II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 19 January 2005

on State aid which Italy plans to grant to agricultural undertakings in Sicily

(notified under document number C(2005) 52)

(Only the Italian text is authentic)

(2006/967/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 15 December 1999, registered on 20 December 1999, the Italian Permanent Representation to the European Union notified the Commission of Regional Law No 22/1999 on emergency measures in the agricultural sector (hereinafter 'Law No 22/1999') in accordance with Article 88(3) of the EC Treaty.

(2) By letters dated of 6 October 2000, registered on 9 October 2000, 1 February 2001, registered on 5 February 2001, and 30 July 2001, registered on 1 August 2001, the Italian Permanent Representation to the European Union sent the Commission the further information requested from the Italian authorities by letters dated 23 February 2000, 20 November 2000 and 27 March 2001.

(3) By letter dated 25 September 2001, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid.

(4) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Communities* [2]. The Commission invited the third parties concerned to submit their comments on the aid in question.

(5) The Commission did not receive any comments from interested parties.

(6) On 29 November 2001 the Commission and the Italian authorities met in Brussels.

(7) By letter dated 29 April 2002, registered on 30 April 2002, Italy sent the Commission further information on the planned aid.

II. DETAILED DESCRIPTION OF THE AID

(8) The measures originally planned under the Regional Law in question are set out in points 9 to 21, broken down by Article:

Article 1: Extension of agricultural loans

(9) The article provides for agricultural credit institutes to extend until 31 December 2000 agricultural loans due for repayment in 1998 and 1999. Such extensions would be subject to the reference rate applicable at the date the loans fall due, with any related charges being borne by the borrowers. Extension of the agricultural loans does not entail government action but is a matter for the contractual parties (farmers and credit institutes). However, Italy has undertaken not to apply this measure.

[1] OJ C 315, 9.11.2001, p. 12.

[2] See footnote 1.

Article 2: Renegotiation of agricultural loans

(10) The article provides for institutes offering special conditions for loans ([3]), and the borrowers, to request the renegotiation of these loans where their reference rate is above the rate applicable at the time of the entry into force of the law. The agricultural loans qualifying for renegotiation will continue to benefit from the subsidy on the outstanding interest payments, even where the negotiating institute receives a request to accept early repayment of the loan.

Article 3: Agri-environmental measures

(11) The article provides for the payment of agri-environmental aid that had been granted to the region of Sicily under Regulation (EEC) No 2078/92 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside ([4]) but which did not qualify for funding by the European Union. It relates to agri-environmental measures set out in the programme drawn up by the Region of Sicily for 1999 and which had already been notified to farmers when the Commission declared such expenditure inadmissible under the co-financing provisions of the Regulation (EEC) No 2078/92. The funding requirement comprises LIT 25 billion (EUR 12 911 420), as against a budget allocation of LIT 10 billion (EUR 5 160 000).

(12) Sicily's agri-environmental programme had been approved by the Commission ([5]) up until the end of 1999, whereas for the majority of Italian regions the programmes had been approved up to 1998. In March 1998 the Commission had decided to make the continuation of any programmes due to expire (or any amendments) conditional upon the submission of evaluations of programmes already carried out.

(13) In October 1998 Sicilian farmers had undertaken the commitments in question, thus incurring expenditure and losing income.

(14) In November 1998 the Commission refused to underwrite new agri-environmental commitments until an evaluation had been carried out ([6]). The Commission stated that a definitive decision on this matter would be taken following a discussion with the competent authorities in the Member States. Sicily submitted the evaluation report in January 1999.

(15) In May 1999 the Commission announced its Decision not to fund the measures A1, B, D1, E and F of the Sicilian agri-environmental plan ([7]), because the evaluation had not supplied sufficient information for a judgement to be made on the socioeconomic and environmental impact of these measures. Furthermore, there had been no amendment of the programme to address the shortcomings highlighted by the evaluation.

(16) Italy plans to grant the same types of aid as set out in the approved agri-environmental programme and in accordance with the same criteria, at the rate of 50 % of the planned amounts. This percentage reflects the effective duration of the commitments, in other words from October 1998 to May 1999 (six months instead of one year).

Article 4: Measures to promote greenhouse crops

(17) The article provides for aid to promote greenhouse crops, comprising 40 % of the cost of soil sterilisation, 50 % of the purchase price of sterilisation equipment and a subsidy of LIT 250/kg for the purchase of plastic sheeting for tunnel greenhouses. The Italian authorities have noted their intention to use, as the legal basis for this measure, Article 49 of Law 86/82 of 5 August 1982 (hereinafter 'Law 86/1982'), already approved by the Commission as aid intended to compensate for losses caused by adverse weather conditions. The budget for this measure is LIT 20 billion (EUR 10 329 000).

