

COMMISSION DECISION

of 2 June 2004

State aid which Italy (Sicily) has envisaged for the promotion and advertising of agricultural products

(notified under document number C(2004) 1923)

(Only the Italian text is authentic)

(Text with EEA relevance)

(2007/54/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to the provision cited above ⁽¹⁾ and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 2 September 1997, registered on 5 September 1997, the Italian Permanent Representation at the European Union notified the Commission of Article 6 of Regional Law n. 27 of 1997 of the Sicilian Region, in accordance with Article 88(3) of the EC Treaty.
- (2) By telex VI/41836 of 28 October 1997, Commission services asked the competent authorities to provide clarifications on the aid provided for by Article 6 and on Regional Law n. 27 of 1997.
- (3) By letter dated 19 January 1998 the competent authorities sent some complementary information and indicated that the Law had already entered into force. The notification was therefore transferred to the register of non notified aids under number NN 36/98, as communicated to Italy by letter SG(98)D/32328 of 3 April 1998. However, the competent authorities also clearly indicated that no aid would be granted under the law before the termination of the procedure of Article 88(3) of the Treaty.
- (4) By telex VI/13937 of 31 May 2000 (anticipated in the English version by telex of 14 April 2000/VI/10442) Commission services asked the competent authorities to provide explanations regarding the provisions contained in Regional Law n. 27/1997 and a copy of the Law itself.
- (5) By letter dated 31 July 2002, registered on 5 August 2002, the competent authorities sent some complementary information regarding Article 5 of the Law.
- (6) By telex AGR 024925 of 22 October 2002 Commission services asked the competent authorities to provide explanations and clarifications regarding the complementary information lately sent and the measures contained in Regional Law n. 27/1997. In the same letter Commission services indicated that if the aid measures envisaged by Article 6 of Regional Law n. 27 of 1997 and, possibly, by other provisions of the same Law had not yet been put into effect and the competent authorities could assure that no aids had been paid and would be paid under Regional Law n. 27/1997 the competent authorities could consider the possibility of withdrawing the notification under examination.
- (7) Not having received any reply to the above telex, by telex AGR 30657 of 20 December 2002, Commission services sent the Italian authorities a reminder inviting them to submit the requested information within one month and informing them that unless satisfactory replies to all the questions asked were received within this deadline, Commission services reserved the right to propose the Commission to issue an information injunction on the basis of Article 10(3) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽²⁾.
- (8) By letter of 10 July 2003 SG(2003)D/230470 the Commission notified Italy of its decision containing an information injunction in respect of Article 6 and Article 4 of Regional Law n. 27/1997, which it had adopted on 9 July 2003 (C(2003) 2054fin) on the basis of Article 10(3) of Regulation (EC) No 659/1999.
- (9) By the said information injunction the Commission had requested Italy to provide, within 20 working days from the notification of its decision, all the documents, information and data necessary to enable the Commission to establish whether the aids foreseen in the law had been granted and were compatible with the common market. Besides inviting Italy to provide any other information deemed useful for the assessment of the above measures, the information injunction specified a list of information that Italy was requested to provide.

⁽¹⁾ OJ C 48 of 24.2.2004, p. 2.

