the second question is inadmissible on the ground that it requires an interpretation of national legislation, something which the Court may not undertake.

24 The Commission and the amministrazione argue that the eighth question is inadmissible on the ground that the aspect of Community law of which an interpretation is requested by the national court is not clearly identifiable.

– Findings of the Court

25 It must be borne in mind that it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court (see, inter alia, Case C-295/97 *Piaggio* [1999] ECR I-3735, paragraph 24 and the case-law cited, and Case C-378/08 *ERG and Others* [2010] ECR I-1919, paragraph 73).

26 Suffice it to note, first, that the second question, which seeks an interpretation of the concept of 'the time-limit of the financial year 1997 for the implementation of State aid' does relate to the 1995 Decision and has a direct bearing on the resolution of the dispute in the main proceedings and, second, that the eighth question is not entirely unconnected to the 1995 Decision since it has the effect of allowing the national court to ascertain the utilisation of the budget allocated to the aid covered by that decision.

27 The second and eighth questions must therefore be answered.

The first, second and third questions

28 By its first, second and third questions, which it is appropriate to consider together, the national court asks the Court to interpret the 1995 Decision in order to determine its scope.

29 In that regard, by the 1995 Decision, the Commission decided not to raise objections to the aid scheme to promote employment provided for by Law 27/91.

30 That aid scheme, put in place by the Region of Sicily, was designed to promote training and job creation. It was to apply with effect from 1991, but was notified to the Commission by the Italian Government, pursuant to Article 88(3) EC, only on 18 May 1995.

31 In order to interpret the 1995 Decision, it is appropriate not only to examine the actual text thereof, of which only a summary was published in the *Official Journal of the European Communities* on 21 December 1995, but also to refer to the Italian Government's notification of 18 May 1995 of the measures adopted.

32 It is apparent from examination of those documents that the aid measures thus notified are those provided for in Articles 9 to 11 of Law 27/91 and for which an annual budgetary allocation was fixed in order to ensure financing for those measures.

33 Having regard to the questions referred by the national court, examination of the scope of the 1995 Decision must be limited to Article 10 of Law 27/91.

34 Article 10 of that Law provides, in essence, for two aid measures to promote employment. The first consists of the grant of a subsidy equivalent to 30 % or 50 % of the remuneration of workers recruited on training and work-experience contracts for the entire duration of those contracts, on condition that the workers were recruited during the period from the first day of the month following the month of entry into force of Law 27/91 up to 31 December 1996.

35 The second consists of the grant of a degressive subsidy varying from 50 % to 25 % of the remuneration of workers in the event of conversion of such a contract into an open-ended contract within the first three years of that contract, on condition that that conversion took place during the period from the first day of the month following the month of entry into force of Law 27/91 up to 31 December 1996 and concerns workers recruited before that period.

36 Next, it must be noted, firstly, that those two forms of aid cannot be cumulative in time in respect of the same worker since, in order to benefit from the second form of aid following conversion of a fixed-term contract, the worker must have been recruited before the date on which Law 27/91 entered into force.

37 Secondly, payment of the sums allocated in respect of the aid granted may, subject to the national budgetary rules applicable, be made after 31 December 1996.

38 By contrast, the event giving rise to the aid, that is to say, the recruitment of the worker, in the first case, or the conversion of the contract into an open-ended contract, in the second, must have occurred before 31 December 1996.

39 In addition, as is apparent from the descriptive list attached to the abovementioned notification letter of 18 May 1995, the budgetary provision approved by the Commission for both of those measures under Article 10 of Law 27/91 amounts to ITL 159 thousand million, that is to say, approximately EUR 79.5 million, for the period 1991 to 1996.

40 In that regard, it must be noted that the 1995 Decision merely fixes the commitment limit of the budgetary provision and neither specifies nor interferes in the rules governing payment of that aid, which remain subject to the national provisions.

41 It follows from the foregoing that the answer to the first, second and third questions is that the 1995 Decision must be interpreted as having accepted, as being compatible with the common market, an aid scheme composed of two measures provided for in Article 10(1)(a) and (b) of Law 27/91, which cannot be cumulative and the event giving rise to which, that is to say, the recruitment of a worker or the conversion of the contract into an open-ended contract, must have taken place before 31 December 1996, but the payments to which they give rise may be made after that date, on condition that the applicable national budgetary and financial rules do not preclude that and that the budgetary provision approved by the Commission is not exceeded.

The fourth, sixth and seventh questions

42 By its fourth, sixth and seventh questions, which it is appropriate to consider together, the national court asks the Court, in essence, to interpret Article 1 of Decision 2003/195 in order to determine whether the aid to which that decision relates is new aid.

