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**Subject: State aid/Italy (Bolzano)
Aid No N 202/09
Investment scheme for processing and marketing of agricultural
products**

Sir,

The Commission wishes to inform Italy that, having examined the information supplied by your authorities on the aid referred to above, it has decided to raise no objections to the relevant aid as it is compatible with the EC Treaty.

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

I. Procedure

- 1) In accordance with Article 88(3) of the EC Treaty Italy notified this measure to the Commission by electronic mail of 3 April 2009, registered as received the same day. Supplementary information was sent by electronic mail of 15 May 2009.

II. Description

Objective of the aid scheme

- 2) The scheme aims at supporting initial investment projects in the sector of processing and marketing of agricultural products.

Legal basis

- 3) Article 4, paragraph 1, letter b) of the provincial law of 14 December 1998 no 11

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with modifications.

Duration of scheme

- 4) 1 January 2010 - 31 December 2013.

Budget of scheme

- 5) The total budget of the scheme is EUR 20 million.

Beneficiaries

- 6) Beneficiaries of the scheme are intermediate enterprises which have less than 750 employees and/or less than EUR 200 million turnover and fulfil all other conditions of Recommendation 2003/361/EC operating in the sector of processing and marketing of certain agricultural products (namely milk, fruits and vegetables) located in Bolzano.
- 7) The scheme will not apply to undertakings that are in difficulty in the meaning of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty¹.

Nature and form of the aid

- 8) The aid will be awarded in the form of a grant. It is conditioned by the obligation of keeping the destination of the immovable property for at least 10 years and the destination of other machinery for 5 years as well an obligation to ensure that they remain in the establishment receiving the aid for the same period of time.
- 9) In case of change of the destination of the assets or its separation before the end of the periods prescribed above the aid will be reimbursed by the beneficiary.
- 10) The aid will be granted on a project basis to all eligible beneficiaries when the conditions of the scheme are met, following an application for the aid.

Aid intensity

- 11) The maximum aid intensity is 20% of eligible investments.

Eligible costs

- 12) The eligible costs include the costs of initial investment which is defined as investment in material and immaterial assets relating to the setting-up of a new establishment, the extension of an existing establishment, diversification of the output of an establishment into new, additional products and a fundamental change in the overall production process of an existing establishment.
- 13) The eligible expenses include: expenditures on buildings and on plants/machinery.
- 14) The scheme does not include replacement investment (replacing, for example, equipment whose life cycle has run out). Only new assets are eligible for aid.

¹ O.J. C 244, 1.10.2004.

- 15) Excluded from the scheme is aid for the manufacture and marketing of products which imitate or substitute milk and milk products.
- 16) The acquisition of the assets directly linked to an establishment may also be regarded as initial investment provided the establishment has closed or would have closed had it not been purchased, and is bought by an independent investor. Only the costs of buying assets from third parties will be taken into consideration and the transaction will take place under market conditions.
- 17) The Italian authorities specified that the scheme ensures that any aid awarded in the past for the acquisition of assets in case of takeovers has been taken into account/deducted prior to the purchase.
- 18) The costs related to the acquisition of assets other than land and buildings under lease will not be eligible for aid.
- 19) The minimum amount of eligible costs equals EUR 200 000, the maximum costs eligible for aid can be EUR 8 million per application and/or per year.
- 20) The Italian authorities have confirmed that the notified aid does not support investments for which a common market organization, including direct support schemes, financed by the EAGF places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants which would increase production beyond those restrictions or limitations.

Own contribution and necessity of the aid

- 21) According to the description provided by the Italian authorities, the aid is calculated on the basis of material investment costs. The recipient will provide a financial contribution of at least 25%, either through its own resources or by external financing, free of any public support.
- 22) An application for the aid must be submitted before work is started on the projects and the authorities have subsequently to confirm in writing that, subject to detailed verification, the project meets in principle the conditions of eligibility laid down by the scheme before the start of the work on the project.

Cumulation of aid

- 23) The Italian authorities indicated that the aid will not be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs.
- 24) The aid will not be cumulated with *de minimis* support in respect of the same eligible expenses.

Transparency

- 25) The Italian authorities have committed themselves to publish the text of the scheme on the Internet and to communicate the link to the Commission. Projects for which expenses were incurred before the date of publication of the scheme will not be eligible for aid.