⁽²⁾ OJ L 83 of 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

- (10) Neither a reply to the above information injunction, nor a request for a prolongation of the deadline within which a reply had to be provided, were received by Commission services.
- (11) By letter dated 17 December 2003 (SG(2003)D/233550), the Commission informed Italy that by its decision C(2003) 4473 fin of 16 December 2003 it had decided to initiate the procedure laid down in Article 88(2) of the Treaty in respect of the aid measures provided for by Article 4 (Advertising of Sicilian products) and by Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997.
- (12) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽³⁾. The Commission called on interested parties to submit their comments.
- (13) By letters dated 10 February 2004 registered on 13 February 2004, the Italian Permanent Representation at the European Union, on behalf of Regione Siciliana asked Commission services for a prolongation of 20 working days to provide the information requested by the Commission in its Decision C(2003) 4473 fin of 16 December 2003, in respect of Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997. In the same letter the Italian authorities announced their intention to withdraw the notification of the aid measure concerned by Article 6 (Cooperatives, cantine sociali) which, as indicated in their letter, had not been implemented.
- (14) By telex AGR 05312 of 23 February 2004 Commission services confirmed that the prolongation requested by Italy had been granted with effect from 13 February 2004.
- (15) By letter dated 18 February 2004, registered on 26 February 2004 the Italian Permanent Representation sent a request for a prolongation of 20 working days with regard to the same aid measure.
- (16) By letter of 24 February 2004, registered on 1 March 2004, later confirmed by letter dated 12 March 2003, registered on 17 March 2003, the Italian authorities informed the Commission of the withdrawal of the notification of the aid measure concerned by Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997 which, as indicated in their letters, had not been and would not be implemented.
- (17) By telex AGR 07074 of 11 March 2004 the Italian authorities were informed that, since the Commission Decision concerned had been published in the *Official Journal of the European Union* on 24 February 2004 and the deadline for third parties to submit comments in its respect would expire on 24 March 2004, no prolongation to submit the information requested and/or comments beyond that date would be granted. By the same telex Commission services acknowledged the withdrawal of Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997.
- (18) The Commission received comments from Italy in respect of Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997 by letter dated 15 March 2004, registered on 18 March 2004.
- (19) In accordance with the Decision to open the procedure ⁽⁴⁾, the current decision only concerns the State aids provided for by Article 4 (Advertising of Sicilian products) of Regional Law n. 27/1997 in favour of Annex I agricultural products which may have been and which may be granted from the entry into force of the *Community Guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products* ⁽⁵⁾, (hereafter the advertising guidelines), i.e. from 1 January 2002.
- (20) As the notification of Article 6 (Cooperatives, cantine sociali) of Regional Law n. 27/1997 was withdrawn by Italy by letter of 24 February 2004, registered on 1 March 2004, there is no reason to describe and assess the aid measures provided for by Article 6.

II. DETAILED DESCRIPTION OF THE AIDS

- (21) Article 4 (Propaganda prodotti siciliani) amends Article 17 of Regional Law No 14/1966 and envisages that '(1) Advertising campaigns are implemented directly by the Regional Ministry or through the Institute for Foreign Trade or through specialised bodies, or through Consortia established by the Ente Fiera del Mediterraneo and by the Ente Fiera di Messina or by these entities and one or more Chambers of Commerce of the Region on the basis of the programmes indicated in Article 15. The said programmes may have three-year duration. (2) With the exclusion of the consortia indicated above, if the implementation of the programmes is entrusted to bodies outside the national or the regional administration, the rules on entrusting the services of the public administration will apply'.
- (22) Despite repeated requests from Commission services, and the information injunction issued by the Commission by its Decision of 9 July 2003, the Italian authorities had not provided the information which could help the Commission to dispel the doubts that Article 4 may provide for State aids within the meaning of article 87(1) of the EC treaty and, if the case, to allow the Commission to conclude that these aids may be considered compatible with the common market. Moreover it was not clear whether the aids concerned had already been granted or not.

⁽⁴⁾ See points 27, 28 and 29 of the Decision in OJ C 48 of 24.2.2004, p. 2.

⁽⁵⁾ OJ C 252 of 12.9.2001, p. 5.

⁽³⁾ See footnote 1.

- (23) In its Decision to open the procedure envisaged by Article 88(2) of the Treaty on the measure under examination, the Commission noted that at that stage of the procedure, due to the lack of information from the Italian authorities, the Commission did not know whether Article 4 of Regional Law n. 27/1997 provided for the introduction or the modification of State aids for promotion and/or advertising of Annex I agricultural products.
- (24) Moreover the Commission expressed doubts on their compatibility with the common market, as due to the lack of replies from the Italian authorities, it was entirely unclear to the Commission whether the measures which were to be financed under Article 4 of the law would be compatible with the rules which are currently applicable to these types of aid measures, i.e. with the rules set out in the *Community Guidelines for State aid for advertising*.
- (25) Also given the modalities of implementation of the advertising and promotion campaigns and programmes envisaged by Article 4 and reported above at recital 21, the Commission expressed doubts that the State aid measures possibly provided therein would be implemented in compliance with EU public procurement rules. In particular regarding the direct selection of the entities and bodies in charge of the advertising campaigns the Commission had doubts that a contract for pecuniary interest would be concluded in writing between the contracting authority and the service providers selected, and, that in this case, the strict conditions of the *Teckal* judgement would be met ⁽⁶⁾. If those conditions were not met, the Commission had doubts that the selection of the intermediaries would be done following the rules of Council Directive 92/50/EEC ⁽⁷⁾ if applicable, and, in any case, in accordance with the principles of the EC Treaty, in particular those of equal treatment and transparency, by ensuring a 'sufficient degree of advertising' as requested by the Court of Justice ⁽⁸⁾.

