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Subject: State Aid / Italy (Bolzano)

SA.42166 (2015/N)

Criteria for the granting of aid to compensate logistical handicaps in the delivery of quality milk in mountain areas

Sir,

The European Commission ("the Commission") wishes to inform Italy that, having examined the information supplied by your authorities on the State aid scheme referred to above, it has decided not to raise any objections to the relevant scheme as it is compatible with the internal market pursuant to Article 107(3)(c) of the Treaty on the Functioning of the European Union ("TFEU").

The Commission has based its decision on the following considerations:

1. PROCEDURE

- (1) By letter of 15 June 2015, registered by the Commission on the following day, Italy notified, according to Article 108(3) TFEU, the above mentioned aid scheme. The Commission sent a request for additional information to the Italian authorities on 5 August 2015 which the Italian authorities answered by letter of 8 October 2015, registered by the Commission on the same day. The Italian authorities submitted further information by letter of 23 October 2015, registered by the Commission on the same day.

S.E On. Paolo Gentiloni
Ministro degli Affari esteri e della Cooperazione Internazionale
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() Ce timbre porte sur l'ensemble des documents qui composent le dossier.*

2. DESCRIPTION

2.1. Title

- (2) Criteria for the granting of aid to compensate logistical handicaps in the delivery of quality milk in mountain areas.

2.2. Objective

- (3) The aim of the notified State aid scheme is to partially compensate farmers located in mountain areas for the additional costs caused by natural constraints that result in logistical handicaps.

2.3. Legal basis

- (4) The legal basis of the scheme consists of:

- articolo 4 della legge provinciale 14 dicembre 1999, n. 10, e successive modifiche;
- deliberazione della Giunta Provinciale sui "Criteri per la concessione di un aiuto per compensare gli svantaggi logistici nella consegna di latte di qualità in zone di montagna".

2.4. Duration

- (5) From 1 January 2016 to 31 December 2020.

2.5. Budget

- (6) Overall budget is EUR 5 500 000. Annual budget is 1 100 000 EUR.

2.6. Beneficiaries

- (7) The aid will be paid to the milk collecting and processing cooperatives.
- (8) However, final beneficiaries will be farmers, i.e. undertakings active in the primary agricultural production which undertake to pursue their farming activity in areas designated pursuant to Article 32(1)(a) and 32(2) of Regulation (EU) No 1305/2013¹ and are active farmers within the meaning of article 9 of Regulation (EU) No 1307/2013². The cooperatives pass on the aid entirely to their members, i.e. the final beneficiaries, by means of a cost reimbursement. Both the eligible cooperatives and their members must have an operating unit in the territory of Bolzano's province.
- (9) Beneficiaries are micro enterprises in conformity with the definition of point 35(13) of the European Union Guidelines for State aid in the agricultural and forestry

¹ Regulation (EU) No 1305/2013 of the European Parliament and of the Council of 17 December 2013 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) (OJ L 347, 20.12.2013, p. 487).

² Regulation (EU) No 1307/2013 of the European Parliament and of the Council of 17 December 2013 establishing rules for direct payments to farmers under support schemes within the framework of the common agricultural policy and repealing Council Regulation (EC) No 637/2008 and Council Regulation (EC) No 73/2009 (OJ L 347, 20.12.2013, p. 608).

sectors and in rural areas 2014 to 2020³ ("the Guidelines") located in mountain areas as defined in Bolzano Province's Rural development programme 2014-2020. The estimated number of final beneficiaries is over 1000.

- (10) The scheme will not apply to undertakings in difficulty within the meaning of point 35(15) of the Guidelines. Moreover, the payment of the notified aid will be suspended if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme), until that beneficiary has reimbursed or paid into a blocked account the total amount of unlawful and incompatible aid including the corresponding recovery interest.

