

## II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

## DECISIONS

## COMMISSION

## COMMISSION DECISION

of 28 January 2009

**concerning State aid C 27/05 (ex NN 69/04) granted for the purchase of forage in the Region of Friuli-Venezia Giulia (Article 6 of Regional Law No 14 of 20 August 2003 and call for expressions of interest published by the Chamber of Commerce of Trieste)**

(notified under document number C(2009) 187)

(Only the Italian text is authentic)

(2009/382/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

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

Having called on interested parties to submit their comments pursuant to that Article,

Whereas:

**I. PROCEDURE**

- (1) Having received information and then a complaint that Regional Law No 14 of 20 August 2003 of the Region of Friuli-Venezia Giulia provided for the granting of funding to the Chambers of Commerce of Trieste and Gorizia to provide for the forage needs of holdings affected by the drought of 2003, the Commission asked the Italian authorities for a series of clarifications by letter of 2 April 2004.
- (2) Not having received a reply at the end of the four-week period allowed the Italian authorities to provide the requested information, the Commission sent them a reminder by letter of 26 May 2004.
- (3) By letter of 10 June 2004, registered as received on 15 June 2004, the Italian Permanent Representation to

the European Union forwarded to the Commission a letter from the Italian authorities stating that they had sent two letters to the Chambers of Commerce of Trieste and Gorizia, of 30 September 2003 and 12 March 2004 respectively, to draw their attention to the need to publish a call for expressions of interest for the aid provided for by Article 6 of the abovementioned law and to send a copy thereof to the Commission.

- (4) On the basis of that information, by letter of 28 June 2004, the Commission asked the Italian authorities to send it the text of the two letters concerned and of the calls for expressions of interest drawn up by the two Chambers of Commerce. In addition, the Commission asked whether aid had been granted and, if so, how much and how it had been granted.
- (5) By letter of 27 September 2004, registered as received on 29 September 2004, the Italian Permanent Representation to the European Union sent the Commission the texts concerned and the information requested in the letter of 28 June 2004.
- (6) Since it was clear from that information that the call for expressions of interest had already been published by the Chamber of Commerce of Trieste and acted on and that, furthermore, the aid that the Chambers of Commerce could pay or had paid was not provided for in the Chambers' general aid scheme, approved by the Commission under State aid N 241/01, the Commission decided to open an unnotified aid dossier under number NN 69/04.

- (7) By letter of 12 November 2004, the Commission requested additional information on the aid concerned from the Italian authorities.
- (8) On the same day, the Commission received a letter from the Italian authorities providing information supplementing that requested in the letter of 28 June 2004 (see recital 4).
- (9) By letter of 6 January 2005, registered as received on 11 January 2005, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities requesting an extension of the deadline allowed them for providing additional information on the aid in question, so as to permit them to re-examine the regional legislation concerned.
- (10) By letter of 25 January 2005, the Commission gave an extension of one month.
- (11) By letter of 21 February 2005, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities stating that the Chamber of Commerce of Gorizia had not implemented the planned aid and no longer intended to do so (the letter was accompanied by a Decision of the Chamber of Commerce confirming this).
- (12) By letters of 28 February 2005, registered as received on 1 March 2005, and of 30 March 2005, registered as received on 31 March 2005, the Italian Permanent Representation to the European Union sent the Commission additional information on the aid granted by the Chamber of Commerce of Trieste.
- (13) By letter of 22 July 2005 <sup>(1)</sup>, the Commission informed Italy of its Decision to initiate the procedure laid down in Article 88(2) of the Treaty with regard to the aid for the purchase of forage provided for by Article 6 of Regional Law No 14 of 20 August 2003 and the subject of the call for expressions of interest published by the Chamber of Commerce of Trieste.
- (14) The Commission Decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission invited interested parties to submit their comments on the measures concerned.
- (15) The Commission did not receive any comments from interested parties.

