

## COMMISSION DECISION

of 17 July 2013

**on State aid SA.33726 (11/C) [ex SA.33726 (11/NN)] — granted by Italy (deferral of payment of the milk levy in Italy)**

(notified under document C(2013) 4046)

(Only the Italian text is authentic)

(2013/665/EU)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having called on interested parties to submit their comments pursuant to that Article, and having regard to those comments,

Whereas:

## I. PROCEDURE

- (1) After becoming aware of the entry into force, on 27 February 2011, of the law converting Decree-Law No 225 of 29 December 2010 into law, which granted a deferral of payment of an instalment of the milk levies payable by Italian milk producers under the scheme for payment by instalments approved by Council Decision 2003/530/EC of 16 July 2003 on the compatibility with the common market of an aid that the Italian Republic intends to grant to its milk producers <sup>(1)</sup>, <sup>(2)</sup>, the Commission asked the Italian authorities, by means of a letter dated 17 March 2011, for further information on the matter in question.
- (2) The Italian authorities sent the Commission this additional information by letter dated 24 June 2011 and registered on 29 June 2011.
- (3) After examining the information provided by the Italian authorities and taking into account the fact that the deferral of payment in question had taken place without the Commission having been notified of it in advance, or having authorised it, the Commission informed the Italian authorities by fax dated 14 October 2011 that a file for non-notified aid had been opened, under reference number SA.33726 (2011/NN).
- (4) By letter of 11 January 2012, the Commission informed Italy of its decision to initiate the procedure provided for under Article 108(2) of the Treaty as regards the aforementioned deferral and the programme for payment by

instalments approved by Decision 2003/530/EC as amended by the addition of the deferral, which constitutes a new aid (SA.33726 (11/C)), asking the Italian authorities to comment on the opening of the procedure within one month..

- (5) The Commission's decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(3)</sup>. The Commission asked interested parties to submit their comments on the aid in question.
- (6) The Commission received comments from interested parties which it forwarded to Italy, giving it the opportunity to respond.
- (7) By e-mail dated 13 February 2012, the Italian Permanent Representation to the European Union sent the Commission a letter from the Italian authorities requesting a two-month extension for commenting on the opening of the procedure. That extension was granted in a message sent by fax dated 21 February 2012.
- (8) By e-mails dated 26 April 2012 and 27 April 2012, the Italian Permanent Representation to the European Union sent the Commission the Italian authorities' reply to the opening of the procedure under Article 108(2) of the Treaty.
- (9) The Italian authorities did not comment on the interested parties' comments.

## II. DESCRIPTION

*The Council's decision*

- (10) Article 1 of Decision 2003/530/EC states that:

The aid the Italian Republic intends to grant to milk producers, by itself making payment to the Community of the amount due from them to the Community by virtue of the additional levy on milk and milk products for the period 1995/1996 to 2001/2002 and by

<sup>(1)</sup> Now internal market.

<sup>(2)</sup> OJ L 184, 23.7.2003, p. 15.

<sup>(3)</sup> OJ C 37, 10.2.2012, p. 30.

allowing these producers to repay their debt by way of deferred payment over a number of years without interest, is exceptionally considered to be compatible with the common market on condition that:

- repayment shall be in full by yearly instalments of equal size,
- the repayment period shall not exceed 14 years, starting from 1 January 2004<sup>1</sup>.

*The law converting Decree-Law No 225 of 29 December 2010 into law (Law No 10 of 26 February 2011, hereinafter referred to as 'Law No 10/2011')*

- (11) Law No 10/2011 introduces into Article 1 of Decree-Law No 225 of 29 December 2010 a paragraph 12 *duodecies* providing for the deferral to 30 June 2011 of payment of the instalment of the milk levy due on 31 December 2010. The cost of this deferral was charged to an overall budget allocation of EUR 5 million covering multiple purposes.
- (12) In their letter of 24 June 2011, the Italian authorities explained that the grant equivalent for this measure would be counted among the *de minimis* aid for Italy provided under Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the EC Treaty<sup>(1)</sup> to *de minimis* aid in the sector of agricultural production<sup>(2)</sup>.