Other provisions

- 26) According to the Italian authorities, the support foreseen is targeted on clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages. As regards the coherence of the measure with the measures foreseen in the Rural Development Programme of Bolzano the Italian authorities have explained that the Programme foresees mostly investments in existing structures while the notified scheme focuses on initial investments.

III. Assessment

State aid character of the scheme

- 27) Under Article 87(1) of the EC Treaty, aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favoring certain undertakings or the production of certain goods, insofar as it affects trade between Member States, is incompatible with the common market.
- 28) Under the scheme, the aid is provided by public authorities through State resources within the meaning of Article 87(1) of the EC Treaty.
- 29) The aid foreseen under this scheme constitutes an economic advantage because it allows the beneficiaries to reduce the investment costs that they should normally face in order to develop this type of projects.
- 30) The measure is selective because it applies only to undertakings carrying out investments in processing and marketing of annex I products in Bolzano, as described above. Therefore, it may distort or threaten to distort competition.
- 31) In view of the fact that the scheme concerns the sector of processing and marketing of agricultural products where trade between Member States exists, there is a risk that the aid could affect that trade.
- 32) Consequently, the proposed aid measure constitutes state aid within the meaning of Article 87(1) of the EC Treaty.

Compatibility of the aid measure

- 33) Having established that the notified scheme involves State aid within the meaning of Article 87(1) of the EC Treaty, it is necessary to consider whether the scheme can be found to be compatible with the common market.
- 34) For this derogation to be applicable, aid measures must fulfill the requirements of State aid legislation, *in primis* Commission Regulation 1857/2006 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) 70/2001². If Regulation 1857/2006 is not applicable, then assessment should be based on the Community guidelines for State aid in the agriculture and forestry sector for 2007-2013 (hereinafter: the Agriculture

² OJ L 358, 16.12.2006

Guidelines)³ and/or any other relevant legislation.

- 35) Regulation 1857/2006 is not applicable to the case in hand as it does not apply to processing and marketing activities but only to primary production of the products included in Annex I to the Treaty.
- 36) Rules applicable to investment granted to companies active in the processing and marketing of agricultural products are set out in chapter IV.B of the Agriculture Guidelines. According to point 42 (d), in regions not eligible for regional aid, for companies that are not small and medium-sized enterprises but which have less than 750 employees and/or less than EUR 200 million turnover, on condition that such beneficiary fulfills all other conditions of recommendation 2003/361/EC, aid up to 20% of eligible investments as listed in the guidelines on national regional aid for 2007-2013, and fulfilling the relevant conditions of those guidelines (hereinafter "RAG")⁴ can be declared compatible.
- 37) According to the information provided by the Italian authorities, the beneficiaries of the notified scheme fall into the definition of "intermediate companies" as defined in point 42 (d) of the Agriculture Guidelines (cf. paragraph 6 of the description) and are located in a region not eligible for regional aid.
- 38) The following points of the RAG need to be respected so as to fulfill the conditions of 42 (d) of the Agriculture Guidelines:
- a) Assistance to firms in difficulty and/or for the financial restructuring of firms in difficulty is excluded from the scheme (point 9 of the RAG). This condition is complied with (cf. point 7 of the description).
 - b) According to point 10 of the RAG, as a general rule, regional aid should be granted under a multi-sectoral aid scheme which forms an integral part of a regional development strategy with clearly defined objectives. Where aid is limited to one area of activity it is the responsibility of the Member State to demonstrate that the project contributes towards a coherent regional development strategy and that, having regard to the nature and size of the project, it will not result in unacceptable distortions of competition. The aid in question is limited to intermediate companies in some sectors of agriculture. However a similar aid scheme exists in Bolzano for small and medium sized enterprises. Additionally the Italian authorities underlined the importance of the sectors concerned to the economy of the Region (they amount to 80% of the gross marketable production). On the basis of the information supplied the Commission can conclude that the conditions of point 10 are met.
 - c) Aid is awarded for an initial investment as defined in points 33 and 34 of the RAG. In line with these points, initial investment means an investment in material and immaterial assets relating to:
 - the setting-up of a new establishment;

³ OJ C 319, 27.12.2006

⁴ OJ C 54, 4.3.2006.

- the extension of an existing establishment;
- diversification of the output of an establishment into new, additional products;
- a fundamental change in the overall production process of an existing establishment.

As shown in point 12 of the description, the eligible costs are the costs of initial investment and they are limited to material assets, which is in line with the RAG.