III. COMMENTS FROM INTERESTED PARTIES

- (26) No comments from interested parties were received.

IV. COMMENTS FROM ITALY

- (27) The Commission received comments from Italy, on behalf of Regione Siciliana, by letter dated 15 March 2004, registered on 18 March 2004.
- (28) In this letter the Italian authorities confirmed the withdrawal of the notification of Article 6 of Regional Law n. 27/97 and communicated their observations regarding Article 4.
- (29) In particular the Italian authorities indicated that the modification introduced by Article 4 (Propaganda prodotti

siciliani) to Article 17 of Regional Law n. 14/1966, regarding the implementation of advertising campaigns through Consortia established by the Ente Fiera del Mediterraneo and by the Ente Fiera di Messina or by these entities and one or more Chambers of Commerce of the Region, was not applied as the said consortia were not established.

- (30) According to the information provided, the promotional programmes are implemented directly by the Regional Ministry or through the Institute for Foreign Trade (conventions drafted in the years 1993-1998, and 1999-2001-2003 in the context of the Agreements between the Ministry of production Activities and the Regions). The responsible subjects select the projects submitted for financing on a yearly basis and procure the necessary services for their implementation on the basis of the applicable rules, within the respect of market rules, except where exclusivity contracts with the organisers exist.
- (31) The competence of the Regional Ministry concerns not only the agri-food sector but also other sectors (crafts, publishing, textile, etc.) Regarding the sector under examination the activities which are financed at the rate of 100 % of the expenses by public funds are the following ones:
- (a) participation to trade fairs and exhibitions in Italy and abroad: expenses which are directly linked to the organisation of the stand, the setting-up, the connection to water and electricity, inclusion in the catalogue of the trade fair, related publicity, interpreting services, transport and insurance costs;
 - (b) organisation of international workshops in Italy and abroad: expenses which are necessary for the organisation and the performance of the meetings (rent of rooms, setting-up, selection of meetings, interpreting services and related publicity);
 - (c) advertising through mass media (press, posters, radio, television).

- (32) The beneficiaries of the interventions listed above under letters (a) and (b) are consortia of undertakings and undertakings which are regularly enrolled in the Chambers of Commerce in Sicily. The selection of the beneficiaries is made through a yearly public call for proposals, on the basis of selection criteria published in advance on the Official Journal of the Sicilian Region. On the basis of the fourth recital of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to de minimis aid ⁽⁹⁾ the interventions indicated above under letters (a) and (b) are not export aids and since 2002 the aids concerned are applied according to the 'de minimis rule'. Regarding the agri-food sector, having

⁽⁶⁾ Judgement of the Court of justice of 18 November 1999, Case C-107/98, *Teckal Srl v Comune di Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia* (1999) ECR I-8121.

⁽⁷⁾ OJ L 209, 24.7.1992, p. 1. Directive as last amended by the 2003 Act of Accession.

⁽⁸⁾ Judgement of the Court of justice of 7 December 2000, Case C-324/98, *Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG* (2000) ECR I-10745.

⁽⁹⁾ OJ L 10, 13.1.2001, p. 30.

regard to the Guidelines applicable to promotion and advertising the aids concerned would appear to be soft aids falling under point 14(1) of the general agricultural Guidelines⁽¹⁰⁾ concerning: 'the organisation of competitions, exhibitions and fairs'. Moreover notwithstanding the fact that the regional law does not specify the maximum ceiling of EUR 100 000 per beneficiary over a three-year period, the aids granted to each beneficiary undertaking for participating to fairs and workshop would be much below this ceiling.

(33) With regard to the advertising through the mass media the Italian authorities specified that the actions implemented both in Italy and in other Community countries do not concern specifically the products of one undertaking or of a group of undertakings, and advertise the products in a generic way, without emphasising their origin, even when the products are typical regional products. For agri-food advertising campaigns the message which is addressed to consumers concerns a product or a group of products, without making reference to their producer undertakings in the Region. The advertising is generic, does not contain any invitation to purchase the products solely because of their regional origin, and it cannot be considered to disparage the products of other Member States. The advertising should not therefore breach Article 28 of the Treaty.

