



EUROPEAN COMMISSION

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**Subject: State aid/Italy
Aid No N 30/2009
Investment aid for the irrigation of agricultural holdings (Bolzano)**

Sir,

The European Commission ("the Commission") wishes to inform Italy that, having examined the information supplied by your authorities on the State aid measure referred to above, it has decided not to raise any objections to the relevant measure as it is compatible with the EC Treaty.

In taking this decision the Commission has relied on the following considerations:

1. PROCEDURE

- (1) By letter of 23 January 2009, registered by the Commission on the same day, Italy notified, according to Article 88(3) of the EC Treaty, the above mentioned aid scheme.
- (2) By letter of 6 March 2009, the Commission asked for supplementary information which the Italian authorities provided on 3 April 2009, registered on 21 April 2009. On 17 April 2009 the Commission asked for additional information which the Italian authorities provided on 29 April 2009, registered on 4 May 2009.

2. DESCRIPTION OF THE AID SCHEME

2.1 Title

- (3) Investment aid for the irrigation of agricultural enterprises in the region of Bolzano.

2.2 Duration and budget

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- (4) The duration of the scheme will be from the date of its approval by the Commission, until 31 December 2013. The overall budget dedicated to the scheme is EUR 6.5 million.

2.3 Beneficiaries

- (5) The estimated number of beneficiaries is 101 to 500 small and medium-sized enterprises. According to the Italian authorities, the aid will be granted to enterprises that are active in the primary production of agricultural products.

2.4 Legal Basis

- (6) The following acts constitute the legal basis for granting the aid:

- Legge provinciale 14 dicembre 1998, n.11 e successive modifiche, articolo 4, comma 1, lett. A), pubblicata sul Bollettino Ufficiale della Regione Trentino-Alto Adige del 19.12.1998, n.54.
- Criteri e modalità per la concessione di aiuti per investimenti nel settore dell'irrigazione (to be adopted after the adoption of the present decision).

2.5 Description of the scheme

- (7) The intensity of the aid will equal 40% of eligible investments, 50% of eligible investments in less favoured areas. The intensity of the aid will be 30% if the beneficiary is a flower production holding or a tree or wine nursery. The intensity will be further reduced by 10% when the beneficiary is above a certain size.
- (8) The maximum amount of aid granted to an individual enterprise will not exceed EUR 400 000 over any period of three fiscal years, or EUR 500 000 if the enterprise is situated in a less favoured area. At the request of the beneficiary, an advance can be granted, which can amount to 50% of the approved aid. Such advances will not be granted for works undertaken: (i) before the application of the beneficiary has been accepted by the relevant authorities, (ii) before such an application has been submitted to the relevant authorities, or (iii) even before the Commission has approved the scheme. The Italian authorities have also confirmed that this advance will be granted only following an analysis of the conformity of the relevant submission from the beneficiary and that overcompensation will in any case be excluded. In the event that it is proven that the conditions for the grant of the aid are not present, any advance granted will have to be paid back with interest.
- (9) The measure in question relates to aid given for the construction and renovation of facilities, equipment and works destined for the irrigation of agricultural holdings as well as of water tanks.
- (10) The Italian authorities have confirmed that the incentive requirement, as set out in point 16 of the Commission Guidelines for State aid in the agriculture and forestry sector 2007–2013 ("the Guidelines")¹ is met. More specifically, the Italian authorities have confirmed that the aid can only be granted or activities undertaken or services received after (i) the aid scheme is declared compatible with the EC Treaty by the Commission, (ii) an application for the aid is properly submitted to the competent authority concerned, (iii) the application is accepted by the competent authority

¹ OJ C 319, 27.12.2006, p.1.

concerned in a manner which obliges that authority to grant the aid, clearly indicating the amount of aid to be granted or how this amount will be calculated.

- (11) The objectives that the investment will pursue are to reduce production costs, improve and redeploy production, increase the quality of holdings, and promote the diversification of farm activities. The measure will not increase the production capacity of the beneficiaries.
- (12) The expenses that will be eligible for the aid will have to relate to the construction, acquisition or improvement of immovable property as well as the purchase or lease purchase of machinery and equipment, including computer software up to the market value of the asset, exclusive of costs connected with a leasing contract (tax, lessor's margin, interest refinancing costs, overheads, insurance charges etc).
- (13) The Italian authorities have confirmed that the aid can only be granted to agricultural holdings which are not enterprises in difficulty.
- (14) The Italian authorities have finally confirmed that the aid cannot be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs.