- d) Replacement investments are excluded from the scheme (point 34 of the RAG). The condition is complied with (cf. paragraph 14).
- e) Aid should be calculated either in reference to material and immaterial investment costs resulting from the initial investment project or to wage costs (point 36 of the RAG). Aid in question is calculated in reference to investment costs (cf. paragraph 13).
- f) In line with point 38 of RAG, aid may only be granted under aid schemes if the beneficiary has submitted an application for aid and the authority responsible for administering the scheme has subsequently confirmed in writing that, subject to detailed verification, the project in principle meets the conditions of eligibility laid down by the scheme before the start of work on the project. The Italian authorities confirmed to comply with this condition.
- g) The aid measure shall foresee that the beneficiary makes a financial contribution of at least 25% of the total eligible costs and that this contribution will be free of any public support (in line with point 39 of the RAG). The notified scheme foresees adequate contribution (cf. paragraph 21 of the description).
- h) The aid is conditioned on the obligation of maintaining the investment or the jobs created during a minimum period of five years as to point 40 of the RAG. The Italian authorities confirmed that this condition is fulfilled (cf. paragraph 8 of the description).
- i) Investment aid is calculated as a percentage of the discounted value of the investment's eligible material costs in line with point 41 of the RAG;
- j) According to point 50 of the RAG, in case of aid calculated on the basis of investment costs, expenditures on land, buildings and plant/machinery are eligible for aid. The notified scheme foresees that only expenses on buildings and plant/machinery are eligible which is in line with the above mentioned point.
- k) In case of acquisition of the assets directly linked to an establishment, only the costs of buying assets from third parties should be taken into consideration and the transaction should take place under market conditions (point 52 of the RAG). All the assets acquired should be new (point 54). As

shown in paragraphs 16 of the description, the conditions are fulfilled. The Commission notes that costs related to the acquisition of assets other than land and buildings under lease are not included in the eligible costs (which is in line with point 53 of the RAG).

l) In line with point 75 of the RAG, the aid shall not be cumulated with *de minimis* support in respect of the same eligible expenses in order to circumvent the maximum aid intensities laid down in these guidelines. This condition is complied with (cf. paragraph 24 of the description).

m) The Italian authorities confirmed that they will comply with the requirement of point 108 of the RAG concerning publication of the final text of the scheme on the internet and communication of the internet address of the scheme to the Commission. They also confirmed that, in line with the same point, projects for which expenses were incurred before the date of publication of the scheme will not be eligible for aid.

n) The Commission notes that the duration of the notified scheme corresponds to the duration of the RAG as well as the duration of the Agriculture guidelines.

39) Additionally, as the notified scheme concerns agricultural products, it has to comply with the relevant provisions and principles set out in the Agriculture Guidelines, namely:

a) It should exclude aid for the manufacture and marketing of products which imitate or substitute milk and milk products in accordance with point 43 of the Agriculture guidelines. The Italian authorities confirmed that the condition is met.

b) Italy accompanied the notification by documentation demonstrating that the State aid measure fits into and does not interfere with the measures under the Rural Development Programme of Bolzano.

c) The Italian authorities confirmed that the expenses eligible for aid for an investment project will not exceed EUR 25 million, and the aid itself will not exceed EUR 12 million. Therefore the requirement of individual notification as set out in point 45 of the Agriculture guidelines is not relevant.

d) In line with point 46 of the Agriculture guidelines, documentation showing that support is targeted on clearly defined objectives reflecting identified structural and territorial needs and structural disadvantages has been submitted.

e) According to point 47 of the Agriculture guidelines, where a common market organization, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on production or limitations on Community support at the level of individual farmers, holdings or processing plants, no investment shall be supported under State aids which would increase production beyond

those restrictions or limitations. This condition is complied with (cf. paragraph 20 of the description).

f) The Italian authorities confirmed that the aid will contain the necessary incentive element, as set out in point 16 of the Agriculture guidelines.

40) In view of the above the Commission considers that the notified scheme fulfills all the relevant conditions of the Agriculture guidelines and the Guidelines on national regional aid, to which reference is made.

IV. Decision

41) The Commission has accordingly decided to consider the aid scheme compatible with article 87.3.c of the EC Treaty and consequently raises no objection.

42) If this letter contains confidential information that should not be disclosed to third parties, please inform the Commission, giving your reasons, within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and publication of the full text of the letter in the authentic language on the Internet site:

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

Your request should be sent by registered letter or fax to:

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Yours faithfully

For the Commission

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Member of the Commission