## II. DESCRIPTION

- (16) Article 6 of Regional Law No 14 of 20 August 2003 of the Region of Friuli-Venezia Giulia (hereafter Regional Law No 14) lays down that the regional authorities are authorised to grant special funding of EUR 170 000 to the Chamber of Commerce, Industry, Crafts and Agriculture of Trieste and of EUR 80 000 to the Chamber of Commerce, Industry, Crafts and Agriculture of Gorizia to cope with exceptional needs connected with feeding animals on livestock holdings affected by the drought of 2003 and located in areas not served by shared irrigation installations.
- (17) The call for expressions of interest published by the Chamber of Commerce of Trieste provides for financial support for holdings in the Province of Trieste affected by the drought of 2003 that, not having been able to irrigate their land not served by shared irrigation installations, suffered a loss of production of at least 20 % in less-favoured areas and 30 % in other areas. That support takes the form of aid for the purchase of forage required to feed livestock.
- (18) The aid is paid on presentation of invoices for purchases of forage from 1 May and 20 November 2003 and covers the quantity of forage necessary to satisfy nutritional requirements calculated per livestock unit (hereafter LU) present on the holding and belonging to the farmer. The LUs include the bovine, ovine, caprine and equine animals raised for slaughter or used for work; in the case of slaughter animals, the farmers concerned are main-occupation farmers and owner-occupiers registered with the *Istituto nazionale per la previdenza sociale* (National Social Security Institute) for the agricultural sector. The term 'forage' means any type of dried hay.
- (19) The aid can be paid to any holding in the Province of Trieste so requesting until the fund created for that purpose has been used up.
- (20) The maximum amount of forage that can be reimbursed per LU is 1 500 kg. The reference price used to calculate the aid is EUR 20, excluding VAT. If the number of applications exceeds the forecast, the individual aid per LU will be reduced proportionately.
- (21) Should the beneficiary holdings request and obtain other aid for the losses caused by the drought of 2003, the amount of aid stipulated in the call for expressions of interest will be reduced accordingly.

<sup>(1)</sup> See letter SG(2005)-Greffé D/203816.

<sup>(2)</sup> OJ C 233, 22.9.2005, p. 5.

### III. INITIATION OF THE PROCEDURE LAID DOWN IN ARTICLE 88(2) OF THE TREATY

(22) The Commission initiated the procedure laid down in Article 88(2) of the Treaty because it doubted that the aid measures concerned were compatible with the common market. Doubts were raised by the following:

- (a) on the basis of the provisions of which it had been informed, the Commission could not draw the conclusion that the loss threshold had been established strictly in accordance with point 11.3 of the Community Guidelines for State aid in the agriculture sector <sup>(1)</sup> (hereafter the Guidelines) and could therefore not rule out the possibility that aid had been paid to certain farmers who would not have been eligible if the loss threshold had been calculated as laid down in that point;
- (b) the actual method used to calculate the aid did not correspond to that laid down in point 11.3 of the Guidelines, since it was based simply on price per unit weight purchased; in addition, the aid was to be paid on the basis of purchase invoices for forage, but the call for expressions of interest published by the Chamber of Commerce of Trieste did not specify that purchases had to be limited to the quantities of forage actually lost because of the drought;
- (c) according to point 11.3 of the Guidelines, the amount of aid should also be reduced by the amount of any direct aid payments, however, the Italian authorities had provided no information on this; the risk of over-compensation for the losses suffered could therefore not be ruled out;
- (d) according to that same point of the Guidelines, the amount of aid paid should be reduced by any amount received under insurance schemes and normal costs not incurred by the farmer, for example, where the crop could not be harvested, should also be taken into account; however, the Italian authorities provided no information on this, which further reinforces the doubts expressed concerning the risk of over-compensation.

### IV. COMMENTS FROM ITALY

(23) By letter of 26 September 2005, registered as received on 27 September 2005, the Italian Permanent Representation to the European Union forwarded to the Commission the comments of the Italian authorities following the initiation of the procedure laid down in Article 88(2) of the Treaty with regard to the aid in question.

(24) The Italian authorities state, among other things, that the drought of 2003 was declared to constitute 'adverse weather conditions' by the Region of Friuli-Venezia Giulia by means of Decree No 0329/Pres. issued by the President of the Region on 16 September 2003, was confirmed by meteorological data collected by the regional meteorological observatory and was the subject of a State aid dossier notified to the Commission and approved by it (N 262/04).