43 In Article 1 of Decision 2003/195, the Commission declared that the aid scheme laid down in Article 11(1) of Law 16/97 was incompatible with the common market.

44 Article 11(1) of that Law provides, in the light of recital 10 in the preamble to Decision 2003/195, for the refinancing for 1997 and 1998 of the aid scheme instituted by Article 10 of Law 27/91 in the additional amount of ITL 82 thousand million, that is to say, approximately EUR 42.3 million.

45 In that regard, 'all aid, that is to say, aid schemes and individual aid, which is not existing aid, including alterations to existing aid' must be considered to be new aid within the meaning of Article 1(c) of Regulation No 659/1999.

46 Furthermore, it is settled case-law that measures taken after the entry into force of the Treaty to grant or alter aid, whether the alterations relate to existing aid or to initial plans notified to the Commission, must be regarded as new aid (Joined Cases C-346/03 and C-529/03 *Atzeni and Others* [2006] ECR I-1875, paragraph 51 and the case-law cited).

47 It follows that, by providing both for an increase in the budget allocated to the aid scheme referred to in Article 10 of Law 27/91, in an amount exceeding 50 % in the present case, and for a two-year extension of the period during which the conditions for grant of that aid were applicable, Article 11(1) of Law 16/97 created new aid distinct from the aid referred to in the 1995 Decision. That new aid alone was declared incompatible with the common market by the Commission in Decision 2003/195.

48 Accordingly, the employment of workers recruited on training and work-experience contracts or conversion of training and work-experience contracts into open-ended contracts with effect from 1 January 1997 can no longer give rise to the grant of any aid.

49 The answer to the fourth, sixth and seventh questions is therefore that Article 1 of Decision 2003/195 must be interpreted as meaning that the aid scheme provided for in Article 11(1) of Law 16/97 constitutes new aid distinct from that provided for in Article 10 of Law 27/91. Article 1 of Decision 2003/195 precludes the grant of subsidies in respect of any employment of workers recruited under training or work-experience contracts or conversion of training and work-experience contracts into open-ended contracts with effect from 1 January 1997.

The eighth question

50 By its eighth question, the national court seeks, in essence, to determine which party to the proceedings has the burden of proving that the budgetary provision allocated for the aid measures referred to in Article 10(1)(a) and (b) of Law 27/91 and authorised by the 1995 Decision has not been exhausted.

51 Firstly, it must be borne in mind that, as has been pointed out in paragraphs 39 and 40 of the present judgment, the budgetary provision accepted by the 1995 Decision is that allocated by the Region of Sicily to the aid scheme provided for in Article 10(1)(a) and (b) of Law 27/91, as determined in the Italian Government's notification of 18 May 1995 to the Commission of the measures adopted.

52 Secondly, it must be held that the 1995 Decision has the effect of authorising an aid scheme by declaring it compatible with the common market, but does not have the effect of imposing that scheme on the Member State concerned.

53 Thus, the purpose and effect of the 1995 Decision are not to compel the Italian Republic to grant the aid referred to in Article 10(1)(a) and (b) of Law 27/91, but rather to authorise it to implement that aid if that continues to be its wish (see, to that effect, Case C-18/08 *Foselev Sud-Ouest* [2008] ECR I-8745, paragraph 16).

54 Accordingly, in the absence of Community legislation on the matter, it is for the internal legal order of each Member State to define the detailed arrangements and rules of evidence intended to establish that the budgetary provision allocated to the aid scheme authorised by the 1995 Decision has not been exceeded.

55 However, it should be pointed out that the national authorities must be in a position to justify, in particular at the request of the Commission, the status of payments made under an aid scheme where, as is the case with regard to the 1995 Decision, the Commission has ruled in respect of a scheme for which the Member State has provided for a maximum budgetary provision which may be disbursed individually to beneficiaries of that scheme.

56 Accordingly, the answer to the eighth question is that it is for the Member State concerned to determine which party to the proceedings has the burden of proving that the budgetary provision allocated for the aid measures referred to in Article 10(1)(a) and (b) of Law 27/91 and authorised by the 1995 Decision has not been exhausted.

The ninth and tenth questions

57 By its ninth and tenth questions, which it is appropriate to consider together, the national court asks, in essence, whether the amount of statutory interest which may be due from the Region of Sicily in the event of delay in payment of the aid is to be included in the amount of the budgetary provision authorised by the 1995 Decision and, if so, what the applicable rate may be.

