Subject: State aid–Italy (Trento)
SA.44086 (2016/N)

Approval of the fundamental criteria for the granting of aid in favour of large enterprises for investments in connection with the processing of agricultural products and the marketing of agricultural products - Article 28 of Provincial Law n. 4 of 28 March 2003 (Provincial law on agriculture)

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 7 January 2016, registered by the Commission on the following day, Italy notified, according to Article 108(3) TFEU, the above mentioned aid scheme. Additional information was provided by the Italian authorities on 26 January 2016.

   (2) The Commission sent a request for additional information to the Italian authorities on 23 February 2016 which the Italian authorities provided by letter of 13 April 2016.

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2. DESCRIPTION

2.1. Title

(3) Approval of the fundamental criteria for the granting of aid in favour of large enterprises for investments in connection with the processing of agricultural products and the marketing of agricultural products - Article 28 of Provincial Law n. 4 of 28 March 2003 (Provincial law on agriculture).

2.2. Objective

(4) With the present notification the Italian authorities wish to enhance the competitiveness of the agricultural sector in the Province concerned, by supporting investments in large enterprises in connection with the processing and marketing of agricultural products.

2.3. Legal basis

(5) The notified aid scheme has the following legal bases:

- deliberazione n. 2140 of 27 November 2015 of Trento's Provincial Council and its Annex "Approval of the fundamental criteria for the granting of aid in favour of large enterprises for investments in connection with the processing of agricultural products and the marketing of agricultural products - Article 28 of Provincial Law n. 4 of 28 March 2003 (Provincial law on agriculture)";

- draft deliberazione amending deliberazione n. 2140;

- Provincial Law n. 4 of 28 March 2003 (Provincial law on agriculture).

2.4. Duration

(6) From the date of the Commission decision until 31 December 2020.

2.5. Budget

(7) Overall budget is EUR 50 000 000.

2.6. Beneficiaries

(8) Beneficiaries are large enterprises within the meaning of point (35.14) of the European Union Guidelines for State aid in the agricultural and forestry sectors and in rural areas 2014 to 2020 ("the Guidelines")¹ which are active in the collection, storage, processing and marketing of agricultural and livestock products within the meaning of points (35.11) and (35.12) of the Guidelines, notably:

(a) agricultural cooperatives, cooperatives for the collection, processing and marketing of agricultural products and their associations, land associations;

(b) acknowledged associations of agricultural producers;

(c) companies carrying out activities that contribute to improving the situation of the basic agricultural production sectors in the agro-foodstuff industry.

(9) The number of beneficiaries is estimated to be under 10.

(10) Undertakings in difficulty within the meaning of point (35.15) of the Guidelines are excluded as beneficiaries.

(11) Aid will not be granted to undertakings still having at their disposal an earlier unlawful aid that was declared incompatible by a Commission decision (either concerning an individual aid or an aid scheme).

2.7. Aid instrument

(12) Direct grant.

2.8. Description of the aid scheme

(13) The notified aid scheme has the same substantial features as the corresponding measure included in the Rural Development Programme for 2014-2020 of the Trento Province ("RDP")
. The Italian authorities explained that the aid scheme at hand has been notified as pure national aid as the availability of the relevant provincial budgetary resources for a top-up within the RDP was uncertain at the time of the definition of the RDP's financial plan and that a notification would allow to grant the aid as soon as the Commission approval decision is adopted whereas the RDP can be modified only once per year.

(14) The following costs are eligible for aid under the notified aid scheme:

(a) the construction, acquisition, including leasing, or improvement of immovable property, with land only eligible up to 10% of the total eligible costs of the operation concerned;

(b) the purchase or lease purchase of machinery and equipment up to the market value of the assets;

(c) general costs linked to expenditure referred to in points (a) and (b), such as architect, engineer and consultant fees, fees relating to advice on environmental and economic sustainability.