(25) The Italian authorities acknowledge that the method used by the Chamber of Commerce of Trieste to calculate the losses suffered by farmers in the Province of Trieste is not in accordance with point 11.3 of the Guidelines. They state, however, that following initiation of the procedure laid down in Article 88(2) of the Treaty, the Chamber of Commerce of Trieste checked the thresholds for the loss of production on each of the holdings receiving aid (43 holdings), on the basis of a comparison of the average production of forage during the three years from 2000 to 2002 (in which no compensation was paid for loss caused by adverse weather conditions) and the quantities of forage harvested in 2003. According to the Italian authorities, the data obtained showed that losses in every case were more than the minimum thresholds laid down for entitlement to aid (20 % in less-favoured areas and 30 % in other areas).

(26) The Italian authorities also add that they calculated the aid that could have been paid in accordance with the Guidelines. To do so, they used the data given in Decision No 1535 of 23 May 2003 of the Regional Executive concerning the average quantity and the average price of forage during the three years from 2000 to 2002. From the figure obtained, they deducted the actual production declared by each holding for 2003, multiplied by the average price for that year. They set out all their calculations in a table showing the amounts of aid paid, the amounts of aid that could have been approved under the Guidelines and the amounts of *de minimis* aid that can still be paid to the beneficiaries of the aid under Commission Regulation (EC) No 1860/2004 of 6 October 2004 on the application of Articles 87 and 88 of the EC Treaty to *de minimis* aid in the agriculture and fisheries sectors <sup>(2)</sup>. From the table it can be seen that if the *de minimis* aid is cumulated with the aid that can be granted under the Guidelines only two farmers received aid that was greater than the losses suffered, which the Italian authorities have undertaken to recover.

(27) As regards the other doubts raised by the Commission when initiating the procedure laid down in Article 88(2) of the Treaty, the Italian authorities explain that the beneficiaries of the aid concerned did not receive direct aid for forage or any amount under insurance schemes. They also state that the beneficiaries did incur costs for harvesting and transporting forage, since some forage was produced.

<sup>(1)</sup> OJ C 28, 1.2.2000, p. 2.

<sup>(2)</sup> OJ L 325, 28.10.2004, p. 4.

(28) Finally, the Italian authorities declare that all the farmers receiving the aid concerned were informed that the procedure laid down in Article 88(2) of the Treaty had been initiated with regard to the measure in question.

#### V. ASSESSMENT

(29) According to 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. The aid provided for by Regional Law No 14 corresponds to that definition in the sense that it is granted by a local authority, it favours the production of certain goods (livestock, since the aid for the purchase of forage is to allow the animals to be fed) and could distort competition and affect trade between Member States in view of Italy's position in the production of those goods (for example, Italy was responsible for 13,3 % of Community beef and veal production in 2006, making it the Community's third largest beef and veal producer).

(30) However, in cases covered by Article 87(2) and (3) of the Treaty, some measures may enjoy derogations and be considered compatible with the common market.

(31) In the case in question, taking into account the nature of the aid (aid to compensate farmers for losses caused by adverse weather conditions) the only derogation that can apply is that provided for in Article 87(3)(c) of the Treaty, according to which aid to facilitate the development of certain economic activities or of certain economic areas may be considered to be compatible with the common market where such aid does not adversely affect trading conditions to an extent contrary to the common interest (the derogation provided for in Article 87(2)(b) of the Treaty is applicable in the case of actual natural disasters rather than assimilated events; as indicated in the Guidelines, the Commission has always held that drought in itself cannot be considered to be a natural disaster within the meaning of Article 87(2)(b) of the Treaty).

(32) In order to be able to apply the above derogation, the aid concerned, unlawful under Article 1(f) 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>(1)</sup> (now Article 88), must be examined on the basis of the substantive criteria set out in any instrument in force at the time when the aid was granted in accordance with the Commission Notice on the determination of the applicable rules for the assessment of unlawful State aid<sup>(2)</sup>.

(33) In this case, the rules that apply to the aid in question when it was granted are those set out in point 11.3 of the Guidelines. According to that point:

(a) losses must attain a certain threshold, fixed at 20 % of normal production in less-favoured areas and 30 % in other areas; The calculation of losses should be made for each individual holding;

(b) the above thresholds must be determined on the basis of the gross production of the relevant crop in the year in question compared with the gross production in a normal year; in principle the latter should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was paid as a result of adverse weather conditions; other methods of calculating normal production (including regional reference figures) may be accepted, provided that they are representative and not based on abnormally high yields;

(c) in order to avoid over-compensation, the amount of aid payable must not exceed the average level of production during a normal period multiplied by the average price during the same period minus actual production in the year the event took place multiplied by the average price for that year;

(d) the amount of aid should also be reduced by the amount of any direct aid payments;

(e) any amounts received under insurance schemes must be deducted from the amount of aid; furthermore, normal costs not incurred by the farmer, for example, where a crop does not need to be harvested, should also be taken into account.