(34) The observations made by the Italian authorities are applicable to promotional and advertising actions carried out both in the European Community and in third countries, as the same criteria are applied.

V. ASSESSMENT OF THE AID

(35) Article 87(1) of the Treaty provides that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

(36) The measure under examination provides for the granting of aid, through public regional resources, to specific agricultural undertakings in Sicily which will undeniably be granted an undue economic and financial advantage to the detriment of other undertakings not receiving the same contribution. According to the case law of the Court of Justice, improvement in the competitive position of an undertaking as a result of State financial aid leads to possible distortion of competition compared with other competing undertakings not receiving such assistance⁽¹¹⁾.

(37) The measure affects trade between Member States in that there is substantial intra-Community trade in agricultural

products as indicated by the table⁽¹²⁾ below which lists the overall value of agricultural imports and exports between Italy and the Community over the 1997-2001 period⁽¹³⁾. It must be considered that within Italy, Sicily is a significant producer of agricultural products.

	All agriculture	
	Millions ECU-EUR	Millions ECU-EUR
	Export	Import
1997	9 459	15 370
1998	9 997	15 645
1999	10 666	15 938
2000	10 939	16 804
2001	11 467	16 681

(38) With respect to the above, it should however be recalled that the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition⁽¹⁴⁾.

(39) The Commission therefore concludes that the measure under examination is caught by the prohibition in Article 87(1) of the Treaty. The Italian authorities have never contested this point.

(40) The prohibition in Article 87(1) is followed by exemptions in Article 87(2) and (3).

(41) The exemptions listed in Article 87(2)(a) (b) and (c) are manifestly inapplicable given the nature of the aid measures

⁽¹²⁾ Source: Eurostat.

⁽¹³⁾ According to consistent case law, the condition of the effect on the trade is met since the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that aid strengthens the position of this company in relation to other competing companies in intra-Community trade, makes it possible to consider that this trade was affected. With regard to State aids in the agriculture sector it is settled case-law that, even when the overall amount of aid in question is small and it is divided among a large number of farmers, intracommunity trade and competition are affected. See Judgment of the Court of Justice of 19 September 2002 Case C-113/00, Kingdom of Spain v Commission of the European Communities (2002) ECR I-7601, paragraphs 30 to 36 and 54 to 56; Judgment of the Court of Justice of 19 September 2002 Case C-114/00, Kingdom of Spain v Commission of the European Communities (2002) ECR I-7657, paragraphs 46 to 52 and 68 to 69.

⁽¹⁴⁾ Judgement of the Court of Justice of 13 July 1988 in Case 102/87 French Republic v Commission of the European Communities (1988) ECR 4067.

⁽¹⁰⁾ OJ C 28 of 1.2.2000, p. 2, rectified in OJ C 232 of 12.8.2000, p. 17.

⁽¹¹⁾ Judgment of the Court of Justice of 17 September 1980, Case C-730/79, Philip Morris Holland BV v Commission of the European Communities (1980) ECR 2671, paragraphs 11 and 12.

in question and their objectives. Indeed, Italy has not submitted that either Article 87(2)(a) (b) or (c) are applicable.

- (42) Article 87(3)(a) is also inapplicable since the aids are not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment. Moreover Italy has not submitted that Article 87(3)(a) is applicable.
- (43) Article 87(3)(b) is also inapplicable as the aids in question are not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy. Moreover Italy has not submitted that Article 87(3)(b) is applicable.
- (44) These aids are not intended to achieve or suitable for achieving the objectives of promoting culture and heritage conservation referred to in Article 87(3)(d), nor has Italy submitted that Article 87(3)(d) is applicable.
- (45) Considering the nature of the aids under examination and their objectives the only exemption which may be applicable is the one provided for by Article 87 (3)(c) of the Treaty.