### III. GROUNDS FOR OPENING THE FORMAL PROCEDURE

- (13) The Commission decided to initiate the proceedings provided for under Article 108(2) of the Treaty for the following reasons:
- the Italian authorities had expressed their intention to classify the grant equivalent for the deferral of payment in question under the '*de minimis*' system provided for in Regulation (EC) No 1535/2007; however, not only were there legal questions surrounding the applicability of that Regulation, as the Italian authorities had failed to provide any information on whether the individual and national aid ceilings established by the Regulation would be complied with, but also the Regulation itself forbids the granting of *de minimis* aid which raises the State aid above the permitted maximum. Since the aid approved by the Council constituted the maximum aid amount that Italy could grant to its milk

producers, adding the grant equivalent of the deferral of payment included in the *de minimis* scheme means exceeding of the maximum aid approved by the Council;

- it therefore follows that the Commission could not rule out the possibility of the deferral in question involving a component of aid (as it amounted to the equivalent of an interest-free loan, hereinafter referred to as the 'related aid'), a situation which none of the information provided by the Italian authorities could justify in the light of the rules applicable to State aid in the agricultural sector (Community Guidelines for State aid in the agriculture and forestry sector 2007 to 2013)<sup>(3)</sup>;
- the deferral amounts to a breach of Decision 2003/530/EC (on the basis that one of its conditions – i.e. instalments of equal size – is no longer complied with). It therefore means that the whole system of staggered payments becomes a new aid scheme for those who have benefited from it (on the basis that it was not included under Decision 2003/530/EC), a situation which does not appear to be permitted under any provision of the guidelines referred to above.

### IV. COMMENTS BY THE ITALIAN AUTHORITIES ON THE OPENING OF THE FORMAL PROCEEDINGS

- (14) In their letter sent by e-mail on 26 April 2012, the Italian authorities first reported on the application of the system of staggered payments of milk levies approved under Council Decision 2003/530/EC, explaining that there were 11 271 beneficiaries under the scheme. Of these, 9 965 (i.e. 88,41 % of the total) had paid their instalments of levies due on 31 December 2010 on time. 1 291 had done so by the deferred deadline and 15 had not made any payments, resulting in their exclusion from the programme.
- (15) The Italian authorities then explained that, in order to calculate the grant equivalent of the aid received by beneficiaries of the deferral, account was taken of interest for the period between 1 January 2011 and the date of actual payment of the instalments which were the subject of the deferral, using the three-month Euribor rate as of 1 October 2010, plus 100 basis points (1,942 %). The results of that calculation indicated a grant equivalent of between EUR 0,08 and EUR 694,19 and also showed that 1 187 of the 1 291 beneficiaries of the deferral had benefited from aid of less than EUR 100,00. According to the authorities, these figures indicate that the deferral of payment under Law No 10/2011 did not compromise the smooth running of the programme for payment by instalment, which continues to be in compliance with the provisions of Decision 2003/530/EC, as evidenced by the fact that only 11,45 % of producers involved in the programme in question benefited from the deferral.

<sup>(1)</sup> Now Articles 107 and 108 of the Treaty.

<sup>(2)</sup> OJ L 337, 21.12.2007, p. 35.

<sup>(3)</sup> OJ C 319, 27.12.2006, p. 1.