Article 5: Co-financing of the national citrus cultivation plan

(18) The article includes a budget provision for action under the national citrus cultivation plan. After excluding this measure from the dossier, the Commission approved the aid as part of aid C 65/A/2001 by Decision SG(2003) 232301 of 15 October 2003.

Article 6: Crop protection associations

(19) The article provides for the grant to crop protection associations of aid to cover 50 % of the expenditure incurred by an insurance fund covering its members' crops. The aid comprises a contribution to both insurance premiums and the management costs of the associations (0,5 % of the sum insured), up to a maximum expenditure of LIT 100 million (EUR 51 645) per association.

([3]) Conditions as set out in the Regional Law No 13 of 25 March 1986 and in the regional laws providing for the State to subsidise interest payments due on agricultural loans.
([4]) OJ L 215, 30.7.1992, p. 85.
([5]) Decisions C(97) 3089 of 14 November 1997 and C(94) 2494 of 10 October 1994.
([6]) Memorandum No 43244 of 6 November 1998.
([7]) Note 27373 of 4 May 1999.

Article 7: Upgrading of livestock farming

(20) The article provides for funding for the measure set out in Article 11 of Regional Law No. 40 of 7 November 1997 (hereinafter 'Law No 40-1997'). This measure was studied during the examination of file NN 37/98 and approved by Commission letter SG(2002) 233136 dated 11 December 2002.

(21) Granting of the above aid is subject to approval by the Commission.

III. **REASONS FOR INITIATING PROCEEDINGS**

The Commission had initiated proceedings in respect of the scheme in question for the reasons set out at points 22 to 29:

(22) **Article 1 (extension of agricultural loans)**: despite Italy's assurances that the measure would not be applied, it had not been officially removed from the wording of the law, and the information provided was too limited to enable its compatibility to be assessed.

(23) **Article 2 (renegotiation of agricultural loans)**: the Italian authorities had stated that the loans subject to renegotiation were those granted under a regional law (Regional Law No 13 of 25 March 1986, hereinafter 'Law No 13/1986', approved by the Commission ([8]) and some national laws ([9]). It was not clear whether the national legal basis of the measure had been notified to the Commission and approved by it. If the loans with special conditions to be renegotiated under this measure were considered to constitute illegal and incompatible aid, any increase in the intensity of the aid would also be incompatible.

(24) Furthermore, it could not be inferred from the wording whether the renegotiation of the loans would simultaneously bring about the alignment of the rates of aid with those provided for by the Community Guidelines on State aid in the agriculture sector ([10]) (hereinafter 'the Guidelines'). According to the aid scheme, such an alignment would have had to be made by 30 June 2000 or 31 December 2001 at the latest.

(25) **Article 3 (agri-environmental measures)**: for the purposes of excluding any possible overcompensation of the additional costs and loss of income sustained by farmers as a result of the adoption of agri-environmental commitments, it could not be inferred from the available information whether the maximum amounts and conditions had been observed. These are:

(a) Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ([11]), and

(b) Commission Regulation (EC) No 1750/1999 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ([12]).

(26) **Article 4 (measures in favour of greenhouse crops)**: regarding the application of point 11.3 of the Guidelines (aid to compensate farmers for losses caused by adverse weather conditions), it would seem that only aid to purchase material to rebuild tunnel greenhouses would meet the requirements of the Guidelines. However, aid for soil sterilisation or purchasing sterilising machinery would not seem to be admissible as the Guidelines permit compensation only for damage caused to buildings and machinery by adverse weather conditions. Furthermore, Italy had not provided guarantees that any compensation received from insurance policies, and any costs not incurred by farmers, would be deducted from the aid.

(27) Regarding the application of point 4.1 of the Guidelines (aid for investments in agricultural holdings), the conditions of that point have not been satisfied: expenditure on soil sterilisation would not seem to be included among the forms of eligible expenditure in point 4.1.1.5, the rate of aid (50 %) for the purchase of machinery exceeds the maximum permitted rate (40 %) in areas which are not less-favoured (point 4.1.1.2), and respect for the eligibility criteria laid down by point 4.1.1.3 of the Guidelines has not been demonstrated.