58 In that regard, it is appropriate, firstly, to note that the first sentence of Article 88(3) EC imposes on the Member States an obligation to inform the Commission of any plans to grant or alter aid (Case C-199/06 *CELF and Ministre de la Culture et de la Communication* [2008] ECR I-469, paragraph 33).

59 Under the second sentence of Article 88(3) EC, if the Commission considers that the plan notified is not compatible with the common market within the meaning of Article 87 EC, it must, without delay, initiate the procedure provided for in Article 88(2) EC (*CELF and Ministre de la Culture et de la Communication*, paragraph 34).

60 Under the final sentence of Article 88(3) EC, the Member State which envisages granting aid must not put its proposed measures into effect until that procedure has

resulted in a final decision of the Commission (*CELF and Ministre de la Culture et de la Communication*, paragraph 35).

61 The prohibition laid down by that provision is designed to ensure that an aid scheme cannot become operational before the Commission has had a reasonable period in which to study the proposed measures in detail and, if necessary, to initiate the procedure provided for in Article 88(2) EC (Case C-301/87 *France* v *Commission* ('*Boussac Saint Frères*') [1990] ECR I-307, paragraph 17, and *CELF and Ministre de la Culture et de la Communication*, paragraph 36).

62 It follows that, as the 1995 Decision rendered the aid scheme provided for in Article 10(1)(a) and (b) of Law 27/91 compatible with the common market only with effect from the date of that decision, any late payment of the aid can give rise to the calculation of interest only in respect of amounts of aid due after that date.

63 Secondly, as follows from the answer to the eighth question, the right to obtain payment of interest in the event of late payment of the aid and the detailed arrangements and rates applicable to that interest fall within the scope of national law.

64 It must, however, be pointed out that the 1995 Decision relates only to the aid measures provided for in Law 27/91, in particular in Article 10(1)(a) and (b) thereof, within the limit of the budgetary provision set out in the Italian Government's notification of 18 May 1995 of the measures adopted.

65 By contrast, the amount of interest which may be due in the event of late payment of those aid measures cannot constitute aid, whether in whole or in part, and, accordingly, cannot be paid from the budgetary provision allocated to that aid.

66 It follows from the foregoing that the answer to the ninth and tenth questions is that the amount of statutory interest which may be due in the event of late payment of the aid authorised by the 1995 Decision for the period following that decision is not to be included in the amount of the budgetary provision authorised by that decision. The rate of interest and the detailed arrangements for applying that rate fall within the scope of national law.

Costs

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

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

1. **Commission Decision SG (95) D/15975 of 11 December 1995 relating to Regional Law No 27 of the Region of Sicily of 15 May 1991 providing for measures to promote employment (State aid NN 91/A/95) must be interpreted as having accepted, as being compatible with the common market, an aid scheme composed of two measures provided for in Article 10(1)(a) and (b) of abovementioned Regional Law No 27, which cannot be cumulative and the event giving rise to which, that is to say, the recruitment of a worker or the conversion of the contract into an open-ended contract, must have taken place before 31 December 1996, but the payments to which they give rise may be made after that date, on condition that the applicable national budgetary and financial rules do not preclude that and that the budgetary provision approved by the Commission of the European Communities is not exceeded.**

2. **Article 1 of Commission Decision 2003/195/EC of 16 October 2002 on the scheme by which Italy plans to aid employment in the Region of Sicily – C 56/99 (ex N 668/97) must be interpreted as meaning that the aid scheme provided for in Article 11(1) of Regional Law No 16 of the Region of Sicily of 27 May 1997 authorising expenditure for the use of the provisions entered in the general funds of the budget of the Region for the financial year 1997 constitutes new aid distinct from that provided for in Article 10 of Regional Law No 27 of the Region of Sicily of 15 May 1991 providing for measures to promote employment. Article 1 of Decision 2003/195 precludes the grant of subsidies in respect of any employment of workers recruited under training or work-experience contracts or conversion of training and work-experience contracts into open-ended contracts with effect from 1 January 1997.**

3. **It is for the Member State concerned to determine which party to the proceedings has the burden of proving that the budgetary provision allocated for the aid measures referred to in Article 10(1)(a) and (b) of Regional Law No 27 of the Region of Sicily of 15 May 1991 providing for measures to aid employment and authorised by Decision SG (95) D/15975 has not been exhausted.**

4. **The amount of statutory interest which may be due in the event of late payment of the aid authorised by Decision SG (95) D/15975 for the period following that decision is not to be included in the amount of the budgetary provision authorised by that decision. The rate of interest and the detailed arrangements for applying that rate fall within the scope of national law.**

[Signatures]