(15) Projects can be supported if the estimated expenditure is at least EUR 30 000. The aid intensity may not exceed 40% of the eligible expenditure for the beneficiaries referred to in recital (8)(a) and (b) and 30% for the beneficiaries referred to in recital (8)(c).

(16) Funding shall be limited to the minimum necessary to render the project profitable. This means, aid must be limited to the net extra costs of implementing the investment, compared to the counterfactual scenario in the absence of aid. In that regard, the Italian authorities informed that the procedural notices provide that the costs of the planned project are reduced by 15% on any price published in the bill of quantities.

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2 The RDP was approved by the Commission on 3 August 2015.
(17) The following costs are excluded from support under the notified aid scheme:

(a) investments carried out in order to comply with EU standards;

(b) costs connected to leasing contracts, such as lessor's margin, interest refinancing costs, overheads and insurance charges;

(c) working capital;

(d) costs for the production of food based biofuels;

(e) value added tax, where it is recoverable by the beneficiary;

(f) aid infringing upon the requirements of Regulation (EU) No 1308/2013;

(g) investments which are not compliant with EU and national legislation on environmental protection.

(18) The Italian authorities gave assurances that, where the eligible costs are in excess of EUR 25 million, the individual aid granted under the notified aid scheme remains subject to the notification requirement of Article 108(3) TFEU.

(19) Aids are paid in the form of grants. According to the Italian authorities, since the beneficiaries would have to cover at least 60% of their investments through other forms of financing, the form of grants aims to ensure a significant support for the envisaged investments, by avoiding that cooperatives decide to charge their members through self-financing. This would have as a consequence that the share paid to the member would be lower than the market average.

(20) Aid may be paid either in a single instalment or in equal annual or bi-annual instalments which together with the eligible costs will be discounted to their value at the moment of granting the aid using the EU reference interest rate applicable on the date of granting the aid.

(21) According to the Italian authorities, the distribution of the benefits on a number of farmers due to the high proportion of associations and cooperatives between primary producers would allow to avoid significant distortions of competition and trade. When granting the aid, priority will be given to projects submitted by cooperatives with the largest number of members, to projects for the dairy sector, which is disadvantaged by the orographic conformation of the territory and, in the event of equal score, to beneficiaries with lower turnover.

(22) The aid application shall be submitted before work on the relevant project has started and shall include at least the applicant's name and the size of the undertaking, a description of the project or activity, including its location and start and end dates, the amount of aid needed to carry it out and the eligible costs. Moreover, applicants shall describe in their applications the situation that would arise if no funding were received (counterfactual situation) and substantiate the counterfactual situation described in their applications with evidence.

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receiving an application the granting authorities will carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect.

(23) Cumulation of aid under the notified aid scheme and other schemes or ad hoc aid is admitted, provided that the aid intensity of 40% is not exceeded.

2.9. Other commitments

(24) Italy committed to publish the information required under point (128) of the Guidelines by the deadline set out in point (131) thereof.

3. ASSESSMENT

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

(25) 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 competition and trade between Member States.

(26) The scheme in question confers an advantage on its recipients. This advantage is funded from the provincial budget, i.e. granted through State resources and it favours only certain undertakings (namely large undertakings active in the sector of processing and marketing of agricultural products) by strengthening their competitive position on the market. 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.

(27) 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 trade. The aid beneficiaries operate in the market of agricultural products where trade between Member States takes place. 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.

(28) 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.

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6 In 2014 exports of agricultural products from Italy to the EU amounted to EUR 22 761.2 millions (as 10.4% of total exports), whereas imports amounted to EUR 27 897.7 millions (as 13.7% of total imports) (Agriculture in the European Union and the Member States – Statistical factsheets – April 2016, Italy available on http://ec.europa.eu/agriculture/statistics/factsheets/pdf/it_en.pdf).
3.2. Lawfulness of the aid – Application of Article 108(3) TFEU

(29) The aid scheme was notified to the Commission on 7 January 2016. It has not been implemented prior to the date of the present decision. Therefore, Italy has complied with its obligation under Article 108(3) TFEU.