- (16) For these reasons, the Italian authorities confirm, as stated in the letter of 24 June 2011 (see paragraph 13 above), that the deferral granted in respect of payment of the levy constitutes *de minimis* aid. They also point out that they have established that the individual ceiling referred to in Article 3(2) of Regulation (EC) No 1535/2007 has been complied with in full, as has the ceiling of EUR 320 505 000 over a period of three fiscal years established for Italy under the same Regulation, and that the grant equivalent of the deferral of payment was equal to a total of EUR 50 877,41. Lastly, they reported that they were in the process of checking whether these ceilings had been complied with, taking into account the other *de minimis* aid schemes granted during 2009, 2010 and 2011.
- (17) As regards the Commission's position that the aid approved by Decision 2003/530/EC had to be considered, given its nature and exceptional character, to be a single maximum aid which cannot be cumulated with any other form of measure, the Italian authorities stressed firstly that the decision in question had recognised the existence of the exceptional circumstances which led the Council to consider the aid to be compatible with Article 107 of the Treaty, subject to certain conditions being met. They also highlighted the fact that the checks carried out showed that the programme for payment by instalments complied with the provisions of Decision 2003/530/EC, since all producers had made the seventh instalment payment, with the exception of 15 producers who had already been removed from the scheme. In their view the exceptional nature of the circumstances resulting in the adoption of Decision 2003/530/EC does not in itself prevent recipients of the aid approved by the Council from accessing any other benefit. The Treaty refers only to the exceptional circumstances mentioned above, without restricting in any way the nature of the aid authorised or the detailed rules for its implementation; it simply makes the derogation from Article 107 and the regulations referred to in Article 109 of the Treaty subject to the adoption of a unanimous Council decision. In this specific case, the exceptional character which led to the adoption of Decision 2003/530/EC is fully reflected in the way in which the decision in question was adopted, namely on a unanimous basis, and relates to the circumstances requiring the adoption of the aid rather than the aid itself.
- (18) The Italian authorities also claimed that the deferral of payment constitutes *de minimis* aid and should therefore be considered an isolated measure, given its low take-up rate among producers, the low value of the amounts in question, and the absence of changes made to the programme for payment by instalments, the structure of which has remained the same, both as regards the total number of instalments and the expiry date.
- (19) Lastly, the Italian authorities have once again stated that, in accordance with the Italian Ministerial Decree of 30 July 2003 implementing the Council Decision, participants in the programme for payment by instalment are required give up any legal action in respect of payment of the levies due and debtors who do not make payments are excluded from the programme. The Italian authorities assert that this condition would involve the initiation of enforced recovery procedures resulting in producers bringing new appeals. It would therefore be reasonable to avoid legal disputes for the recovery of very low amounts through proceedings that cost more than the amounts to be recovered. In this respect, the Italian authorities refer to Article 32(6) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy<sup>(1)</sup>, which states that, in duly justified cases, Member States may decide not to pursue recovery procedures if the costs already incurred and likely to result from the recovery are greater than the amount to be recovered. In their opinion, this provision should be applied by analogy to this case. In any event, similar provisions are also made by Article 25(4) of Law No 289/2002 (the 2003 financial law), in accordance with which the sum of EUR 12 is considered a low amount and not subject to recovery. Of the beneficiaries of the deferral, 559 received aid less than EUR 12.
- (20) In the letter sent by e-mail on 26 April 2012, the Italian authorities provided a list of beneficiaries of the deferral and the amount of aid which each of them received.

#### V. COMMENTS BY INTERESTED PARTIES ON THE OPENING OF THE PROCEDURE

- (21) On 7 March 2012, the Commission received comments from a third party on the opening of the procedure.
- (22) The interested party essentially wished to know why the Commission had restricted the opening of the procedure to the deferral of payment provided for under Law No 10/2011 and not extended it to the provisions of Article 40 *bis* of Law No 122/2010, which provides for the deferral of payment of the instalments paid under an additional programme of payment by instalment set up by Law No 33/2009 and urged the Commission to extend the scope of the procedure accordingly. In this respect, the interested party made the point that a complaint regarding the provisions of Article 40 *bis* of Law No 122/2010 had already been submitted to the Commission and the case closed by the Commission.

<sup>(1)</sup> OJ L 209, 11.8.2005, p. 1.