(28) **Article 5 (co-financing of the national citrus cultivation plan)**: the funding envisaged by the Article was to finance the national citrus cultivation plan, a plan which was still being examined by the Commission. Therefore, at that stage of the procedure, it was not yet possible to consider financing of the plan admissible.

([8]) Decision C(97) 1785 of 17 July 1997 (co-financing decision).
([9]) Article 4 of Law No 286/89, Article 4 of Law No 31/91, Article 2 of Law No 237/93.
([10]) OJ C 28, 1.2.2000, p. 2.
([11]) OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 567/2004 (OJ L 90, 27.3.2004, p. 1).
([12]) OJ L 214, 13.8.1999, p. 31. Regulation repealed by Regulation (EC) No 445/2002 (OJ L 74, 15.3.2002, itself repealed by Regulation (EC) No 817/2004 (OJ L 153, 30.4.2004)).

(29) **Article 6 (crop protection associations)**: a contribution to the associations' management costs did not seem to satisfy some of the criteria of point 14 of the Guidelines, particularly with regard to the general availability of the services, the limiting of administrative costs for non-members, and the requirement to account separately for the expenditure relating to the subsidised services.

IV. COMMENTS SUBMITTED BY ITALY

(30) By letter dated 29 April 2002 Italy provided the following information and clarifications:

(31) **Article 1 (extension of agricultural loans)**: Italy specified that the provision in question had been repealed by Article 1(2) of Regional Law No 28 of 23 December 2000 (hereinafter 'Law No 28/2000'). Italy also emphasised that the provision had never been notified, as the extension of agricultural loans did not entail government action and instead was a matter for the contractual parties, and as the responsibilities regarding the extension of the loans rested entirely with the farmers.

(32) **Article 2 (renegotiation of agricultural loans)**: Italy specified that the possibility of renegotiation would concern only loans financed on the basis of the regional law (Article 2(3) of Regional Law No 13/86) within the period of validity of the approved scheme. Italy indicated, furthermore, that the aim of the provision is to bring the rate applied to loans previously entered into by farmers below the so-called 'usurious rate', as defined by Law No 108 of 1996. In many cases, the loans in question have reference rates which are far higher than the usurious rate, and are two or three times higher than the prevailing market rate. The aim of the renegotiations is to align the old reference rates with current market rates. As a result of the article in question, the institutions granting aid would be able to renegotiate the relevant loans, resulting in savings of public resources. The regional government has undertaken not to change the extent of the state aid in grant-equivalent terms of the initial measure. The fact that up-dated aid instalments due will benefit the borrower means that, in cases where the loan is settled early, the reduction of aid causes the borrower to receive a lower amount than that which was originally granted, and thus the equivalent aid is also lower.

(33) **Article 3 (agri-environmental measures)**: Italy pointed out that the prohibition on assuming new agri-environmental commitments for programmes expiring at the end of 1998 in the absence of an evaluation (November 1998), as well as the decision not to co-finance certain measures (May 1999), had both occurred after farmers had agreed (in October 1998) to the commitments in question. It should be noted, in the case of Sicily, that the commitments which have been challenged are not 'new five-year commitments'. Rather, they come within the framework of the Sicilian agri-environmental programme which is still valid given that it was approved by the Commission until the end of 1999, and not just until 1998 as was the case for the other regions.

(34) **Article 4 (measures in favour of greenhouse crops)**: Italy has undertaken to limit the aid solely to the purchase of plastic sheeting to cover tunnel greenhouses. In order to avoid any risk of overcompensation, Italy has also undertaken that, wherever a farmer has entered into an insurance contract providing cover for damage caused by adverse weather conditions, it would subtract, from the compensation payable, any sums received, as well as any ordinary expenditure not incurred by the farmer.

(35) **Article 6 (crop-protection associations)**: Italy undertook to abrogate the contribution towards the associations' day-to-day management costs.

V. ASSESSMENT OF THE AID

(36) The provision at Article 1 has been repealed (see point (9)) and measures provided for by Articles 5 and 7 were approved within the framework of other aid schemes (see paragraphs (18) and (20)). Therefore, the following assessment concerns only Articles 2, 3, 4 and 6 of Law No 22/1999.

V.1. Existence of aid within the meaning of Article 87(1) of the Treaty

(37) Under Article 87(1) of the Treaty, 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 is, in so far as it affects trade between Member States, incompatible with the common market.