2.7. Description of the aid scheme

- (11) The aid scheme aims to partially compensate farmers operating in the Bolzano Province for the additional costs caused by the natural constraints faced in mountain areas, designated pursuant to Article 32(2) of Regulation (EU) No 1305/2013. The calculation of the aid takes into account the logistical handicaps in the daily delivery of quality milk, as an indicator for the natural constraints.
- (12) The Italian authorities explained that the approved rural development program 2014-2020 of the Bolzano Province ("Bolzano's RDP") includes measure 13 "Payments to areas facing natural or other specific constraints" in accordance with article 31 of Regulation (EU) No 1305/2013. The aid provided for in the notified scheme is nonetheless distinguished from measure 13 of Bolzano's RDP because the latter does not provide for aid aimed to compensate the costs caused by the natural constraints in mountain areas for the milk delivery from the collection point to the processing centres. Yet the national scheme shares the same objective of the RDP measure of preserving extensive and environmental-friendly farming in the mountain areas and avoiding the migration of the rural population and it contributes to the priorities of the RDP policy and of Bolzano RDP, in particular to priority 4 "Restoring, preserving and enhancing ecosystems related to agriculture and forestry" focus area 4a "Restoring, preserving and enhancing biodiversity, including in Natura 2000 areas, and in areas facing natural or other specific constraints and high nature value farming, as well as the state of European landscapes".
- (13) The Italian authorities explained that the aid provided for in the notified scheme was not included in measure 13 of the Bolzano's RDP because in that framework only direct payments to farmers would have been allowed and payments to cooperatives would have been excluded, implying an excessive number of applications and fragmentation of the aid and a consequent much heavier administrative burden and more complicated management for the implementation of the aid.
- (14) In the Bolzano Province there are 4 912 farmers, scattered over the whole provincial territory and located sometimes at extreme altitude (they are located between 1 000 and 2 000 metres above sea level). They are associated into 11 milk collecting and processing cooperatives whose processing centres are located between 300 and 1000 metres above sea level. The majority of the cooperatives collect daily the milk from the collection points close to their members.

³ OJ C 204, 1.7.2014, p. 1.

- (15) Depending on the characteristic of their collection catchment area, some milk collecting and processing cooperatives have many associated farmers located at a high altitude and very far away from the processing centre, while others have fewer members located in high mountain and on average have to cover shorter distances. This implies very different milk collection costs for the cooperatives (the average standardized milk collection cost of the cooperatives ranges from 0 EUR/litre to 0,1022 EUR/litre, see table 1) and, ultimately, for their associated farmers, with an evident disadvantage for those cooperatives which count among their members farmers located at a higher altitude. In fact in the cooperative system in place in the Bolzano Province for the collection and processing of milk, the cost of the logistical handicaps in the delivery of milk are equally shared among all the cooperative's members irrespective of their position of easier or more difficult access.
- (16) The Italian authorities affirmed that the entire territory of the Bolzano province and of the Trentino Alto Adige region qualifies as mountain area pursuant to Article 32 (2) of Regulation (EU) No 1305/2013. Due to this fact, the calculation of the additional costs is not done on the basis of a comparison between areas affected by natural constraints and areas not affected by natural constraints. The calculation of aid is rather based on a comparative logic. The aid will be paid only to those milk collecting and processing cooperatives operating in the provincial territory that, facing more severe natural constraints, incur an average standardized cost for the collection of quality milk above the average standardised cost for milk collection calculated at provincial level. Considering the 2014 data, the aid will be paid to 4 milk collecting and processing cooperatives out of the 11 operating on the provincial territory (see table 1).
- (17) The Italian authorities exclude any risks of overcompensation with direct payments provided for in Chapter 4 of Title III of the Regulation (EU) No 1307/2013, as in Italy the additional premium for areas with natural constraints is not activated. The Italian authorities confirmed that the calculations contain only elements that are verifiable, are based on figures established by appropriate expertise, indicate clearly the source of the figures used and do not contain elements linked to investment costs.
- (18) The difference among the cooperatives in terms of milk collection cost has been evidenced by a study commissioned by the dairies association of Alto Adige that analysed the different situations of all dairies of the region. The data referred to 2014 (see table 1) show that the average standardized milk collection cost of the cooperatives range from 0 EUR/litre to 0,1022 EUR/litre and that the average at provincial level amounts to 0,021 EUR/litre. The method for the calculation of the aid takes the logistical handicaps related to daily milk delivery as an indicator for the natural constraints and differentiates the payments on the basis of the severity of the identified permanent natural constraints. The calculation method of the annual aid amount per hectare is the following:
- calculation of the average standardized cost for the collection of milk incurred by each milk collecting and processing cooperative operating on the provincial territory and of the provincial average of those standard average costs;
 - the allocated annual provincial budget for the year of reference is yearly attributed to the eligible milk collecting and processing cooperatives, those who have an average standardized milk collection cost above the provincial average, up to the maximum level corresponding to the difference between the average standardized cost for milk collection of each cooperative and the average at