Applicable provisions

- (46) The applicability of the exemption mentioned at recital 45 needs to be assessed in the light of the provisions applicable to the granting of State aids for promotion and advertising in the agriculture sector, i.e. of the provisions contained in the advertising Guidelines ⁽¹⁵⁾.
- (47) According to point 7.1 of the advertising Guidelines, the Commission will apply these guidelines to new State aid, including pending notifications from Member States, with effect from 1 January 2002. Unlawful aid within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be assessed in accordance with the rules and guidelines applicable at the time when the aid is granted.
- (48) In accordance with the decision to open the procedure where the Commission expressed doubts that the measures concerned may not comply with the rules currently applied to this type of aids ⁽¹⁶⁾, this Decision only concerns the aids granted and to be granted from 1 January 2002 for the promotion and advertising of Annex I agricultural products.
- (49) With regard to the aids for promotion, point 8 of the said advertising Guidelines establishes that promotion operations such as the dissemination to the general public of scientific knowledge, the organisation of trade fairs or exhibitions, participation in these and similar public

relations exercises, including surveys and market research are not considered as advertising. State aid for such promotion in the broader sense is subject to points 13 and 14 of the Community guidelines for State aid in the agriculture sector ⁽¹⁷⁾. Since the notification does not specify that the aid scheme under examination applies only to small and medium enterprises, Commission Regulation No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹⁸⁾ is not applicable to this case.

- (50) With regard to aids for advertising point 7 of the advertising Guidelines establishes that advertising, to which the Guidelines apply, does not only concern any operation using the media (such as press, radio, TV or posters) which is designed to induce consumers to buy the relevant product, but that it also includes any operation which is designed to induce economic operators or consumers to buy the relevant product and all material which is distributed direct to consumers for the same purpose, including advertising activities aimed at consumers at the point of sale.

Aids for promotion

- (51) On the basis of the information available, it appears that the measures for participation to trade fairs and workshops in the Community and outside the Community, which are described above at recitals 31(a) and (b) and 32 of this Decision, can be entirely considered as aids for promotion only to the extent that the described activities do not include either operations which are designed to induce economic operators or consumers to buy the relevant product, or material which is distributed direct to consumers for the same purpose. On the basis of paragraph 7 of the advertising Guidelines aids for operations which are designed to induce economic operators or consumers to buy the relevant product, and for material which is distributed direct to consumers for the same purpose are considered as aids for advertising.
- (52) In so far as the said measures for participation to trade fairs and workshops in the Community and outside the Community are indeed aids for promotion, in compliance with point 13 and 14 of the Community Guidelines for State aid to the agricultural sector, the aids can be granted at a rate of up to 100 % but should not exceed EUR 100 000 per beneficiary over any three-year period, or, in the case of aid granted to undertakings falling within the scope of the Commission definition of small and medium-sized enterprises, as defined in Commission Regulation (EC) No 70/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to State aid to small and medium-

⁽¹⁵⁾ See footnote 5.

⁽¹⁶⁾ See points 27, 28 and 29 of the Decision in OJ C 48 of 24.2.2004, p. 2.

⁽¹⁷⁾ See footnote 9.

⁽¹⁸⁾ OJ L 1 of 3.1.2004, p. 1.

sized enterprises ⁽¹⁹⁾, 50 % of the eligible costs, whichever is greater. For the purpose of calculating the amount of aid, the beneficiary is considered to be the person receiving the services. As it appears from the observation provided by the Italian authorities the promotional measures under examination are financed within the respect of the above maximum aid amount and appear therefore compatible with the applicable rules ⁽²⁰⁾.

- (53) In compliance with the said point 14 of the general agricultural Guidelines, in order to avoid the creation of distortions of competition, this type of aid measure should in principle be available to all those eligible in the area concerned based on objectively defined conditions. On the basis of the information provided by Italy and reported above at recital 32 of this decision, this condition appears to be met ⁽²¹⁾. Aids which are restricted to identified groups in order to provide support only for their members cannot be considered to facilitate the development of the sector as a whole and must be considered as operating aids. Thus, where the provision of such services is undertaken by producer groups or other agricultural mutual support organisations, the services concerned must be available to all eligible farmers. In such cases any contribution towards the administrative costs of the group or organisation concerned should be limited to the costs of providing the service.

Aids for advertising

- (54) In so far as the said measures for participation to trade fairs and workshops include also operations which are designed to induce economic operators or consumers to buy the relevant product or material which is distributed direct to consumers for the same purpose (for example advertising to the point of sale or advertising which is addressed to economic operators, such as food processors, wholesale or retail distributors, restaurants, hotels and other catering establishments), these measures need to be assessed on the basis of the rules for advertising aids, as much as the advertising measures carried out through the mass media (press, posters, radio, television) which were described above at recitals 31 (c) and 33 of this Decision.