3.3. Compatibility of the aid

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

(30) Under Article 107(3)(c) TFEU, 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.

(31) For this derogation to be applicable, the aid must fulfil the requirements 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

(32) As regards the notified aid scheme, Part I and Part II, Chapter 1, Section 1.1.1.4 of the Guidelines are applicable.

3.3.2.1. Common Assessment Principles

(33) According to point (43) of the Guidelines, the objectives of aid in the agricultural and forestry sectors and in rural areas are to ensure viable food production and to promote the efficient and sustainable use of resources in order to achieve intelligent and sustainable growth. The notified aid scheme aims at improving the overall performance and the competitiveness of the beneficiaries (recital (4)). It therefore complies with point (43) of the Guidelines.

(34) The scheme is a rural development-like measure which is similar to the corresponding RDP measure (recital (13)). The scheme at hand can therefore be regarded as fitting into and consistent with the rural development framework and thus in line point (47) of the Guidelines. Therefore the Commission considers that the scheme contributes to the objectives of rural development.

(35) As described in recital (17)(g) above, investments which are not compliant with EU and national legislation on environmental protection are not eligible for aid. Therefore, no negative impact on the environment within the meaning of point (52) of the Guidelines has been identified.

(36) Since the present scheme fulfils the specific conditions laid down in the relevant section of Part II of the Guidelines, as analysed below under section 3.3.2.2, the Commission considers, in line with point (55) of the Guidelines, that the aid is necessary to address the objectives of common interest under Section 3.1. of Part I of the Guidelines.

(37) Pursuant to point (56) of the Guidelines, an aid is appropriate if no other less distortive policy instrument or other less distortive types of aid make it possible to achieve the same contribution to the objectives of the CAP. The Italian authorities explained to have notified the aid scheme at hand as the availability of the
relevant budgetary resources for a top-up within the RDP was uncertain and they demonstrated the advantage of the notified rural development-like measure (recital (13)). Since the present scheme fulfils the specific conditions laid down in the relevant section of Part II of the Guidelines, in line with point (57) and (58) of the Guidelines the Commission considers the policy instrument appropriate.

(38) With regard to investment aid not covered by Regulation (EU) No 1305/2013, as described in recital (19) the Italian authorities explained that other potentially less distortive forms of aid than a direct grant would create extra costs for the beneficiaries, with the consequence that the objectives pursued by investment aids could not be sufficiently achieved by other means. Thus, the condition of point (62) of the Guidelines is deemed to be satisfied. The Commission therefore considers the aid instrument appropriate and the specific aid form in line with Part II of the Guidelines.

(39) It follows from recital (22) above that work on the relevant activity will only start after the beneficiary has submitted an aid application to the national authorities in line with point (70) of the Guidelines and that the aid application includes the elements required under point (71) of the Guidelines.

(40) In compliance with point (72) of the Guidelines beneficiaries will also describe in their application the situation without the aid and submit documentary evidence in support of the counterfactual described in the application (recital (22)). According to the information provided by the Italian authorities, when receiving an application, the granting authority will carry out a credibility check of the counterfactual and confirm that the aid has the required incentive effect (recital (22)), as foreseen in point (73) of the Guidelines. The Commission therefore considers that the notified aid complies with the requirement of incentive effect.

(41) As shown in section 3.3.2.2 below, the eligible costs and aid intensities respect the specific conditions set out in Part II of the Guidelines and thus are in line with point (84) of the Guidelines. As described in recital (17)(e), VAT is not eligible, in line with point (86) of the Guidelines. Furthermore, in compliance with point (88) of the Guidelines, where the aid will be paid in several instalments, the aid and the eligible costs will be discounted to their value at the moment of granting the aid using the interest rate applicable on the date of granting the aid (recital (20)).