(38) The final wording of Article 2 of the Regional Law provides for the renegotiation of agricultural loans with special conditions within the meaning of Law No 13/86 (a scheme authorised by the Commission [13]) during the validity period of the said scheme (31 December 1997). The Italian authorities claim that no renegotiation of farm loans took place. Since, under Article 2(3) of the Regional Law, such renegotiations had to be completed within 18 months of the date of entry into force of the law, the Commission considers it unnecessary to consider the measure.

[13] See note 7.

(39) The Commission reserves the right to verify that the national legislation cited in the original notification, even where not directly applicable to the article of the law in question, has been properly notified to and approved by the Commission in so far as it concerns State aid.

(40) Articles 3, 4 and 6 of the Regional Law under examination correspond to the definition of aid in Article 87(1) of the Treaty, due to the fact that they give:

(a) economic advantages (unrecoverable financial assistance)

(b) to certain undertakings (Sicilian agricultural undertakings)

(c) financed by public (regional) resources, and

(d) have the potential to affect trade, given Italy's place in the agriculture sector (for example, in 1999 Italy exported agricultural products to other Member States to a total value of EUR 10 258 million, while imports from other Member States were valued at EUR 15 271 million ([14])).

V.2. **Compatibility of the aid**

(41) The prohibition referred to in Article 87(1) of the Treaty is not absolute. In order to be considered compatible with the common market, the measures referred to in Articles 3, 4 and 6 of the law in question must qualify for one of the derogations provided for in Article 87(2) and (3) of the Treaty.

(42) The only possible derogation in the case in point is laid down in Article 87(3)(c), according to which aid may be considered compatible with the common market if it is found to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest.

(43) In interpreting this derogation, the Commission in dealing with the agricultural sector first of all checks whether Commission Regulation (EC) No 1/2004 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 ([15]) is applicable. If this Regulation does not apply, the Commission refers to the Community Guidelines on State aid in the agricultural sector ([16]).

(44) Regulation (EC) No 1/2004 is not applicable in the case in point, since the scheme is not restricted to small and medium-sized agricultural undertakings. The Commission has therefore referred to points 5.3 (agri-environmental commitments) and 11 (compensation for damage caused by bad weather) of the Guidelines.

V.2.1. *Agri-environmental measures*

(45) The Commission takes note of the fact that the agri-environmental commitments in question had already been given by the farmers at the time of the Commission's doubts, and then its final decision that such commitments should not be considered eligible for Community co-financing and that, consequently, the farmers had already incurred expenses and lost revenue at the time of the Decision.

(46) Furthermore, these commitments were part of an agri-environmental programme approved by the Commission until 1999 and thus complied in concept with the requirements of Regulation (EC) No 1257/1999.

(47) In order to assess the compatibility with the common market of State aids in connection with agri-environmental commitments, the Commission applies point 5.3 of the Guidelines.

(48) This point says that State aids may be deemed compatible if they are granted in accordance with the criteria applicable to agri-environmental measures co-financed under Articles 22 to 24 of Regulation (EC) No 1257/1999. In the case in point, this condition cannot be met in the light of what was said in paragraph 46.

(49) It is nevertheless necessary to examine why the Commission decided not to co-finance such measures, with a view to excluding any administrative shortcomings or irregularities indicating, for example, any overcompensation of farmers.

(50) The Commission's communications, as well as internal correspondence of the relevant departments, reveal nothing which can indicate, on the part of the Region of Sicily, any irregular administration or overcompensation of farmers. The reasoning adopted by the Commission (see paragraph 15) for the failure to agree to co-financing concerned the need to take account of the outcome of the assessment of the programme as a result of changes designed to improve it.

([14]) *Source*: Eurostat. Separate data for individual regions are not available.

([15]) OJ L 1, 3.1.2004, p. 1.

([16]) OJ C 28, 1.2.2000, p. 2.

(51) Italy plans to grant aid in the same ways and according to the same criteria as the approved agri-environmental programme at a rate of 50 % of the planned amounts. This percentage matches *pro rata temporis* the actual duration of the commitments (six months). The Italian authorities have shown that the scale of the aid is such as not to result in overcompensation of costs but rather, in the case of certain measures, does not succeed in covering the greater burdens stemming from commitments which have already been honoured. Indeed, when the farmers were informed (May 1999) that there would be no co-financing, the bulk of the cultivation operations had already been carried out in compliance with the commitments given (preparatory work, seeds, fertilisers, spring treatment, pruning). The farmers had also incurred the costs of technical consultations and administrative and technical documentation. The costs and lost revenue incurred during the six months in question thus represented more than 50 % of the total for a whole farming year.