⁽¹⁹⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

⁽²⁰⁾ As far as the agriculture sector is concerned, promotional and advertising measures implemented outside the EU are not explicitly covered by the agricultural guidelines. Therefore, the Commission exercises its powers of discretion in their assessment. According to current Commission practice, where the measures envisaged comply with relevant state aid rules applicable within the EU territory, they can be considered compatible with the common market (see for example Italy/Tuscany Aid N 656/02, Aid NN 150/02 (ex N 109/02) (Commission letter C(2003) 1747 of 11.6.2003) and Aid NN 44/03 (ex N 6/03) (Commission letter C(2003) 2534 of 23.7.2003).

⁽²¹⁾ As indicated in Commission Decision C(2002)1786 fin of 7.5.2002 (Aid N 241/01 — Italy/Chambers of Commerce) the establishment and the enrolment of a European undertaking in the locally competent Chamber of Commerce are not subject to any legal or de facto limitation. See also Aid N 62/01 (Italy/Union of the Chambers of Commerce of Piemonte and Veneto, Commission Decision SG (2001)D/290914 of 8.8.2001.

- (55) According to the advertising Guidelines, normally, producers and traders would be expected to bear the costs of advertising themselves, as part of their normal economic activities.

- (56) Therefore, in order not to be regarded as operating aids but as aids that are compatible with the common market under Article 87(3)(c) of the Treaty, advertising aids should not interfere with trade to an extent contrary to the common interest (negative criteria), and should facilitate the development of certain economic activities or of certain economic areas (positive criteria). Moreover State aids must comply with the Community's international obligations, which in the case of agriculture are specified in the Agreement on Agriculture (WTO-GATT 1994).

- (57) In order to satisfy the negative criteria, according to point 3.1 of the applicable advertising Guidelines, the aid must not be granted for campaigns contrary to Article 28 of the Treaty (point 3.1.1), or for campaigns which contravene secondary Community legislation (3.1.2), or for advertising related to particular firms (3.1.3). Moreover where the conduct of publicly financed advertising activities is entrusted to private firms, in order to exclude the possibility of aid to the firms carrying out the campaigns, the choice of the private firm concerned must be made on market principles, in a non-discriminative way, where necessary using tendering procedures which are in accordance with Community law, and in particular with case-law ⁽²²⁾ using a degree of advertising sufficient to enable the services market to be opened up to competition and the impartiality of procurement procedures to be reviewed.

- (58) On the basis of the information provided, the requirements envisaged by point 3.1.1 (campaigns contrary to Article 28 of the Treaty) and 3.1.3 (advertising related to particular firms) appear to be met by the advertising measures which are described above at recitals 30, 31(c) and 33 of this Decision. On the other hand, no indication that the requirement indicated at point 3.1.2 (campaigns which contravene secondary Community legislation) is also met was provided by the Italian authorities.

- (59) Besides satisfying the negative criteria, according to point 3.2 of the applicable advertising Guidelines, advertising aids should satisfy at list one of the positive criteria aimed at showing that the aid indeed facilitates the development of certain economic activities or of certain economic areas. This positive condition is considered to be met provided

⁽²²⁾ Case C-324/98, already cited.

that the subsidised advertising concerns any of the following: surplus agricultural products or underexploited species; new products or replacement products not yet in surplus; high-quality products, including products produced or obtained using environmentally friendly production or catchment methods, such as products from organic farming; development of certain regions; development of small and medium sized undertakings (SMEs) as defined by Regulation (EC) No 70/2001; projects that are implemented by organisations officially recognised within the meaning of Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products⁽²³⁾; projects that are jointly implemented by producer organisations or other organisations of the fishery sector recognised by national authorities.

(60) With regard to the aids for advertising, the observations submitted by the Italian authorities do not indicate that the advertising measures in question meet any of the above positive criteria.