- (23) On 10 March 2012, the Commission received comments from a second interested party on the opening of the procedure.
- (24) The interested party in question drew the Commission's attention to the provisions of Article 1(4) of Decree-Law No 16/2012, allowing firms in financial difficulty to pay sums due in regular instalments. It asked the Commission to intervene, pointing out that these measures were not compatible with the single market.
- (25) On 14 March 2012, the Commission received comments from a further interested party on the opening of the procedure.
- (26) In these comments, the interested party also made reference to Decree-Law No 16/2012, stressing the resulting difference in treatment between farmers and also the accuracy of the data used by AGEA (*Agenzia per le Erogazioni in Agricoltura* — the Italian paying agency) in order to calculate the additional levy.
- (30) This situation favours certain undertakings, in particular milk-producing agricultural holdings.
- (31) It may also have an impact on trade, given the Italian position on the market <sup>(1)</sup>.
- (32) Equally, it has the potential to distort competition, since the undertakings which benefited from it have secured an advantage (the deferral does not earn interest and is therefore equivalent to an interest-free loan) which could not have been acquired under normal market conditions and which has placed the undertaking concerned in a more advantageous competitive situation compared to undertakings which have not received it <sup>(2)</sup>.
- (33) However, in the light of the additional information provided by the Italian authorities in response to the opening of the procedure under Article 108(2) of the Treaty, there is a need to establish whether the measure in question can be considered *de minimis* aid in accordance with Regulation (EC) No 1535/2007, and therefore not be considered State aid within the meaning of Article 107(1) of the Treaty.

## VI. ASSESSMENT

### VI.1. Existence of aid

- (27) In accordance with Article 107(1) of the Treaty, aid granted by a Member State or by means of State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is to be deemed incompatible with the common market.
- (28) The measure in question, namely the aid connected to the deferral of payment (the granting of the equivalent of an interest-free loan, see paragraph 13, second indent above), but also the new aid arising from the breach of Decision 2003/530/EC (interest not paid on annual instalments already made and capital and interest not yet paid in respect of remaining years until the expiry of the payment by instalment, i.e. until 31 December 2017) (new aid, see paragraph 13, third indent) falls under the following definition:
- (29) The measure is imputable to the State since it results from a national law; it is financed using public resources in the sense that the Italian State, by granting the deferral of payment of an annual instalment established in Decision 2003/530/EC and by creating a new aid through that deferral, has denied itself for a specific period of time a sum of money that could be used for other purposes.
- (34) In their letter sent by email on 26 April 2012, the Italian authorities explained that the interest connected to the deferral of payments was between EUR 0,08 and EUR 694,19. They also stated that checks carried out had shown that the ceiling established for Italy over three fiscal years had not been exceeded, but that they would still have to verify whether there continued to be a risk of an individual ceiling being exceeded in the event of cumulated *de minimis* aid for the 2009, 2010 and 2011 fiscal years.
- (35) The Commission can certainly note that the amount of interest relating to the deferral, taken in isolation, does not exceed the EUR 7 500 provided for in Article 3(2) of Regulation (EC) No 1535/2007. It also notes that the

<sup>(1)</sup> In 2009 Italy was the fifth largest producer of cow's milk in the EU, producing 11.364 million tonnes. In 2010 it imported 1 330 602 tonnes and exported 4 722 tonnes of milk.

<sup>(2)</sup> Under European Court of Justice case law, the mere fact that the competitive situation of a company has been improved by the granting of an advantage which the company could not have obtained under normal market conditions and which competing undertakings do not enjoy is sufficient to prove distortion of competition (Case 730/79 - *Philip Morris v Commission* [1980] ECR I - 2671).

total aid amount granted by the deferral, i.e. EUR 50 877,41, has not resulted in the ceiling of EUR 320 505 000 allowed for Italy in the Annex to the Regulation being exceeded. Nevertheless, the Commission does not have any new information to indicate that the individual ceiling of EUR 7 500 has not been exceeded in any cases, also taking into account all *de minimis* aid received by the same beneficiary during the period of three fiscal years, because as of 26 April 2012, it had not received any information from the Italian authorities involved in performing these checks. It cannot therefore conclude that that individual aid ceiling has been respected in all cases, particularly since the Commission also has to take into account the new aid arising from the breach of Decision 2003/530/EC. Indeed, it has to examine the measure in question in its entirety (i.e. the aid related to the granting of the deferral, the granting of the equivalent of an interest-free loan and the new aid arising from the breach of Decision 2003/530/EC): a considerable number of beneficiaries (more than 1 250) have benefited from this deferral and the amount of the aid also includes part of the principal sum (i.e. that corresponding to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017) plus interest, which far exceeds the interest relating to the deferral of payment taken into account by the Italian authorities in support of their arguments.

