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I

(Acts whose publication is obligatory)

COMMISSION REGULATION (EC) No 451/2006
of 17 March 2006
establishing the standard import values for determining the entry price of certain fruit and vegetables

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Commission Regulation (EC) No 3223/94 of 21 December 1994 on detailed rules for the application of the import arrangements for fruit and vegetables ⁽¹⁾, and in particular Article 4(1) thereof,

Whereas:

- (1) Regulation (EC) No 3223/94 lays down, pursuant to the outcome of the Uruguay Round multilateral trade negotiations, the criteria whereby the Commission fixes the

standard values for imports from third countries, in respect of the products and periods stipulated in the Annex thereto.

- (2) In compliance with the above criteria, the standard import values must be fixed at the levels set out in the Annex to this Regulation,

HAS ADOPTED THIS REGULATION:

Article 1

The standard import values referred to in Article 4 of Regulation (EC) No 3223/94 shall be fixed as indicated in the Annex hereto.

Article 2

This Regulation shall enter into force on 18 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 March 2006.

For the Commission

J. L. DEMARTY

*Director-General for Agriculture and
Rural Development*

⁽¹⁾ OJ L 337, 24.12.1994, p. 66. Regulation as last amended by Regulation (EC) No 386/2005 (OJ L 62, 9.3.2005, p. 3).

ANNEX

to Commission Regulation of 17 March 2006 establishing the standard import values for determining the entry price of certain fruit and vegetables

(EUR/100 kg)		
CN code	Third country code ⁽¹⁾	Standard import value
0702 00 00	052	100,2
	204	59,0
	212	102,0
	999	87,1
0707 00 05	052	126,8
	204	36,3
	999	81,6
0709 90 70	052	104,0
	204	52,2
	999	78,1
0805 10 20	052	46,1
	204	45,4
	212	48,9
	220	46,8
	400	60,8
	448	37,8
	624	67,8
0805 50 10	999	50,5
	052	50,1
	624	66,1
0808 10 80	999	58,1
	388	96,6
	400	118,8
	404	102,0
	512	75,6
	524	78,8
	528	88,0
	720	82,0
0808 20 50	999	91,7
	388	84,1
	512	75,9
	528	62,6
	720	60,4
	999	70,8

⁽¹⁾ Country nomenclature as fixed by Commission Regulation (EC) No 750/2005 (OJ L 126, 19.5.2005, p. 12). Code '999' stands for 'of other origin'.

COMMISSION REGULATION (EC) No 452/2006**of 17 March 2006****fixing the minimum selling prices for butter for the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies may sell by standing invitation to tender certain quantities of butter from intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the minimum selling prices for butter from intervention stocks and the amount of the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

ANNEX

Minimum selling prices for butter and processing security for the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005*(EUR/100 kg)*

Formula			A		B	
Incorporation procedure			With tracers	Without tracers	With tracers	Without tracers
Minimum selling price	Butter ≥ 82 %	Unaltered	—	210	—	—
		Concentrated	—	—	—	—
Processing security		Unaltered	—	79	—	—
		Concentrated	—	—	—	—

COMMISSION REGULATION (EC) No 453/2006**of 17 March 2006****fixing the maximum aid for cream, butter and concentrated butter for the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies may sell by standing invitation to tender certain quantities of butter of intervention stocks that they hold and may grant aid for cream, butter and concentrated butter. Article 25 of that Regulation lays down that in the light of the tenders received in response to each individual invitation to tender a minimum selling price shall be fixed for butter and maximum aid shall be fixed for cream, butter and concentrated butter. It is further laid down

that the price or aid may vary according to the intended use of the butter, its fat content and the incorporation procedure. The amount of the processing security as referred to in Article 28 of Regulation (EC) No 1898/2005 should be fixed accordingly.

- (2) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005 the amount of the maximum aid for cream, butter and concentrated butter and the amount the processing security, as referred to in Articles 25 and 28 of that Regulation respectively, are fixed as set out in the Annex to this Regulation.