(61) Regarding the maximum level of State aid for the advertising of agricultural products point 5 of the applicable advertising Guidelines requires that as a general rule, direct aid, from a general purpose government budget, must not exceed the amount which the sector itself has committed to a given advertising campaign. Thus, in the case of aid for advertising, the rate of direct aid should not exceed 50 % and undertakings from the sector will have to contribute at least 50 % of the cost, either through voluntary contributions or through the collection of parafiscal levies or compulsory contributions. To take account of the weight of some of the positive criteria mentioned in point 3.2 of the advertising Guidelines, the Commission may authorise the raising of the above-mentioned maximum rate of direct aid up to 75 % of the costs in the case of advertising for products produced by SMEs in areas eligible for support under Article 87(3)(a) of the Treaty.

(62) On the basis of the information provided and reported above at recital 31 of this Decision, it appears that all the promotional and advertising measures envisaged by the present scheme are financed at the rate of 100 % by public funds. The condition that 50 % (or 25 % where applicable) of the financing must come from the sector is therefore not met.

(63) From the above assessment the Commission can therefore conclude that the advertising aids under examination do not meet the requirements set out at points 3.1.2 (campaigns which contravene secondary Community legislation), 3.2 (positive criteria) and 5 (maximum level of State aid) of the applicable advertising Guidelines.

(64) The same conclusion applies to both measures implemented within the Community and outside the Community. Since the advertising measures implemented outside the Community are not explicitly covered by the agricultural guidelines, the Commission exercises its powers of discretion in their assessment. According to current Commission practice, where they comply with relevant state aid rules applicable within the Community territory the envisaged measures can be considered compatible with the common market and aid up to 80 % can be authorised⁽²⁴⁾. In the present case as it appears from the information provided and reported above at recitals 31 and 33 of this Decision, the measures implemented within and outside the Community are the same ones and aid is granted at the rate of 100 %. Therefore also in this case neither the requirements set out at points 3.1.2 (campaigns which contravene secondary Community legislation) and 3.2 (positive criteria) of the applicable advertising Guidelines, nor the maximum level of State aid which is allowed by the Commission are respected⁽²⁵⁾. Also these aid measures are therefore incompatible with the common market.

(65) This Decision concerns exclusively aid to the agricultural sector for the promotion and advertising of Annex I agricultural products. It does not constitute a formal position of the Commission as to whether service providers were selected in accordance with Community public procurement rules and case-law. The Commission reserves the right to further investigate the issue under the angle of public procurement.

VI. CONCLUSION

(66) From the abovementioned considerations, it results that the aid measures for promotion, in so far as they comply with point 13 and with point 14 of the Community Guidelines for State aid to the Agriculture sector, can be considered compatible with the common market in accordance with Article 87(3)(c) as aids to facilitate the development of certain economic activities.

(67) The aid measure for advertising, which do not comply with the rules set out in the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products, are not compatible with the common market and can be implemented only if they are modified in compliance with the said rules.

(68) The aid measures for advertising which are incompatible with the common market, if granted, must be recovered from the beneficiaries,

⁽²³⁾ OJ L 17, 21.1.2000, p. 22. Regulation as amended by the 2003 Act of Accession.

⁽²⁴⁾ See for example Italy/Tuscany Aid N 656/02, Aid NN 150/02 (ex N 109/02) (Commission letter C(2003) 1747 of 11.6.2003) and Aid NN 44/03 (ex N 6/03) (Commission letter C(2003) 2534 of 23.7.2003).

⁽²⁵⁾ See footnote 23.

HAS ADOPTED THIS DECISION:

Article 1

The State aids which Italy has envisaged for the promotion of the agricultural products listed in Annex I to the Treaty on the basis of Article 4 of the Sicilian Regional Law No 27/97 are compatible with the common market.

The above aids may accordingly be implemented.

Article 2

The State aids which Italy has envisaged for the advertising of the agricultural products listed in Annex I to the Treaty on the basis of Article 4 of the Sicilian Regional Law n. 27/97 are incompatible with the common market.

The above aids may accordingly not be implemented.

Article 3

Italy shall take all necessary measures to recover from the beneficiaries the aids referred to in Article 2, if it has unlawfully made them available to the beneficiaries.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the decision. The aid to be recovered shall include interest from the date on which it was at

the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant-equivalent of regional aid.

Article 4

Italy shall amend its provisions regarding aids for the advertising of Annex I agricultural products in compliance with the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products.

Article 5

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

Article 6

This Decision is addressed to the Republic of Italy.

Done at Brussels, 2 June 2004.

For the Commission

Franz FISCHLER

Member of the Commission