(36) Article 3(7) of Regulation (EC) No 1535/2007 also states that '*de minimis* aid shall not be cumulated with State aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that laid down by Community rules in the specific circumstances of each case'.

(37) In this regard, the Commission has already indicated, by initiating the procedure provided for in Article 108(2) of the Treaty, that this deferral was in addition to the aid approved by the Council, which should be regarded as the maximum which could be granted in this context.

(38) The Italian authorities also take the view that the deferral of payment should be regarded as a stand-alone measure, given the low take-up rate amongst producers, the low value of the amounts in question, and the fact that no changes have been made to the programme for payment

by instalments, the structure of which has remained the same, both as regards the total number of instalments and the expiry date.

(39) The Commission does not share this opinion. Indeed, it is clear that the deferral of payment is directly linked to a reimbursement, the payment in instalments of which was provided for in detail in Decision 2003/530/EC. The first indent of Article 1(1) of that Decision clearly states that the repayment 'shall be [...] by yearly instalments of equal size'. The deferral cannot therefore be considered as being entirely unrelated to the system of instalments established by Decision 2003/530/EC.

(40) The Italian authorities also dispute the fact that the aid authorised by the Council is the maximum amount that may be granted to milk producers. They take the view that the decision in question has recognised the existence of exceptional circumstances resulting in the approval of the programme for repayment in instalments, but that this exceptional character does not in itself justify beneficiaries having no possibility of any other support, since the Treaty only refers to exceptional circumstances, without restricting the nature of the aid authorised or the detailed rules for its implementation. In this specific case, the exceptional character which led to the adoption of Council Decision 2003/530/EC is fully reflected in the way in which the decision in question was adopted, namely on a unanimous basis, and relates to the circumstances requiring the adoption of the aid rather than the aid itself.

(41) The Commission does not agree with the Italian authorities. In fact, although the third paragraph of Article 108(2) of the Treaty states that '[...] the Council may, acting unanimously, decide that aid [...] shall be considered compatible with the internal market [...] if such a decision is justified by exceptional circumstances' and also Recital 8 to Decision 2003/530/EC states that '[...] exceptional circumstances exist which justify considering the aid [...] to be compatible with the common market', the fact remains that the Council itself, in the operative part of the Decision, established that the aid is considered to be compatible with the internal market 'exceptionally' and not 'taking account of the exceptional circumstances'. The term 'exceptionally' clearly indicates the Council's intention to draw attention to the granting of the aid, assigning it a unique nature, despite the existence of exceptional circumstances as mentioned in Recital 8. While the reference to unanimity made by the Italian authorities can indeed demonstrate that the procedure was exceptional, it does not call into question the unique nature of the aid as set out in the Decision.

(42) In view of the fact that the aid approved by the Council, given its unique nature, was the maximum amount permissible in that given context, i.e. the equivalent of aid at 100 %, the addition of the deferral of payment would entail the automatic application of the provisions of Article 3(7) of Regulation (EC) No 1535/2007, meaning that the grant equivalent of the deferral cannot be considered to fall within the scope of that Regulation, and therefore constitutes State aid. Its compatibility with the internal market must be assessed in the light of the rules on competition in force when the deferral was granted, as must that of the new aid arising from the breach of Decision 2003/530/EC.

### VI.2 Compatibility of the aid with the internal market

(43) The competition rules which applied when the deferral was granted are contained in the Community guidelines for State aid in the agriculture and forestry sector 2007 to 2013.

(44) The position of the Italian authorities in their letter sent by e-mail on 26 April 2012 was based on the argument that the deferral of payment should be regarded as part of a *de minimis* scheme. The authorities did not therefore provide any explanation of compatibility of the deferral of payment with the internal market, or that of the new aid falling outside the framework of Decision 2003/530/EC, in the light of the rules laid down in the guidelines referred to above.

(45) The Commission therefore has no new information to dispel the doubts it had when it initiated the procedure provided for in Article 108(2) of the Treaty. The aid connected to the deferral of payments and, therefore, the new aid established by the breach of Decision 2003/530/EC therefore constitutes unilateral aid which is solely intended to improve the financial situation of producers without contributing to the development of the sector. It is therefore operating aid which is incompatible with the internal market within the meaning of point 15 of the Guidelines referred to above.

### VI.3 Recovery

#### *The need to remove the aid*

(46) In accordance with the Treaty and European Court of Justice case law, if aid is found to be incompatible with the internal market, the Commission is authorised to decide whether the State concerned must abolish or

alter the aid <sup>(1)</sup>. European Court of Justice case law also states that a State's obligation to abolish aid which the Commission regards as incompatible with the internal market is intended to restore the previously existing situation. In this context, the Court has declared that this objective has been achieved once the recipient has repaid the amounts awarded to him, thus losing the advantage gained over market competitors, and thus restoring the situation in existence prior to the payment of the aid <sup>(2)</sup>.

(47) In keeping with that case law, Article 14 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 <sup>(3)</sup> states that, where negative decisions are taken in cases of unlawful aid, the Commission shall decide that the Member State concerned shall take all necessary measures to recover the aid from the beneficiary (in the present case, all beneficiaries that have benefited from the deferral of payment).

(48) Italy is therefore required to take all necessary measures to recover the incompatible aid from the beneficiaries. In accordance with paragraph 42 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' <sup>(4)</sup>, Italy has four months from the entry into force of this Decision to implement its provisions. Interest is to be paid on the amounts to be recovered, calculated on the basis of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty <sup>(5)</sup>.

(49) This Decision is to be implemented immediately, in particular as regards the recovery of all incompatible individual aid granted.

#### *Benefits and amounts to be recovered*

(50) In view of the very specific context in which the aid was granted (the aid having been added to a programme forming a package approved by the Council) and the consequences of the aid (the breach of Decision 2003/530/EC for those who had benefited from the deferral of payment, while the aid had already been approved, exceptionally, by the Decision), the following should be recovered in respect of those parties who had benefited from the deferral of payment:

<sup>(1)</sup> Case C-70/72 *Commission v Germany* [1973] ECR I - 813, paragraph 13.

<sup>(2)</sup> Joined cases C-278/92, C-279/92 and C-280/92 *Spain v Commission* [1994] ECR I - 4103, paragraph 75, Case C-75/97 *Belgium v Commission* [1999] ECR I-30671, paragraphs 64-65

<sup>(3)</sup> OJ L 83, 27.3.1999, p. 1.

<sup>(4)</sup> OJ C 272, 15.11.2007, p. 4.

<sup>(5)</sup> OJ L 140, 30.4.2004, p. 1.

- a) interest linked to the deferral of payment of the levy instalment which was due on 31 December 2010, plus any interest on arrears accrued until the date of recovery;
- b) interest accrued on annual instalments which were due on 31 December of the years 2004, 2005, 2006, 2007, 2008 and 2009 (the capital for those annual instalments was paid before the deferral for payment resulted in a breach of Decision 2003/530/EC), plus interest on arrears accrued until the date of recovery;
- c) interest accrued on annual instalments which were due on 31 December of the years 2011 and 2012 (no information shows that the capital had not been paid by the deadline), plus interest on late payments accrued until the date of recovery;
- d) capital and interest connected to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017, the final date of the repayment schedule established in accordance with Decision 2003/530/EC.

*Assessment of the comments from interested parties regarding the recovery*

- (51) The importance attached by the Italian authorities to the low value of the amounts to be recovered and the risk of producers making new appeals to the national courts do not change the fact that State aid which does not meet the conditions required in order to benefit from the derogations provided for in Article 107 of the Treaty, and which is therefore incompatible with the internal market, should be recovered from the beneficiaries in order to restore the competitive situation in existence prior to the granting of the aid. Indeed, European Court of Justice case law indicates that the removal of illegal aid which is declared incompatible with the single market is the logical result of such illegality, since the sole purpose of recovery is reinstate a previously existing situation<sup>(1)</sup>. The objective of reinstating a previously existing situation is achieved once the illegal aid incompatible with the internal market has been repaid by the beneficiary, and once the latter has consequently been deprived of the previously existing advantage over

market competitors. In such cases, the situation prior to the granting of the aid has therefore been resumed<sup>(2)</sup>.

- (52) Furthermore, as regards the low value of the amounts for recovery, the Italian authorities appear to restrict the scope of recovery only to the interest which has to be added to the annual payment for the year subject to the deferral. However, recovery, which affects only those who actually benefited from the deferral of payment, must include all aid declared as incompatible, in addition to any interest due (please refer to paragraph 50 above).
- (53) Finally, the argument that producers might appeal to national courts cannot be considered relevant, because according to European Court of Justice case law, the mere possibility of internal difficulties, even insurmountable ones, cannot justify a failure by a Member State to comply with its obligations under Union law<sup>(3)</sup>.
- (54) Consequently, Italy could apply the *de minimis* rules applicable to the agricultural sector for recovery of the individual aid from beneficiaries which met all the requirements of the applicable *de minimis* regulation (Regulation (EC) No 1535/2007) at the time that the unlawful aid incompatible with the internal market was granted. Paragraph 49 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid in the case of aid schemes unlawful and incompatible with the internal market'<sup>(4)</sup> stated that a Member State will be required to carry out a detailed analysis of each individual aid granted on the basis of the scheme in question. In order to quantify the precise amount of the aid to be recovered from each individual beneficiary under the scheme, Italy will therefore need to establish the extent to which the aid has been granted to a specific project, which, at the time of granting, met all conditions of a block exemption regulation or an aid scheme approved by the Commission. In such cases, the Member State may also apply the substantive *de minimis* criteria applicable at the time of the granting of an unlawful and incompatible aid which is the subject of a recovery decision pursuant to Article 2 of Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid<sup>(5)</sup>. Under this criterion, the individual aid granted under this measure does not constitute aid for beneficiaries which, at the time of granting, met the conditions stipulated in the *de minimis* Regulation in force (Regulation (EC) No 1535/2007).

<sup>(2)</sup> Case C-348/93 *Commission v Italy* [1995] ECR I-673, paragraph 27.

<sup>(3)</sup> Judgment of 19 May 1999 in Case C-6/97 *Italy v Commission* [1999] ECR I-2981, paragraph 34.

<sup>(4)</sup> OJ C 272, 15.11.2007, p. 4.

<sup>(5)</sup> OJ L 142, 14.5.1998, p. 1.

<sup>(1)</sup> Order of 12 December 2012, Case T-260/00 - *Cooperativa San Marco fra Lavoratori della Piccola Pesca and Others v Commission*, not yet published, paragraph 55.

#### VI.4 Assessment of the comments from interested parties regarding other proceedings

- (55) As regards the comments made by the first interested party (paragraph 22), the Commission would stress that the postponement of the payment pursuant to Article 40 bis of Law No 122/2010, for one instalment payable under an additional programme for payment by instalment established by Law No 33/2009, is not covered by the proceedings under this Decision, since it does not concern the additional instalment programme established by Decision 2003/530/EC.
- (56) Concerning the comments made by the other two interested parties on Decree-Law No 16/2012 (paragraphs 24 and 26), the Commission is currently examining the comments in question. However, it is of the opinion that they need to be examined separately for reasons of administrative efficiency, *inter alia*, relating to the fact that the joining of the two proceedings by a widening of proceedings and the application of all related administrative formalities would significantly delay closure of the proceedings under this Decision.