provincial level. The aid is paid to each cooperative on the basis of the total hectares of forage area belonging to all the member agricultural holdings (the forage area of the farmers is taken from the provincial register of the agricultural holdings, APIA, that is the basis of the calculation of all surface premiums of the RDP);

- the aid received by each cooperative is shared among their members according to the hectares of forage area of each of them. The reimbursement from the cooperative to the farmers occurs annually, at the occasion of the final reporting of the price of the milk delivered by each of them, that will take into account the reduced costs related to the natural constraints that result in logistical handicaps.

(19) The aid, calculated according to the method described in the previous recital, is paid annually in the form of a direct grant. Considering only those cooperatives who have an average standardised cost for milk collection above the provincial average and referring that cost difference to the sum of the forage area of the members of each eligible cooperative, the aid payment based on 2014 data would range between 27,41 EUR/ha and 276,81 EUR/ha (see table 1). In any case the scheme states that the payments will range from minimum 25 EUR/ha to maximum 450 EUR/ha.

Table 1

cooperative	(A) No of associated milk producers	(B) Forage area (ha)	(C) Delivered milk in litres (campaign 2014/15)	(D) average standardized logistical cost 2014 (EUR cent/litre)	(E) average standardized logistical cost at provincial level 2014 (EUR cent/litre)	(F) costs above the provincial average (EUR cent/litre) (D-E)	costs above the provincial average per ha of forage area (€/ha) ((F*C)/B)	Total costs above the provincial average per cooperative (EUR) (F*C)	(G) aid intensity (D-E)/D*100
1) Latte montagna Alto Adige	2 567	22 963	185 112 202	2,44	2,10	0,34	27,41	629 381	13,93%
2) Latteria Bressanone BRIMI	1 157	10 091	101 880 946	1,78	2,10	0,00	0,00	0	0,00%
3) Latteria Vipiteno	384	3 838	40 588 000	2,20	2,10	0,10	10,58*	0	4,55%
4) Latteria sociale Merano	475	3 452	28 126 757	2,69	2,10	0,59	48,07	165 948	21,93%
5) Algunder Sennerei	55	387	2 737 500	4,78	2,10	2,68	189,61	73 365	56,07%
6) Passeier Bergkäserei	16	168	573 560	10,22	2,10	8,12	276,81	46 573	79,45%
7) Latteria tre cime	145	1 540	12 967 089	1,49	2,10	0,00	0,00	0	0,00%
8) Caseificio Sesto	59	554	4 058 270	0,00	2,10	0,00	0,00	0	0,00%
9) Latteria Burgusio	45	361	3 031 691	0,00	2,10	0,00	0,00	0	0,00%
10) Latteria Tirolo	6	9	104 836	0,00	2,10	0,00	0,00	0	0,00%
11) Latteria Prato	3	17	62 048	0,00	2,10	0,00	0,00	0	0,00%
Totale	4 912	43 381	379 242 899					915 267 €	

Source: data related to 2014 taken from the study commissioned by the dairies association of Alto Adige.

*This cooperative will not receive aid as the costs above the provincial average per ha of forage area are below the minimum of 25 €/ha

(20) The fact that the additional costs are not calculated in comparison to areas not subject to the natural constraints ensures that the compensation granted will be only partial. All farmers of the Bolzano province would have eligible additional costs if compared to farmers of areas not subject to natural constraints, but the aid compensates only the quota of additional logistical costs that is above the provincial average calculated on an area that is entirely subject to natural constraints thus ensuring that the amount of aid to be paid just partially compensates the additional costs resulting from the natural constraints and does not go beyond them.