Article 2

This Regulation shall enter into force on 18 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

ANNEX

Maximum aid for cream, butter and concentrated butter and processing security for the 5th individual invitation to tender under the standing invitation to tender provided for in Regulation (EC) No 1898/2005*(EUR/100 kg)*

Formula		A		B	
Incorporation procedure		With tracers	Without tracers	With tracers	Without tracers
Maximum aid	Butter $\geq 82\%$	38,5	35	38,5	35
	Butter $< 82\%$	—	34,1	—	—
	Concentrated butter	46	42,6	46	42
	Cream	—	—	18,5	15
Processing security	Butter	42	—	42	—
	Concentrated butter	51	—	51	—
	Cream	—	—	20	—

COMMISSION REGULATION (EC) No 454/2006**of 17 March 2006****fixing the maximum aid for concentrated butter for the 5th individual invitation to tender opened under the standing invitation to tender provided for in Regulation (EC) No 1898/2005**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾, and in particular Article 10 thereof,

Whereas:

- (1) In accordance with Article 47 of Commission Regulation (EC) No 1898/2005 of 9 November 2005 laying down detailed rules for implementing Council Regulation (EC) No 1255/99 as regards measures for the disposal of cream, butter and concentrated butter on the Community market ⁽²⁾, the intervention agencies are opening a standing invitation to tender for the granting of aid for concentrated butter. Article 54 of that Regulation provides that in the light of the tenders received in response to each special invitation to tender, a maximum amount of aid is to be fixed for concentrated butter with a minimum fat content of 96 %.
- (2) An end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is to be lodged to

ensure the taking over of the concentrated butter by the retail trade.

- (3) In the light of the tenders received, the maximum aid should be fixed at the appropriate level and the end-use security should be determined accordingly.
- (4) The measures provided for in this Regulation are in accordance with the opinion of the Management Committee for Milk and Milk Products,

HAS ADOPTED THIS REGULATION:

Article 1

For the 5th individual tender under the standing invitation to tender opened in accordance with Regulation (EC) No 1898/2005 the maximum amount of the aid for concentrated butter with a minimum fat content of 96 %, as referred to in Article 47(1) of that Regulation, is fixed at 45 EUR/100 kg,

The end-use security provided for in Article 53(4) of Regulation (EC) No 1898/2005 is fixed at 50 EUR/100 kg.

Article 2

This Regulation shall enter into force on 18 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 308, 25.11.2005, p. 1. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

COMMISSION REGULATION (EC) No 455/2006**of 17 March 2006****amending Regulation (EC) No 343/2006 opening the buying-in of butter in certain Member States
for the period 1 March to 31 August 2006**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 1255/1999 of 17 May 1999 on the common organisation of the market in milk and milk products ⁽¹⁾,Having regard to Commission Regulation (EC) No 2771/1999 of 16 December 1999 laying down detailed rules for the application of Council Regulation (EC) No 1255/1999 as regards intervention on the market in butter and cream ⁽²⁾, and in particular Article 2 thereof,

Whereas:

- (1) Commission Regulation (EC) No 343/2006 ⁽³⁾ establishes the list of Member States in which buying-in for butter is open, as provided for in Article 6(1) of Regulation (EC) No 1255/1999.
- (2) On the basis of most recent communications by Latvia, the Commission has observed that butter market prices have been equal or superior to 92 % of the intervention price for two consecutive weeks. Intervention buying-in should therefore be suspended in that Member State. Latvia should therefore be withdrawn from the list established in Regulation (EC) No 343/2006.
- (3) Regulation (EC) No 343/2006 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Article 1 of Regulation (EC) No 343/2006 is replaced by the following text:

'Article 1

Buying-in of butter as provided for in Article 6(1) of Regulation (EC) No 1255/1999 is hereby open in the following Member States:

- Germany
- Estonia
- Spain
- France
- Italy
- Ireland
- Netherlands
- Poland
- Portugal
- Finland
- Sweden
- United Kingdom.'