3. ASSESSMENT

3.1 General

- (15) Pursuant to Article 87(1) of the EC Treaty, aid granted by a Member State or through state resources in any form whatsoever that distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods is prohibited, insofar as it affects trade between Member States.
- (16) The measure confers advantage on its recipients. This advantage is granted through State resources and it favours certain agricultural holdings located in Italy, and more specifically in the Bolzano province.
- (17) According to the case law of the Court of Justice, the mere fact that the competitive position of an undertaking is strengthened compared to 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.²
- (18) Aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-Community trade.³ There is substantial intra-Community trade in agricultural products. Therefore, the present measure is liable to affect trade between Member States.
- (19) In the light of the above the conditions of Article 87(1) are fulfilled. It can therefore be concluded that the proposed measure constitutes State aid within the meaning of that Article.

² Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities* [1980] ECR 2671.

³ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities* [1988] ECR 4067.

- (20) Consequently, it should be examined whether a derogation from the general principle of prohibition of State aid under Article 87(1) of the EC Treaty can apply.
- (21) The Commission considers that State aid in the agriculture sector is compatible with the common market if it complies with the applicable provisions for State aid in the agricultural sector.

3.2 Application of Block Exemption Regulation No 1857/2006

- (22) As a starting point, since the beneficiaries of the measure in question are small and medium-sized enterprises, it first has to be analysed whether the measure can benefit from the Block Exemption Regulation of the Commission on State aid granted to such enterprises (Regulation 1857/2006).⁴ The scheme in question concerns investment in agricultural holdings. Therefore, it has to be assessed whether the conditions of Article 4 are present in the instant case.
- (23) As noted above in para. 9, the measure in question is limited to aid granted in respect of irrigation equipment and irrigation works. According to Article 4(7)(c) of Regulation 1857/2006, the benefit of the Block Exemption is not granted in cases of such aid in respect of irrigation equipment and irrigation works. Therefore, the scheme cannot benefit from the exemption provided by Regulation 1857/2006.

3.3 Application of the Guidelines

- (24) The next step should be the assessment of the scheme in the light of the Guidelines and more specifically Section IV.A of the Guidelines relating to aid for investment in agricultural holdings.
- (25) It should be first pointed out that, as stated in para. 10, no aid will be granted in respect of work begun or activities undertaken before an application for aid has been properly submitted to the competent authority concerned and accepted by this authority and that aid under the scheme will only be granted in respect of activities undertaken or services received after the aid scheme has been set up and declared compatible with the Treaty by the Commission. Furthermore, the Italian authorities have reported that the aid has not been put into effect and that the aid would not be granted to activities undertaken before the aid has been declared compatible by the Commission.
- (26) According to point 27 of the Guidelines, Chapter IV.A (investment in agriculture holdings) only applies to investment linked to the primary production of products falling within the scope of Annex I of the Treaty. It does not apply to investment made on a farm in favour of processing and marketing of such products. This condition is complied in the present aid as it will only be granted to farmers active in the primary production of agricultural products. .
- (27) According to para. 29 of the Guidelines, aid for investment in agricultural holdings can be declared compatible with Article 87(3)(c) of the EC Treaty if it fulfils all the conditions of Article 4 of Regulation 1857/2006. Further, aid may be granted up to the same rate and at the same conditions as those established in Article 4 of Regulation 1857/2006 to in respect of irrigation equipment and irrigation works.

⁴ Commission Regulation (EC) No 1857/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production of agricultural products and amending Regulation (EC) No 70/2001, OJ L 358, 16.12.2006, p. 3

- (28) According to article 4(2) of Regulation 1857/2006, aid can be granted at the maximum gross aid intensity of 50% of eligible investments in less favoured areas, 40% of eligible investments in other regions, whereas for young farmers the maximum gross aid intensity is 10% higher (Article 4(2)(c) of Regulation 1857/2006). As demonstrated in para. 7, the present scheme complies with these thresholds.
- (29) According to Article 4(3) of Regulation 1857/2006, the investment aid can pursue the following different types of objectives:
- a) Reduction of production costs;
 - b) improvement and redeployment of production;
 - c) improvement in quality;
 - d) preservation and improvement of environment or hygiene conditions or animal welfare standards.
- (30) As noted by the Italian authorities, the objectives of the present aid include the above mentioned objectives a), b) and c), as well as the promotion of the diversification of farm activities. Therefore, the condition of Article 4(3) of Regulation 1857/2006 is met.
- (31) According to Article 4(4) of Regulation 1857/2006, the eligible costs may include:
- a) the construction, acquisition or improvement of immovable property;
 - b) the purchase or lease-purchase of machinery and equipment, including computer software up to the market value of the asset;
 - c) general costs linked to that expenditure, such as architects, engineers and consultation fees, feasibility studies, the acquisition of patents and licences.
- (32) The Italian authorities have confirmed that eligible costs will include the construction, acquisition or improvement of immovable property, as well as the purchase or lease-purchase of machinery and equipment, including computer software up to the market value of the asset. Therefore, the condition of Article 4(4) of Regulation 1857/2006 is met.
- (33) According to Article 4(5) of Regulation 1857/2006, the aid cannot be granted to enterprises in difficulty. The Italian authorities have confirmed that no recipient will be an enterprise in difficulty (see above para. 14).
- (34) According to Article 4(6) of Regulation 1857/2006, the aid will not be granted in contravention of any prohibitions or restrictions laid down in Council Regulations establishing common market organisations of the market, even where such prohibitions and restrictions only refer to Community support. The Italian authorities have confirmed that this provision will be respected, therefore the condition of Article 4(6) of Regulation 1857/2006 is met.
- (35) According to Article 4(7) of Regulation 1857/2006 aid cannot be granted for: the purchase of production rights, animal and annual plants, the planting of annual plants, drainage work or irrigation equipment and work unless it leads to a 25% reduction of water use and simple replacement investments. Nevertheless, it should