(21) Aid will be degressive above a threshold level of area per holding, according to the following scheme:

Forage area	% of reduction of the aid
Between 5,01 and 10 ha	10%
Between 10,01 and 20 ha	20%
Above 20 ha	30%

(22) Using the calculation method illustrated in recital (18), the aid is granted in favour of approximately 67% of the milk produced in the Bolzano Province that corresponds to 2,47% of the national production of milk.

(23) In order to receive the support, the candidate cooperatives have to introduce an annual request by the 30th of September of the reference year. The request shall bear the following indications: name of the candidate cooperative, number and size of the associated farmers, location of the cooperative and a description of the collection catchment area (altitude of the associated farmers and average distance from the processing centre).

(24) The aid can be cumulated with other aid in relation to the same eligible costs provided that such cumulation does not result in exceeding the highest aid amount applicable under the Guidelines.

(25) As regards the control activities, the Italian authorities explained that administrative and on the spot controls on the respect of conditions and requirement are carried out yearly on a sample of 6% of applications approved for financing. Consequently, if as a result of the controls undertaken, irregularities or defaults in charge of a beneficiary are proven, sanctions will be applicable.

(26) This scheme aims at improving the profitability of farmers located in mountain areas and it does not have any impact on the frequency of milk deliveries or on the mode in which it is realised. Therefore the Italian authorities affirmed that the present aid scheme, for its nature, does not have any impact on the environment.

2.8. Other commitments

(27) The milk produced by the farmers associated into cooperatives must satisfy the requirements provided for in the provincial law No 1 of 22 January 2001, as modified, concerning the marking of not genetically modified foodstuffs.

(28) Italian authorities made a commitment to publish the information required under point (128) of the Guidelines by the deadline set out in point (131) of the Guidelines.

3. ASSESSMENT

3.1. Existence of aid - Application of Article 107(1) TFEU

(29) For Article 107(1) TFEU to apply, the scheme must provide an economic benefit to an undertaking which it would not have received in its normal course of business, the aid must be granted to certain undertakings, the benefit must be granted by a Member State or through State resources and the scheme must be capable of affecting trade between Member States.

(30) The scheme in question confers an advantage on its recipients. This advantage is granted through State resources and it favours undertakings active in the agricultural production in the Bolzano Province. 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 competition⁴. In the present case, the Commission considers that the advantage granted to the beneficiary strengthens its competitive position, and thus the scheme is liable to distort competition.

(31) Pursuant to the case law of the Court of Justice, aid to an undertaking appears to affect trade between Member States where that undertaking operates in a market open to intra-EU trade⁵. The beneficiaries of aid operate in the agricultural sector, in particular in the milk production which is a market sector where intra-EU trade takes place. Statistical data show that in 2014 intra-EU trade of cow's milk and cream has exceeded EUR 5,20 billion⁶. The sector concerned is open to competition at EU level and therefore sensitive to any measure in favour of the production in one or more Member States. Therefore, the present scheme is liable to distort competition and to affect trade between Member States.

(32) In light of the above, the conditions of Article 107(1) TFEU are fulfilled. It can therefore be concluded that the proposed scheme constitutes State aid within the meaning of that Article. The aid may only be considered compatible with the internal market if it can benefit from one of the derogations provided for in the TFEU.

3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

(33) The aid scheme was notified to the Commission on 15 June 2015. It has not been implemented before. Therefore, Italy has complied with its obligation under Article 108(3) TFEU.

⁴ Judgment of the Court of 17 September 1980 in Case 730/79 *Philip Morris Holland BV v Commission of the European Communities*, ECLI:EU:C:1980:209.

⁵ See in particular the judgment of the Court of 13 July 1988 in Case 102/87 *French Republic v Commission of the European Communities*, ECLI:EU:C:1988:391.

⁶ Source: Eurostat.

3.3. Compatibility of the aid

3.3.1. Application of Article 107(3)(c) TFEU

- (34) Under Article 107(3)(c), an aid may be considered compatible with the internal 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.
- (35) For this derogation to be applicable, the aid must be assessed in the light of the relevant Union State aid legislation.