Article 2

This Regulation shall enter into force on 18 March 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17 March 2006.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ OJ L 160, 26.6.1999, p. 48. Regulation as last amended by Regulation (EC) No 1913/2005 (OJ L 307, 25.11.2005, p. 2).

⁽²⁾ OJ L 333, 24.12.1999, p. 11. Regulation as last amended by Regulation (EC) No 2107/2005 (OJ L 337, 22.12.2005, p. 20).

⁽³⁾ OJ L 55, 25.2.2006, p. 17. Regulation as amended by Regulation (EC) No 387/2006 (OJ L 63, 4.3.2006, p. 10).

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL RECOMMENDATION

of 14 March 2006

concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (Sixth EDF) for the financial year 2004

(2006/220/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Third ACP-EEC Convention, signed at Lomé on 8 December 1984,

Having regard to Internal Agreement 86/126/EEC on the financing and administration of Community aid ⁽¹⁾, and in particular Article 29(3) thereof,

Having regard to the Financial Regulation of 11 November 1986 applicable to the Sixth European Development Fund (Sixth EDF) ⁽²⁾, and in particular Articles 66 to 73 thereof,

Having examined the revenue and expenditure account and the balance sheet relating to the Sixth EDF as at 31 December 2004 and the Court of Auditors' report concerning the financial year 2004 together with the Commission's replies ⁽³⁾,

Whereas pursuant to Article 29(3) of the Internal Agreement, the discharge for the financial management of the Sixth EDF is to be given to the Commission by the European Parliament on the recommendation of the Council;

Whereas the overall implementation by the Commission of the operations of the Sixth EDF during the financial year 2004 has been satisfactory,

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the Sixth EDF for the financial year 2004.

Done at Brussels, 14 March 2006.

For the Council

The President

K.-H. GRASSER

⁽¹⁾ OJ L 86, 31.3.1986, p. 210. Agreement as last amended by Council Decision 86/281/EEC (OJ L 178, 2.7.1986, p. 13).

⁽²⁾ OJ L 325, 20.11.1986, p. 42.

⁽³⁾ OJ C 301, 30.11.2005, p. 249.

COUNCIL RECOMMENDATION**of 14 March 2006****concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (Seventh EDF) for the financial year 2004**

(2006/221/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Fourth ACP-EC Convention, signed at Lomé on 15 December 1989, as amended by the Agreement signed at Mauritius on 4 November 1995,

Having regard to Internal Agreement 91/401/EEC on the financing and administration of Community aid under the Fourth ACP-EC Convention ⁽¹⁾, setting up, amongst others, the Seventh European Development Fund (Seventh EDF) and in particular Article 33(3) thereof,Having regard to Financial Regulation 91/491/EEC of 29 July 1991 applicable to development finance cooperation under the Fourth ACP-EC Convention ⁽²⁾, and in particular Articles 69 to 77 thereof,Having examined the revenue and expenditure account and the balance sheet relating to the operations of the Seventh EDF as of 31 December 2004 and the Court of Auditors' report concerning the financial year 2004 together with the Commission's replies ⁽³⁾,

Whereas pursuant to Article 33(3) of the Internal Agreement, the discharge for the financial management of the Seventh EDF is to be given to the Commission by the European Parliament on the recommendation of the Council;

Whereas the overall implementation by the Commission of the operations of the Seventh EDF during the financial year 2004 has been satisfactory;

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the Seventh EDF for the financial year 2004.

Done at Brussels, 14 March 2006.

*For the Council**The President*

K.-H. GRASSER

⁽¹⁾ OJ L 229, 17.8.1991, p. 288.⁽²⁾ OJ L 266, 21.9.1991, p. 1.⁽³⁾ OJ C 301, 30.11.2005, p. 249.