be pointed out that as explained above, point 29 of the Guidelines admits irrigation equipment and irrigation works to be covered in case of notification of aid. Furthermore, the Italian authorities have confirmed that the aid will not be granted for the purchase of production rights, animal and annual plants, the planting of annual plants or for simple replacement investments. The investments relating to the renovation of facilities and equipment, cannot be regarded as replacement investments within the meaning of Article 2(17) of Regulation 1857/2006, since their primary aim is introducing technologies that contribute to water saving. Therefore, the condition of Article 4(7) of Regulation 1857/2006 is met.

- (36) The conditions of Articles 4(8) and 4(10) of Regulation 1857/2006 are also met, as the Italian authorities have stated that no aid will be granted for the purchase of land other than land for construction and that no aid will be given to manufacturers of products which imitate or substitute for milk and milk products.
- (37) According to Article 4(9) of Regulation, the maximum amount of aid granted to an individual enterprise must not exceed EUR 400 thousand over any period of fiscal years, or EUR 500 thousand if the enterprise is situated in a less favoured area. As noted in para. 8, this condition is also met.
- (38) Pursuant to point 35 of the Guidelines, no aid shall be authorised for investment to comply with existing Community or national standards. The Italian authorities have confirmed that the aid in question does not relate to such investment.
- (39) Pursuant to point 36 of the Guidelines, the notifications of investment aid to agricultural holdings should be accompanied by documentation showing that aid is coherent with the member state Rural Development Programme and that support is targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages. In this regards, the Italian authorities have submitted information showing that the funding support is targeted at clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages requiring such an investment project. The Italian authorities have also demonstrated that the envisaged measure is coherent with the "Rural Development Programmes" (RDP) of the Region of Bolzano (2007-2013). Further, the Italian authorities have demonstrated that the investment aid in question targets the rationalisation of water savings. Therefore this condition can be considered met.
- (40) The Italian authorities indicate that one of the objectives of the scheme is the renovation of the relevant facilities with technologies that contribute in saving water resources. According to the Italian authorities, the existing facilities are obsolete, and they lead to waste of water. Further, the aid will only result in limited extension of irrigation areas, which in any case will be compensated from interventions aiming at improving the possibilities for water saving. The Italian authorities have also confirmed that in providing the aid, they will make maximum efforts to protect water resources and that in any case they will follow all relative Community norms relating to water protection, including the provisions of Article 4(7) of Directive 60/2000⁵ (the Water Framework Directive). Given the above, it can be concluded that the aid in question will not cause any environmental damage.
- (41) Pursuant to point 37 of the Guidelines, investment aid cannot be granted if it entails an increase of the production of the enterprise when a common market organization, including direct support schemes financed by EAGF place restrictions on production

⁵ OJ L 327, 22.12.2000, p. 1.

or limitation to community support. This provision is respected as according to the information that the Italian authorities have submitted, such restrictions do not apply.

- (42) Point 39 of the Guidelines is also respected as according to the Italian authorities, the present scheme does not foresee the purchase of second hand equipment.
- (43) In the light of the foregoing, it's possible to conclude that the present aid scheme complies with all the conditions under Chapter IV.A, points 27 *et seq.* of the Guidelines.

4. CONCLUSION

- (44) On the basis of the above considerations, the Commission concludes that the notified measure is compatible with Article 87(3)(c) of the EC Treaty.
- (45) If this letter contains confidential information, which should not be published, please inform the Commission within fifteen working days from the receipt of the present letter. If the Commission does not receive a reasoned request by this deadline, you will be deemed to have agreed to the publication of the full text of this letter in the authentic language on the following webpage:

http://ec.europa.eu/community_law/state_aids/index.htm.

Any such request specifying the relevant confidential information should be sent by registered letter or fax to:

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Fax No: 0032 2 2967672

Yours faithfully,

For the Commission

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