3.3.2. Application of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020

- (36) As regards the notified aid scheme, Part I, Part II, Chapter 1, Section 1.1.7, and Part III of the Guidelines are applicable.

3.3.2.1. Specific assessment according to the category of aid

- (37) Based on the information provided in recital (8), the final beneficiaries of the aid are undertakings active in the primary agricultural production, who are active farmers and which undertake to pursue their farming activity in areas designated pursuant to Article 32 of Regulation (EU) No 1305/2013. Therefore, the conditions set out in points 252 and 253 of the Guidelines are met.
- (38) The Italian authorities have demonstrated the constraints for agricultural production in the mountain area concerned (recitals (14) and (15)) and they also explained that the aid covers partial compensation for the additional costs resulting from those constraints and does not go beyond them (recital (20)). In consequence, the requirements of point 254 of the Guidelines are complied with.
- (39) As explained in recital (16) the Italian authorities did not provide a cost comparison with areas that are not affected by natural constraints; nonetheless they illustrated how the aid payment is based on the comparison of the collecting costs incurred by all the milk collecting and processing cooperatives operating within the provincial territory (see table 1), and just those who have an average standardized milk collection cost above the provincial average, as a result of the more severe natural constraints faced, are eligible to receive the aid. The Commission notes that the comparison within a mountain area undoubtedly leads to a smaller difference in terms of cost to be compensated thus determining a lower aid compared to what would be allowed under the Guidelines. The first condition prescribed in point 255 of the guidelines is therefore complied with.
- (40) As explained in recital (17) there is no risk of overcompensation with direct payments pursuant to Chapter 4 of Title III of the Regulation (EU) No 1307/2013. The second condition set out in point 255 of the Guidelines is therefore complied with.
- (41) The calculation method of the aid used by the Italian authorities illustrated in recital (18) shows that the payments differentiate on the basis of the severity of the identified permanent natural constraints affecting farming activities, as in a provincial territory that is entirely defined as mountain area, are eligible to receive the aid only the milk collecting and processing cooperatives who have an average

milk collection cost above the provincial milk collection average cost, as a result of the more severe natural constraints they face due to the altitude of their members. The criterion of point 256(a) of the Guidelines is therefore satisfied.

- (42) As illustrated in recital (18) the aid will be granted annually per hectare of forage area of the farmers. Point 257 of the Guidelines is therefore complied with.
- (43) The aid will be fixed on the basis of the difference between the average standardized cost for milk collection of each cooperative and the average at provincial level and will respect the minimum and maximum amounts established in point 258 of the Guidelines, up to 450 EUR/ha (see recital (19)) as beneficiaries are located in mountain areas as defined in Article 32(2) of Regulation (EU) No 1305/2013 (see recitals (8) and (11)).
- (44) Point 259 of the Guidelines is not relevant for the present aid scheme and therefore not applicable.
- (45) As requested by point 260 of the guidelines, the legal basis of the aid specifies the threshold level of area per holding for aid degressivity and the respective percentages of reduction (see recital (21)).
- (46) Italian authorities affirmed not to avail themselves of the possibility of point 261 of the Guidelines for the application of the degressivity.
- (47) Since the concerned area is designated as a mountain area and not as an area facing significant natural constraints, the phasing out of the aid for areas losing the status of being constraint following the new delimitation referred to in article 32(3) of regulation (EU) No 1305/2013 is not relevant for the present aid scheme and points 262 and 263 of the Guidelines are not applicable.
- (48) Pursuant to point 719 of the Guidelines, the Commission only authorizes schemes of limited duration. Aid schemes other than those benefiting from co-financing under Regulation (EU) No 1305/2013 should not apply for more than seven years. It follows from recital (5) that this requirement is met.
- (49) On the basis of the above, the Commission considers that the requirements regarding the compatibility of aid for areas facing natural constraint are fulfilled.