COUNCIL RECOMMENDATION**of 14 March 2006****concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (Eighth EDF) for the financial year 2004**

(2006/222/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Fourth ACP-EC Convention, signed at Lomé on 15 December 1989, as amended by the Agreement signed at Mauritius on 4 November 1995,

Having regard to the Internal Agreement on the financing and administration of the Community aid under the Second Financial Protocol to the fourth ACP-EC Convention ⁽¹⁾, setting up, amongst others, the Eighth European Development Fund (Eighth EDF), and in particular Article 33(3) of that Agreement,Having regard to the Financial Regulation of 16 June 1998 applicable to development finance cooperation under the Fourth ACP-EC Convention ⁽²⁾, and in particular Articles 66 to 74 thereof,Having examined the revenue and expenditure account and the balance sheet relating to the operations of the Eighth EDF as of 31 December 2004, and the Court of Auditors' report concerning the financial year 2004 together with the Commission's replies ⁽³⁾,

Whereas pursuant to Article 33(3) of the said Internal Agreement, the discharge for the financial management of the Eighth EDF is to be given to the Commission by the European Parliament on the recommendation of the Council;

Whereas the overall implementation by the Commission of the operations of the Eighth EDF during the financial year 2004 has been satisfactory,

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the Eighth EDF for the financial year 2004.

Done at Brussels, 14 March 2006.

*For the Council**The President*

K.-H. GRASSER

⁽¹⁾ OJ L 156, 29.5.1998, p. 108.⁽²⁾ OJ L 191, 7.7.1998, p. 53.⁽³⁾ OJ C 301, 30.11.2005, p. 249.

COUNCIL RECOMMENDATION**of 14 March 2006****concerning the discharge to be given to the Commission in respect of the implementation of the operations of the European Development Fund (Ninth EDF) for the financial year 2004**

(2006/223/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the ACP-EC Partnership Agreement, signed in Cotonou on 23 June 2000 ⁽¹⁾,

Having regard to the Internal Agreement on the financing and administration of Community aid under the Financial Protocol to ACP-EC Partnership Agreement ⁽²⁾ setting up, amongst others, the Ninth European Development Fund (Ninth EDF), and in particular Article 32(3) of that Agreement,

Having regard to the Financial Regulation of 27 March 2003 applicable to the Ninth European Development Fund ⁽³⁾, and in particular Articles 96 to 103 thereof,

Having examined the revenue and expenditure account and the balance sheet relating to the operations of the Ninth EDF as of 31 December 2004 and the Court of Auditors' report concerning the financial year 2004 together with the Commission's replies ⁽⁴⁾,

Whereas pursuant to Article 32(3) of the said Internal Agreement, the discharge for the financial management of the Ninth EDF is to be given to the Commission by the European Parliament on the recommendation of the Council;

Whereas the overall implementation by the Commission of the operations of the Ninth EDF during the financial year 2004 has been satisfactory,

HEREBY RECOMMENDS that the European Parliament give the Commission a discharge in respect of the implementation of the operations of the Ninth EDF for the financial year 2004.

Done at Brussels, 14 March 2006.

For the Council

The President

K.-H. GRASSER

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 317, 15.12.2000, p. 355.

⁽³⁾ OJ L 83, 1.4.2003, p. 1.

⁽⁴⁾ OJ C 301, 30.11.2005, p. 249.

COMMISSION

COMMISSION DECISION

of 6 October 2004

on State aid which Italy plans to grant to the agricultural undertaking *Cooperativa Agricola Moderna Srl*

(notified under document number C(2004) 3639)

(Only the Italian version is authentic)

(2006/224/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having called on ⁽¹⁾ interested parties to submit their comments pursuant to the provision cited above and having regard to their comments,

Whereas:

I. PROCEDURE

- (1) By letter dated 8 February 2001, registered on 9 February 2001, the Italian Permanent Representation to the European Union notified the Commission of the measure indicated above in accordance with Article 88(3) of the EC Treaty.
- (2) By letters of 21 August 2001, registered on 24 August 2001, of 3 December, registered on 5 December 2001, and of 11 April 2002, registered on 17 April 2002, the Italian Permanent Representation to the European Union sent the Commission the further information requested from the Italian authorities by letters of 9 April 2001 and 27 September 2001 and via informal contacts.
- (3) By letter dated 5 June 2002, the Commission informed Italy that it had decided to initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the said aid.
- (4) The decision to initiate the procedure was published in the Official Journal of the European Communities ⁽²⁾. The Commission invited interested parties to submit their comments on the aid.
- (5) The Commission did not receive any comments from interested parties.

⁽¹⁾ OJ C 251, 18.10.2002, p. 3.

⁽²⁾ See note 1.

- (6) By letter dated 16 September 2002, registered on 17 September 2002, Italy sent the Commission further information on the planned aid.

II. DETAILED DESCRIPTION OF THE AID

- (7) *Cooperativa Agricola Moderna Srl* is one of the undertakings eligible to receive the rescue aid examined and approved by the Commission in case N 354/2000 ⁽³⁾. The approving decision makes provision for converting the rescue aid into restructuring aid provided that within six months of the aid being authorised Italy submits a restructuring plan for the undertaking, in accordance with point 23 of the Community Guidelines on State aid for rescuing and restructuring firms in difficulty (hereafter "the Guidelines") ⁽⁴⁾. The Italian authorities sent notification of the restructuring plan in accordance with the commitment made. This Decision therefore focuses on the restructuring aid.
- (8) In line with the restructuring plan, the rescue aid disbursed, amounting to ITL 900 000 000 (€ 464 810), was converted into a subsidy in the form of a capital grant.

A. Description of the undertaking

- (9) *Cooperativa Agricola Moderna Srl* is a small-scale cooperative society comprising 69 partners specialising in wine and cereal growing (primary production). It currently manages 75 hectares which it owns and 207 hectares which it leases, and receives the production from a further 178 hectares.

B. Market study

- (10) According to the Italian authorities, *Cooperativa Agricola Moderna Srl*'s main activity is the production of grapes for winemaking (80% of its gross saleable production). The market concerned is the wine market. The total wine production of the Marche Region, which has a surface area of 23 500 hectares, 13 000 of which produce wine with a registered designation of origin, is ITL 147 billion. With its 125 hectares of vineyards, *Cooperativa Agricola Moderna Srl* covers 0,53% of the total surface area in the region devoted to wine growing and 0,96% of that dedicated to wine with a registered designation of origin and it accounts for 0,38% of the region's average production (data from the last three years).
- (11) The current trends in the wine sector are towards the consumption of better quality wine (the consumption of wine with a registered designation of origin is increasing and the consumption of table wine is decreasing ⁽⁵⁾). The international markets are growing all the time and the reputation of Italian wine abroad is improving even though it has to face vigorous competition from traditional producers and other emerging countries in the sector. Almost three quarters of Italian wine firms export abroad: these are generally small and medium-sized undertakings with an annual turnover of less than 50 billion. Marche Region wines with a registered designation of origin have good prospects of success. The Verdicchio dei Castelli di Jesi wine, which has been judged one of the best Italian white wines, is, together with Rosso Conero, one of the most popular Marche Region wines in Italy and throughout the world. The quantity exported amounts to 30% ⁽⁶⁾. Its future prospects in the context of the restructuring reveal a moderately optimistic view of developments in the wine market, anticipating no slump in the demand for high-quality wines produced in restricted geographical areas. *Cooperativa Agricola Moderna Srl*'s restructuring plan provides for a proportion of production to be converted to wines of that kind.

⁽³⁾ Letter SG(2000) D/106283 dated 14.8.2000.

⁽⁴⁾ OJ C 288, 9.10.1999, p. 2.

⁽⁵⁾ Ismea-Nielsen study.

⁽⁶⁾ Market survey carried out by ASSIVIP, the Inter-Provincial Association of Quality Wine Producers.