(42) With regard to investment aid to large enterprises, point (97) of the Guidelines stipulates that Member States must ensure that the aid amount corresponds to the net extra costs of implementing the investment in the area concerned, compared to the counterfactual scenario in the absence of aid. To that end, the method explained in point (96) of the Guidelines must be used together with maximum aid intensities as a cap to ensure that the aid does not exceed the minimum necessary to render the project sufficiently profitable. As described in recital (16), this condition is met.

(43) According to point (99) of the Guidelines, aid may be cumulated, provided that the total amount of State aid for a project does not exceed the aid ceilings laid down in the Guidelines. As described in recital (23) above, this condition is fulfilled.
On the basis of the foregoing, it can therefore be concluded that the requirement of proportionality is complied with.

In conformity with point (116) of the Guidelines the Italian authorities have furthermore provided sufficient information that any negative effects on competition and trade will be limited to the minimum (recital (21)).

Italy has committed to comply with the transparency requirements set out in point (128) of the Guidelines by the deadline set out in point (131) thereof (recital (24)).

3.3.2.2. Specific assessment according to the category of aid

According to point (134) of the Guidelines investment aid falling under Section 1.1.1.4 of Part II of the Guidelines shall comply with the following condition: "where a common market organisation, including direct support schemes, financed by the European Agricultural Guarantee Fund (EAGF) places restrictions on the production or limitations on Union support at the level of individual undertakings, holdings or processing plants, no investment which would increase production beyond those restrictions or limitations may receive State aid support". As specified in recital (17)(f) above, this condition is fulfilled.

No aid will be granted under the notified aid scheme for the production of food based biofuels (recital (17)(d)). Point (166) of the Guidelines is therefore complied with.

In conformity with point (167) of the Guidelines, the notified aid scheme concerns investments in tangible assets and intangible assets in connection with the processing of agricultural products and the marketing of agricultural products (recitals (8) and (14)), as referred to in points (35.11) and (35.12) of the Guidelines.

Aid for investments in connection with the processing and the marketing of agricultural products under the notified aid scheme fulfil all the conditions of Section 1.1.1.4 of the Guidelines, as specified in recital (55) below. The condition of point (168) of the Guidelines is therefore complied with.

The eligible costs described in recital (14) respect the categories of eligible costs listed in point (169) of the Guidelines. Therefore the Commission considers the afore mentioned eligible costs to be in line with point (169)(a), (b) and (c) of the Guidelines.

No aid will be granted under the notified scheme in connection with costs referred to in point (170) of the Guidelines (recital (17)(a)(b) and (c)).

The maximum aid intensity of 40% foreseen under the notified scheme (recital (15)) is in line with the applicable maximum aid intensity set out in point (171)(d) of the Guidelines.

As specified in recital (18), no individual aid will be awarded under the notified scheme which would exceed the notification thresholds referred to in point (37)(a) of the Guidelines, in line with point (173) of the Guidelines.
On the basis of the above, the Commission concludes that the conditions set out in Section 1.1.1.4 of Part II of the Guidelines are fulfilled.

3.4. Other conditions

The Commission takes note that undertakings in difficulty (recital (10)) and undertakings still having at their disposal an earlier unlawful aid that was declared incompatible by a Commission decision (recital (11)) are excluded from any support in line, respectively, with point (26) and point (27) of the Guidelines.

In accordance with point (719) of the Guidelines the Commission only authorises schemes of limited duration. Aid schemes that can benefit from co-financing under Regulation (EU) No 1305/2013 should be limited to the duration of the programming period 2014-2020. Other aid schemes should not apply for a period of more than seven years. It follows from recital (6) above that this requirement is met.

The Commission therefore concludes that the notified aid scheme complies with the relevant provisions of the Guidelines.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the 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 in State aid decisions 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(3) of Commission Regulation (EC) No 794/2004, to the following address: agri-state-aids-notifications@ec.europa.eu.

For the Commission

Phil HOGAN
Member of the Commission

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