(34) As regards compliance with the first two conditions, the Commission notes that the Italian authorities established the existence of a drought based on appropriate meteorological information. As regards the size of the losses caused by the above adverse weather conditions, the Commission notes first of all that the Italian authorities themselves acknowledge that the method used to calculate the losses suffered by farmers in the Province of Trieste does not comply with point 11.3 of the Guidelines. The Commission cannot but confirm this, since the call for expressions of interest published by the Chamber of Commerce of Trieste simply stipulates the loss threshold above which aid may be granted, but does not specify the method for calculating losses.

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

<sup>(2)</sup> OJ C 119, 22.5.2002, p. 22.

- (35) That being stated, according to the information provided by the Italian authorities following initiation of the procedure laid down in Article 88(2) of the Treaty, applying the method laid down in point 11.3 of the Guidelines, i.e. in this case, a comparison of the average production of forage during the period from 2000 to 2002 (in which no compensation was paid for losses caused by adverse weather conditions) and forage production in 2003, the losses were more than the minimum thresholds laid down for entitlement to aid (20 % in less-favoured areas and 30 % in other areas) on every single holding receiving aid.
- (36) As regards the actual method used to calculate the aid (and therefore compliance with the third condition referred to above), the Commission notes that the method used does not comply with the Guidelines, since the aid was paid on presentation of invoices for purchases of forage made between 1 May and 20 November 2003 for the quantities necessary to satisfy the normal nutritive requirements for each livestock unit present on the holding, while according to the Guidelines the amount of aid payable should not exceed the average level of production during a normal period multiplied by the average price during the same period minus actual production in the year the event took place multiplied by the average price for that year.
- (37) The information provided by the Italian authorities following initiation of the procedure laid down in Article 88(2) of the Treaty shows that the calculation method used by the Chamber of Commerce of Trieste led in several cases (12 cases out of 43) to a higher aid payment than would have resulted from the use of the calculation method provided for in the Guidelines.
- (38) Given that the calculation method used by the Chamber of Commerce of Trieste resulted in more than 25 % of cases in the amounts of aid that can be paid according to point 11.3 of the Guidelines being exceeded, the Commission cannot accept that method.
- (39) As regards the other conditions laid down in point 11.3 of the Guidelines (and therefore compliance with the fourth and fifth conditions referred to above), the Commission notes the statement by Italian authorities that the beneficiaries of the aid in question did not receive direct aid for forage or any amount under insurance schemes and that the beneficiaries did incur costs for harvesting and transporting forage, since some forage was produced. This means that the conditions concerned are not relevant in this case.

## VI. CONCLUSION

- (40) In the light of the foregoing, the Commission cannot accept that all the conditions laid down in point 11.3 of the Guidelines are satisfied, since, as stated in recital 38, the method used by the Chamber of Commerce of Trieste to calculate the aid in many cases resulted in the amounts that could have been paid without over-compensation being exceeded.
- (41) The aid granted by the Chamber of Commerce of Trieste for purchases of forage following the drought of 2003 does not therefore qualify for the derogation provided for in Article 87(3)(c) of the Treaty as regards that part that exceeds the amount that could have qualified for that derogation if the method for calculating the aid laid down in point 11.3 of the Guidelines had been used. However, that part of the aid that does not exceed that amount is compatible with the common market, since it satisfies all the conditions laid down by the Guidelines.
- (42) According to Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in cases of unlawful aid, the Commission is to decide that the Member State concerned is to take all necessary measures to recover the aid from the beneficiary. Italy must therefore take all necessary measures to recover the aid granted from the beneficiary. Under point 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>(1)</sup> Italy has four months from the entry into force of this Decision to execute its provisions. The aid to be recovered must include interest calculated in accordance with Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 <sup>(2)</sup>.
- (43) However, any aid granted under the aid scheme that at the time it was granted satisfied the conditions laid down in a Commission regulation adopted on the basis of Article 2 of Council Regulation (EC) No 994/98 <sup>(3)</sup> (the *de minimis* Regulation) is deemed not to constitute State aid within the meaning of Article 87(1) of the Treaty.
- (44) Point 49 of the Notice from the Commission 'Towards an effective implementation of Commission decisions ordering Member States to recover unlawful and incompatible State aid' lays down that to quantify the precise amount of aid to be recovered from each individual beneficiary under the Member State's scheme, it may apply the *de minimis* criteria applicable at the time of the granting of the unlawful and incompatible aid that is subject to the recovery decision.

<sup>(1)</sup> OJ C 272, 15.11.2007, p. 11.

<sup>(2)</sup> OJ L 140, 30.4.2004, p. 1.

<sup>(3)</sup> OJ L 142, 14.5.1998, p. 1.

- (45) When the Chamber of Commerce of Trieste granted the aid, the Community rules on *de minimis* aid in the agriculture sector had not yet been adopted.
- (46) The first such Community rules on were laid down in Regulation (EC) No 1860/2004.
- (47) In accordance with Regulation (EC) No 1860/2004, aid not exceeding EUR 3 000 per beneficiary over the three-year period (this is the *de minimis* aid granted to an undertaking) does not affect trade between Member States and does not distort or threaten to distort competition and therefore does not fall under Article 87(1) of the Treaty.
- (48) Under Article 5 of Regulation (EC) No 1860/2004, the same principle applies to aid granted before the entry into force of that Regulation provided it fulfils all the conditions laid down in Articles 1 and 3 thereof.
- (49) In the case in question, individual aid not exceeding EUR 3 000 will be deemed not to constitute State aid within the meaning of Article 87(1) of the Treaty if, at the time it was granted, it complied with Articles 1, 2 and 3 of Regulation (EC) No 1860/2004. The above applies only to amounts not exceeding EUR 3 000 actually paid under the scheme concerned. The Italian authorities cannot claim that the number of cases of recovery can be reduced by deducting in the 12 cases of over-compensation the amount that each beneficiary could have received under Regulation (EC) No 1860/2004, since if the amount of aid granted under the scheme exceeds the maximum *de minimis* aid, that aid cannot benefit from the provisions of the *de minimis* Regulation, even for that part that does not exceed that maximum amount,

HAS ADOPTED THIS DECISION:

#### Article 1

The aid scheme for the purchase of forage implemented unlawfully by the Chamber of Commerce of Trieste (Italy, Region of Friuli-Venezia Giulia), in infringement of Article 88(3) of the Treaty is incompatible with the common market in that it provides aid exceeding that resulting from the method for calculating aid laid down in point 11.3 of the Community Guidelines for State aid in the agriculture sector. The aid granted under the scheme is compatible with the common market up to the amount resulting from the method for calculating aid laid down in point 11.3 of the above Guidelines and incompatible for the part exceeding that amount.

#### Article 2

Individual aid granted under the scheme referred to in Article 1 shall not constitute State aid if, at the time it is granted, it fulfils

the conditions laid down by the regulation adopted pursuant to Article 2 of Regulation (EC) No 994/98 which is applicable at the time the aid is granted.

#### Article 3

1. The Chamber of Commerce of Trieste (Italy) shall recover the incompatible aid granted under the scheme referred to in Article 1 from the beneficiaries.

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

3. The interest shall be calculated on a compound basis in accordance with Chapter V of Regulation (EC) No 794/2004 and Commission Regulation (EC) No 271/2008 <sup>(1)</sup> amending Regulation (EC) No 794/2004.

#### Article 4

1. Recovery of the aid granted under the scheme referred to in Article 1 shall be immediate and effective.

2. Italy shall ensure that this Decision is implemented within four months of its notification.

#### Article 5

1. Within two months of notification of this Decision, Italy shall submit the following information:

(a) the total amount (principal and interest) to be recovered from each beneficiary;

(b) a detailed description of the measures already taken and those planned to comply with this Decision;

(c) documents demonstrating 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 recovery of the aid granted under the scheme referred to in Article 1 has been completed. It shall immediately submit, on simple request by the Commission, information on the measures already taken and planned to comply with this Decision. It shall also provide detailed information concerning the amounts of aid and interest already recovered from the beneficiaries

<sup>(1)</sup> OJ L 82, 25.3.2008, p. 1.

*Article 6*

This Decision is addressed to Italy.

Done at Brussels, 28 January 2009.

*For the Commission*  
Mariann FISCHER BOEL  
*Member of the Commission*

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