#### VII. CONCLUSION

- (57) The Commission finds that Italy has unlawfully implemented the deferral of payment in question, rendering unlawful also the aid to which it relates (see paragraph 13, second indent, above) and the new aid scheme determined by the infringement of Decision 2003/530/EC (see paragraph 13, third indent). Consequently, none of the aid can be considered compatible with the single market because the Italian authorities have not provided any information to indicate compatibility under the competition rules applicable to the agricultural sector (see paragraphs 43 to 45). (They have merely argued that the deferral of payment should be viewed in isolation i.e. without taking account of the impact on Decision 2003/530/EC, and could be considered a *de minimis* scheme). The Commission has therefore been unable to resolve the doubts already expressed by the initiating of the procedure provided for in Article 108(2) of the Treaty.
- (58) The incompatible aid should be recovered with interest from the relevant beneficiaries, in other words those who have actually made use of the deferral of payment in question,

HAS ADOPTED THIS DECISION:

#### Article 1

1. The deferral of payment of the milk levy due on 31 December 2010, introduced as paragraph 12 *duodecies* of Article 1 of Decree-Law No 225 of 29 December 2010 by

Law No 10/2011 and unlawfully applied by Italy, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, constitutes State aid which is incompatible with the internal market.

2. The aid resulting from failure to comply with the conditions laid down in Decision 2003/530/EC, as determined by the deferral of payment referred to in Article 1 and unlawfully applied by Italy, in breach of Article 108(3) of the Treaty on the Functioning of the European Union, is incompatible with the internal market.

#### Article 2

1. Italy is required to recover the incompatible aid referred to in Article 1(1) and (2) above from the beneficiaries of the deferral referred to in Article 1(1).

2. The sums to be recovered shall bear interest from the date on which they were placed at the disposal of the beneficiaries until that of their recovery.

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004.

4. The recovery, which concerns only those parties to have actually benefited from the deferral of payment referred to in Article 1 and who have therefore benefited from the aid referred to in Article 2 shall apply to the following:

a) interest linked to the deferral of payment of the levy instalment due on 31 December 2010, plus any interest on arrears accrued until the date of recovery;

b) interest accrued on annual instalments which were due on 31 December of the years 2004, 2005, 2006, 2007, 2008 and 2009 (the capital for those annual instalments was paid before the deferral for payment resulted in a breach of the Council Decision), plus interest on arrears accrued until the date of recovery;

c) interest accrued on annual instalments which were due on 31 December of the years 2011 and 2012 (no information shows that the capital had not been paid by the deadline), plus interest on late payments accrued until the date of recovery;

d) capital and interest connected to the annual instalments due on 31 December of the years 2013, 2014, 2015, 2016 and 2017, the final date of the repayment schedule established in accordance with the Council Decision.

5. Individual aid granted under the scheme referred to in Article 1 shall not constitute aid if, at the time it was granted, it met the conditions laid down in a regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98, which was applicable at the time the aid was granted.

*Article 3*

1. Recovery of the aid referred to in Article 1 shall be immediate and effective.
2. Italy shall ensure that this Decision is implemented within four months following the date of its notification.

*Article 4*

1. Within two months of notification of this Decision, Italy shall submit the following information:
  - a) the list of the beneficiaries that have received aid under the schemes referred to in Article 1 and the total amount received by each of them under the scheme concerned;
  - b) the total amount (capital and interest) to be recovered from each beneficiary that received aid which cannot be covered by the *de minimis* rule;
  - c) a detailed description of the measures already taken and planned in order to comply with this Decision;

d) the documents showing that the beneficiaries have been ordered to repay the aid.

2. Italy shall keep the Commission informed of the progress of the national measures taken to implement this Decision until the aid granted under the schemes referred to in Article 1 has been fully recovered. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned in order to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries.

*Article 5*

This Decision is addressed to the Italian Republic.

Done at Brussels, 17 July 2013.

*For the Commission*  
Dacian CIOLOS  
*Member of the Commission*