(52) However, the information available to the Commission does not make it possible to verify whether the Region of Sicily conducted the proper checks to ensure that farmers complied with their agri-environmental commitments in 1999 and whether such checks proved positive.

(53) The Commission therefore believes that the State aid in question should be considered compatible with the common market only in so far as Italy can prove that the checks referred to in paragraph 52 were conducted between October 1998 and May 1999 and proved positive.

V.2.2. *Measures in favour of greenhouse crops*

(54) In the final version of the measure the aid in question will be granted to greenhouse farmers who have suffered from adverse weather conditions in accordance with Article 49 of Law No 86/1982, which extends to crops grown under cover the benefits of Law No 37/1974. However, only the costs of purchasing plastic sheeting for tunnel greenhouses will be considered eligible.

(55) Article 49 of Law No 86/92 was approved by the Commission since it concerned aid intended to compensate the damage caused to greenhouses and plastic sheetings by the severe storms and heavy hail showers occurring in areas where greenhouse cultivation is the main form of farming.

(56) Aid intended to compensate damage caused to buildings and equipment by adverse weather conditions can be authorised on the basis of point 11.3 of the Guidelines up to 100 % of actual costs, with no minimum threshold being applied. However, point 11.3.6 of the Guidelines lays down that, in order to avoid excessive compensation, any sums received from insurance schemes and normal costs not incurred by farmers must be deducted from the amount of the aid. Furthermore, in accordance with point 11.3.1 of the Guidelines, the aid measures must be accompanied by appropriate meteorological information.

(57) As outlined in paragraph 34, Italy has indicated that the eligible expenses were limited to the cost of replacing plastic sheeting. Furthermore, Italy promised to deduct from aid amounts any sums paid under insurance schemes and normal costs not incurred.

(58) In addition, Italy provided the meteorological documentation concerning the bad weather in question.

(59) The Commission therefore believes that the measure in question can be considered compatible with the common market.

V.2.3. *Crop protection associations*

(60) In the final version of the measure, Italy will grant aid equivalent to 50 % of insurance premiums for damage caused by natural disasters in the case of policies taken out by crop protection associations. These associations are private bodies set up by farmers themselves with a view to increasing their own bargaining power when taking out insurance contracts.

(61) Point 11.5 of the Guidelines allows aid to be granted up to 80 % of the cost of insurance premiums covering losses caused by natural disasters or exceptional occurrences, and up to 50 % of the cost of such premiums when the insurance also covers other losses caused by adverse weather conditions or losses caused by animal or plant diseases.

(62) In the case in point, the type of aid and the maximum aid intensity comply with point 11.5 of the Guidelines.

(63) The Commission therefore believes that the measure in question can be considered compatible with the common market.

VI. **CONCLUSIONS**

(64) The measure referred to in Article 2 of Law No 22/99 does not constitute aid within the meaning of Article 87(1) of the Treaty.

(65) The measure referred to in Article 3 of the above law is compatible with the common market within the meaning of Article 87(3)(c) of the Treaty only in so far as Italy can prove that the proper checks of farmers' compliance were conducted between October 1998 and May 1999 and that such checks proved positive.

(66) The measures referred to in Articles 4 and 6 of the above law are compatible with the common market within the meaning of Article 87(3)(c) of the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

Article 2 of Regional Law No 22/1999, which Italy intends to implement for the benefit of agricultural undertakings in Sicily, does not constitute aid within the meaning of Article 87(1) of the Treaty.

Article 2

The measure referred to in Article 3 of Regional Law No 22/1999, which Italy intends to implement for the benefit of agricultural undertakings in Sicily, is compatible with the common market, provided that the conditions laid down in Article 4 of this Decision are complied with.

Article 3

The measures referred to in Articles 4 and 6 of Regional Law No 22/1999, which Italy intends to implement for the benefit of agricultural undertakings in Sicily, are compatible with the common market. The implementation of these measues is therefore authorised.

Article 4

Within two months of notification of this Decision, Italy shall provide the information which can prove that the relevant authorities conducted checks between October 1998 and May 1999 on the compliance by farmers with the agri-environmental commitments given in connection with the environmental programme of the Region of Sicily and which were not eligible for Community co-financing and that such checks proved positive.

Article 5

This Decision is addressed to the Italian Republic.

Done at Brussels, 19 January 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission