



EUROPEAN COMMISSION

Brussels, 1.2.2010
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**Subject: State Aid - Italy
Aid No N 706/2009
Aids of limited amount in favour of companies active in the primary
agriculture sector**

Sir,

The Commission wishes to inform Italy that, after examining the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the aid in question, as it is compatible with TFUE.

The Commission has taken this decision on the basis of the following considerations:

1. PROCEDURE

- (1) By electronic notification of 18 December 2009, registered on 21 December 2009, the Italian authorities notified a temporary aid scheme on the granting of limited amounts of compatible aid under the Temporary Framework for State aid measures to support access to finance in the current financial and economic crisis" (hereinafter referred to as the Temporary Framework)¹.
- (2) Additional information was submitted by e-mail on the same day of the notification, 18 December 2009.

¹ Communication from the Commission - Temporary framework for State aid measures to support access to finance in the current financial and economic crisis, OJ C 83, 7.4.2009, p.1, as amended by Communication from the Commission of 28 October 2009, OJ C 261, 31.10.2009, p.2 and amended by Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis OJ C 303, 15.12.2009, p 6.

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2. DESCRIPTION OF THE AID SCHEME

2.1. Objective of the aid scheme

- (3) Italy considers that the economic and financial crisis is affecting its real economy and has provided specific updated economic and statistic data showing that the economic downturn has affected and hit also the agriculture sector.
- (4) In this regards, Italy has provided both an updated Report on the general state of the economic downturn² (on the basis of which the Temporary Framework was implemented by means of Decree of 3 June 2009 - see point 5) and a specific Report on the state of the crisis in the agriculture sector³.
- (5) As concerns the agriculture sector, in the first 9 months of the year 2009 it was registered a decrease in producer prices worth 13,5%, mainly as a result of the decrease of prices of cereals (-38,7%) and wine (-22,9%). The net decrease was not balanced by an equal decrease of the consumption prices (-0,6% against -13,5%) and led to a general foregone income in the agriculture sector.
- (6) The foregone income has been aggravated by a progressive increase in the volume of financial burdens of the agriculture enterprises and by the difficult access to credit that decreased (in the first semester of 2009) by 30%, in terms of numbers, against the figures of 2006 and by 17% in terms of total value. In the year 2008, the 43% of the agriculture companies and the 31% of cooperatives showed a negative cash flow. The crisis hit mainly the wine sector, the first processing phase of red meat and the olive oil sector.
- (7) The aid scheme is therefore aimed to specifically tackle the economic downturn in the agriculture sector and is based on the Temporary framework.
- (8) The scheme is meant to amend and complement the main national legal basis, the Italian Decree of 3 June 2009⁴, adopted on the basis of the Temporary Framework and approved by the Commission on 28 May 2009 (N 248/09). As a result of that, what is not directly ruled under the present aid scheme (draft decree) falls within the general rules laid down by the Decree of the 3 June 2009.
- (9) More in particular; the draft amending decree aims to lay down the modalities for the application of the Communication from the Commission amending the Temporary Community Framework for State aid measures to support access to finance in the current financial and economic crisis, introducing a separate compatible aid limited to the enterprises active in the primary production of agriculture products."

² Nota di aggiornamento del "Documento di osservazioni delle Autorità Italiane sulla crisi economica del 4 maggio 2009."

³ "Descrizione dello stato di crisi economica e finanziaria del settore agricolo"(December 2009) by the Ministry of Agricolture.

⁴ DPCM 3 June 2009. Enclosed to the notification of the Italian authorities.

- (10) The aim of the aid regime is, therefore, to give application to the amendments (28 October 2009) to the Temporary Framework that allow the award of aids of limited amount also to the enterprises active in the primary agriculture sector.

2.2. The nature and form of the aid

- (11) The Italian authorities confirmed that the aid will be provided in transparent forms of aid as defined in Article 3 paragraph 6 of Regulation N. 1535/2007.⁵ The forms of aid will be decided directly by the administration concerned (regional and local) and might take the form of direct grants, interest rate subsidies, loans with an aid element which is calculated on the basis of the applicable reference rate⁶ and in the form of guarantees where the aid element is calculated either on the basis of notified methodologies, or on the basis of the safe harbour premiums laid down in the annex to the Temporary Framework.

2.3. Legal basis

- (12) Draft Decree of the President of the Council of Ministers amending the Decree of the President of the Council of Ministers of 3 June 2009.
- (13) The decree is addressed to all public administrations concerned willing to award aid to the agriculture primary production sector, in view of ensuring a uniform compliance at national, regional and local level, of the conditions imposed under the amended version of the Temporary Framework.
- (14) According to the text, all the public administrations concerned are bound to comply with the decree and with the present Commission approval decision, pursuant to art. 107 of TFUE. Any aid awarding decision shall quote in its text the decree and the Commission approval decision.
- (15) The decree will enter into force only upon its approval by the Commission. In this regard, a stand-still clause is inserted stressing out that the administrations cannot award any aid before the Commission approval.

2.4. Administration of the scheme

- (16) The notified scheme is a framework scheme allowing aid to be granted at all public administration level, especially the regional and local level that, in accordance with the principle of subsidiarity, are in the best position to decide the nature and amount of aid interventions to be awarded. The aim of the decree is to give guidance on the binding conditions to be complied with by all the administrations in order to insure a uniform application on the national territory of the competition rules.

⁵ Commission Regulation (EC) No 1535/2007 of 20 December 2007 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid in the sector of agricultural production; OJ L 337, 21.12.2007, p.35

⁶ Communication from the Commission of 19 January 2008 on the revision of the method for setting the reference and discount rates; OJ C 14, 19.1.2008, p. 6–9.

2.5. Budget and duration of the measure

- (17) The total aid volume under this scheme has been estimated by the Italian authorities in 320 Millions Euro.
- (18) The aid can be granted from the approval of the scheme by the Commission until 31 December 2010.

2.6. Beneficiaries

- (19) Undertakings active in the primary production of agricultural products.
- (20) Only those agricultural producers who were not firms in difficulty⁷ at the date of 1 July 2008 can benefit from the aid. Anyway, the aid may be granted to undertakings that entered into difficulties after this date due to the economic and financial crisis.
- (21) The Italian authorities estimated that the indicative number of beneficiary undertakings will be above 1.000.

2.7. Sectoral scope, exclusion of export aid and aid favouring domestic over imported products

- (22) The scheme applies to the whole sector of the primary agricultural production. The Italian authorities engaged that the aid will not be restricted to specific sub-sectors of the agriculture.
- (23) The aids will be granted in the form of aid regimes to be set up by the administrations concerned.
- (24) The aid does not apply to export aids or aids favouring domestic over imported national goods and services.
- (25) The aid amount cannot be calculated on the basis of the price or quantities of marketed products.
- (26) The public administrations will duly verify the respect of the above mentioned conditions.

2.8. Aid measure and cumulation

- (27) The Italian authorities confirm that the conditions laid down in section 4.2.2 of the Temporary Framework, as amended for granting limited amounts of compatible aid to agricultural undertakings, will be fully met. In particular:

- the aid shall not exceed 15,000 €per undertaking.

⁷ Within the meaning of point 2.1 of the Community guidelines on State aid for rescuing and restructuring for firms in difficulty (OJ C 244, 1.10.2004, p.2) as regards large firms and within the meaning of Article 1 (7) of the General Block Exemption Regulation (Regulation (EC) No 800/2008, OJ L 214, 9.8.2008, p.3)) as regards SMEs.

- The aid shall be awarded in a transparent way in the meaning of art. 3 paragraph 6 of Regulation n. 1535/2007.
- Aid will be awarded in the form of direct grants, interest rate subsidies, loans with an aid element which is calculated on the basis of the applicable reference rate and in the form of guarantees where the aid element is calculated either on the basis of notified methodologies, or on the basis of the safe harbour premiums laid down in the annex to the Temporary Framework. If adopted under different forms, the administrations concerned will have to insure that the aid is transparent.
- All figures used shall be gross, that is, before any deduction of tax or other charge. Where aid is awarded in a form other than a grant, the aid amount shall be the gross grant equivalent (GGE) of the aid.
- The 15,000 € maximum ceiling per undertaking shall apply in both cases of aid regimes totally state-funded or co-funded by EU resources
- before granting the aid, the granting authorities shall obtain from the undertakings concerned a declaration (also in the form of electronic data transmission) about any *de minimis* aid received in the period since 1.1.2008 (as defined in Commission Regulation n. 1535/2007) or aid granted under this measure;
- the total amount of *de minimis* aid and aid granted under this measure per undertaking in the period 1.1.2008 to 31.12.2010 may not exceed €15,000;
- where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected.

2.9. Monitoring and reporting, business secrets, language waiver

- (28) The Italian authorities confirmed that the monitoring and reporting obligations laid down in Section 6 of the Temporary Framework will be respected (e.g.: detailed records regarding the granting of aid must be maintained for 10 years; before 31 October of each year during which the Temporary Framework is applicable, a report on the measures put in place should be provided).
- (29) The Italian authorities confirmed that the notification does not contain business secrets.
- (30) The Italian authorities confirmed their acceptance the Commission decision to be adopted in the English language, due to exceptional circumstances.
- (31) As concerns any other provision not ruled out directly under the present decree, it shall fall under the rules and be regulated by the general Decree of 3 June 2009 and by the Temporary Framework.

3. ASSESSMENT UNDER COMPETITION RULES

3.1. Legality of measure

- (32) By notifying the aid measure before putting it into effect, the Italian authorities respected their obligations under Article 108 (3) of TFUE.

3.2. Presence of aid within the meaning of Article 107(1) of TFUE

- (33) Under Article 107(1) of the TFUE, 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, insofar as it affects trade between Member States, is incompatible with the internal market.
- (34) The aid at issue is financed out of public resources and benefits certain undertakings. Pursuant to the case law of the Court of Justice, aid to an undertaking is deemed to affect trade between Member States if that undertaking operates in a market open to intra-Community trade.⁸ The mere fact that the competitive position of an undertaking is strengthened compared with other competing undertakings, by giving it an economic benefit which it would not otherwise have received in the normal course of its business, points to a possible distortion of competition.⁹ The beneficiaries of the aid at issue operate on a market where intra-community trade takes place.¹⁰ The aid measure could therefore distort competition and affect trade between Member States and consequently constitutes aid pursuant to Article 107(1) of the TFUE.

3.3. Compatibility of aid pursuant to Article 107(3)(b) TFUE

- (35) Having established that the measure involves state aid within the meaning of Article 107 (1) of TFUE, it is necessary to consider whether the above mentioned measure can be found compatible with the internal market.
- (36) As described under paragraph (3) above, the recent developments in the Italian economy point to a considerable downturn in the agriculture sector, where the decrease in producer prices led to a general foregone income of agriculture producers that is still currently aggravated by a difficult access to credit tools. Italy has provided specific data and figures in this regards.
- (37) Italy already implemented various measures which aim at remedying the serious disturbance in its economy. By complementary granting limited compatible amounts aid to agricultural undertakings (€15,000 per undertaking during 2010) the Italian authorities aim at supporting those undertakings that have an increased financing need due to the current crisis, as evidenced by the data provided by Italy. Thus, the measure contributes to remedying the severe disturbance in the economy of Italy.

⁸ See, in particular, judgment of the Court of 13 July 1988, Case 102/87, French Republic v Commission of the European Communities, ECR 1988, p. 4067.

⁹ Judgment of the Court of 17 September 1980, Case 730/79, Philip Morris Holland BV v Commission of the European Communities, ECR 1980, p. 2671.

¹⁰ Italy's intra-EU imports and exports of agricultural products in 2007 stood at € 22 357 millions and €16 502 millions respectively (Source: EUROSTAT 2008).

- (38) By adopting the Temporary Framework, the Commission indeed acknowledged (section 4.1) the "seriousness of the current financial crisis and its impact on the overall economy of the Member States". The Commission concluded "that certain categories of State aid are justified, for a limited period, to remedy these difficulties and that they may be declared compatible with the internal market on the basis of Article 87(3)(b)." The Commission in its Communication of 28 October 2009 furthermore recognised increased difficulties for farmers to obtain credit as a consequence of the financial crisis and extended the scope of section 4.2.2 ("Compatible limited amount of aid") of the Temporary Framework by introducing a separate compatible limited amount of aid possibility for undertakings active in primary agricultural production.
- (39) The Commission considers that the macroeconomic data of the Italian economy including the whole agriculture sector justify the introduction of a complementary scheme for undertakings active in primary agricultural production.
- (40) The notified measure has been designed to meet the requirements of the additional category of aid ("Compatible limited amount of aid") described in section 4.2.2 of the Temporary Framework as amended.
- (41) The Italian authorities confirmed that the scheme does not apply only to sub-sectors of agriculture and to aids targeting specific agricultural products but will be open to all sub-sectors of agricultural production.
- (42) By excluding firms in difficulty on 1 July 2008 from the scope of the scheme, it is excluded that aid is granted to agricultural producers already in structural difficulties before the beginning of the current crisis.
- (43) The Commission accordingly considers that the notified measure is, in the context of the other measures already put in place, necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework as amended. In particular,
- The maximum aid amount will not exceed the cash equivalent of €15,000 per undertaking (point 4.2.2 (h));
 - The measure is granted through an aid scheme in line with point 4.2.2 (b);
 - The aid granting authorities will obtain from the undertakings concerned a declaration about any *de minimis* aid or aid granted under this measure received during the current fiscal year and will check that the total aid will not exceed €15,000 per undertaking during the period from 1 January 2008 to 31 December 2010 (point 4.2.2 (g), first sentence).
 - Where the aid granted under this measure is to be combined with other compatible aid or with other forms of Community financing, the maximum aid intensities indicated in the relevant Guidelines or Block exemption regulations will be respected. Thus, the cumulation rules with *de minimis* aid and aid for other purposes are respected (in particular point 4.2.2 (g) and point 4.7);
 - Firms in difficulty (situation of 1.7.2008) are excluded from eligibility under the scheme in compliance with point 4.2.2 (c);

- The measure applies to undertakings active in the primary production of agricultural products. Aid under this measure is not fixed on the basis of the price or quantity of products put on the market (point 4.2.2 (h));
- Export aids and aid favouring domestic over imported goods and services are excluded (point 4.2.2 (e));
- In line with point 4.2.2 (f) aid may be granted until 31.12.2010;
- The monitoring and reporting rules laid down under point 6 of the Temporary Framework will be respected.

(44) For these reasons, it may be concluded that the notified measure is in conformity with the Temporary Framework as last amended and can be considered to be compatible with the TFUE on the basis of Article 107 (3) (b) TFUE.

(45) The Commission notes that the Italian authorities have confirmed that the notification does not contain business secrets.

(46) The Commission furthermore notes that the Italian authorities accepted the decision to be adopted in the English language, due to exceptional circumstances.

4. CONCLUSION

(47) In view of the foregoing, the Commission has accordingly decided to consider the aid compatible with the internal market under Article 107(3)(b) of the TFUE.

Yours faithfully,
For the Commission

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Vice-President of the Commission