3.3.2.2. Common Assessment Principles

- (50) According to points 38, 42 and 231 of the Guidelines, the common assessment principles apply to aid granted in accordance with Article 107(3)(c) TFEU.
- (51) As described in recital (3) above, the present notified scheme aims to improve the profitability of farmers located in mountain areas. The notified aid scheme thus contributes to a common objective, in particular to ensure viable food production and achieve sustainable growth, and is consistent with the rural development objectives and priorities listed in point 10 of the Guidelines. The provisions of point 43 and 44 of the Guidelines are thus satisfied.
- (52) As explained above in recital (12), the measure provided for in the scheme is not part of the Bolzano's RDP for 2014-2020 but can be regarded as fitting into and consistent with it as it matches with a measure provided for in the rural development policy. The Commission thus considers that the conditions of point 47 of the

Guidelines are met and that the scheme contributes to the objectives of rural development.

- (53) As affirmed by the Italian authorities (recital (26)) the aid by its nature will not have any impact on the environment. Therefore, no negative impact on the environment within the meaning of point 52 of the Guidelines has been identified.
- (54) Since the present scheme fulfils the specific conditions laid down in the Guidelines, as analysed above in Section 3.3.2.1, the Commission considers, in line with points 55 and 57 of the Guidelines that the aid is necessary and that it is granted by means of an appropriate instrument to address the objective of common interest.
- (55) In accordance with point 58 of the Guidelines, the Italian authorities have illustrated the reason for not including the measure provided for in the present national scheme in the Bolzano's RDP (see recital (13)).
- (56) Although as described in recital (23) above, applicants have to submit an aid application to the competent authorities, according to point 75 (c) of the Guidelines aid to areas facing natural constraints are not required or deemed to have an incentive effect. Therefore, point 75(c) of the Guidelines is complied with.
- (57) As described in recitals (16) and (17), the eligible costs are calculated in a sound way by means of a comparative logic and the annual aid amount will be fixed between the maximum and minimum amounts allowed per hectare (recitals (19) and (43)). The requirements of point 84 of the Guidelines are thus respected.
- (58) The Italian authorities have confirmed that the calculations and the corresponding aid respect the relevant requirements of point 93 of the Guidelines (recital (17)).
- (59) Furthermore, the Commission notes that, in accordance with point 100 of the Guidelines, aid can be cumulated with other aid in relation to the same eligible costs provided that such cumulation does not result in exceeding the highest aid amount applicable to the aid under the Guidelines (recital (24)). On the basis of this paragraph and of the previous two, the criterion of proportionality is deemed to be fulfilled.
- (60) Since the present scheme fulfils the specific conditions laid down in the Guidelines, as analysed above in Section 3.3.2.1, and does not exceed the relevant maximum aid amount (recitals (19) and (57)), the Commission considers, in line with point 113 of the Guidelines, that the negative effect on competition and trade is limited to the minimum.
- (61) Italian authorities have committed to comply with the transparency requirements set out in point 128 of the Guidelines (recital (28)).
- (62) The Commission notes that Italian authorities committed to exclude undertakings in difficulty from any support and to suspend the payment of the notified aid if the beneficiary still has at its disposal an earlier unlawful aid that was declared incompatible by a Commission decision (recital (10)) in line with points 26 and 27 of the Guidelines.
- (63) Taking into account the considerations above and the result of the analysis illustrated in recital (49), the Commission concludes that the notified aid scheme can benefit from the derogation provided for in article 107(3)(c) TFEU.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the notified aid on the grounds that it is compatible with the internal market pursuant to Article 107(3)(c) TFEU.

If any parts of this letter are covered by the obligation of professional secrecy according to the Commission communication on professional secrecy and should not be published, please inform the Commission within fifteen working days of notification of this letter. If the Commission does not receive a reasoned request by that deadline Italy will be deemed to agree to the publication of the full text of this letter. If Italy wishes certain information to be covered by the obligation of professional secrecy please indicate the parts and provide a justification in respect of each part for which non-disclosure is requested.

Your request should be sent electronically via the secured e-mail system Public Key Infrastructure (PKI) in accordance with Article 3(4) of Commission Regulation (EC) No 794/2004⁷, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

⁷ Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140, 30.4.2004, p. 1).