C. Source of Cooperativa Agricola Moderna Srl's difficulties

- (12) According to the Italian authorities, the cooperative's financial difficulties are due to:
- a) Excessive financial costs associated with financing investments through short-term loans.
 - b) A constant downward trend in market prices not linked with similar reductions in production costs (manpower, technology). The low level of mechanisation of production and the age of certain vineyards in particular cannot assure adequate profit margins.
 - c) Insufficient reserves. The depreciation fund reserves over the last five years have not been sufficient in relation to the useful lifetime of equipment, and this has exacerbated the financial situation.
 - d) Natural disasters. The poor weather conditions which marked the 1998-1999 season (hail) and the 1999-2000 season (hail and drought) caused losses which were only partially offset by the insurance cover and were not eligible for compensatory aid under any national or regional schemes.
 - e) Investment in new vineyard equipment for which the public funding turned out to be considerably less than the maximum amount laid down by Community legislation. The Region had set the ceiling for eligible expenditure at ITL 17 000 000 per hectare and the rate of aid at 35%. In steeply sloping areas the equipment costs considerably exceeded this ceiling (ITL 32 000 000 per hectare).

Cooperativa Agricola Moderna Srl's debt burden

- (13) According to the Italian authorities, *Cooperativa Agricola Moderna Srl's* losses can be summed up as follows:

Difference in economic performance 1995–2000 (*)	ITL 776 432 609 (€ 400 994)
Difference in public aid for investments	ITL 179 363 240 (€ 92 633)
Loss of gross production due to weather conditions 1998/1999	ITL 165 120 000 (€ 85 277)
Loss of gross production due to weather conditions 1999/2000	ITL 194 599 000 (€ 100 502)
Total losses	ITL 1 315 514 849 (€ 679 406)

(*) The sum of ITL 776 432 609 (€ 400 994), which does not figure as an item in the liabilities in the cooperative's accounts, is calculated in the light of the following:

- a) in the last five years production from members' land was reimbursed at prices lower than the market value, which meant that the members absorbed a real loss of ITL 434 233 484 (€ 224 262,88);
- b) in order to guarantee that labour provided was remunerated in accordance with the wage agreements in force, the cooperative set aside only 50% of the necessary depreciation fund reserves for machinery, equipment and land improvements, the loss totalling ITL 375 911 000 (€ 194 142) over five years.

D. Rescue aid

- (14) Under aid scheme N 354/2000 the Commission had agreed that Italy could use the criteria listed below in order to assess the extent of the difficulties of the five companies receiving rescue aid. The eligible undertakings had to show at least two viability indices and two financial and structural indices.

Indices	Index	Value
Viability indices	Operating losses	Losses during the last three-year period
	Operating income/operational capital	Less than 3% in the last 5 financial years or a reduction in the last 5 financial years to a value of less than 3% in the last financial year (1,5% for cooperative societies)
	Operating income/value of production	Reduction of 50% in the last 5 financial years with an annual rate of reduction of at least 5% and no more than 20% in the last financial year
	Turnover/stocks	Reduction between 20 and 40% in the last 5 financial years with a rate of reduction of no more than 15% in the last financial year
	Financial charges/turnover	Between 4 and 15% in the last 5 financial years
Financial and structural indices	Time to pay suppliers	Increase of 70% in the last 5 financial years with a rate of growth of at least 10% and no more than 30% in the last financial year
	Operating income/financial costs	Reduction of 25-30% in the last 5 financial years with an annual rate of reduction of at least 3-4% and no more than 15% in the last financial year
	Working capital-Stocks/Current liabilities	Less than 0,6 in the last 3 financial years or reduction in the last 5 financial years up to a value of less than 0,6 in the last financial year
	Working capital/Current liabilities	Less than 0,8 in the last 3 financial years or reduction in the last 5 financial years up to a value of less than 0,8 in the last financial year
	Permanent capital /tangible assets	Less than 0,6 in the last 3 financial years or reduction in the last 5 financial years up to a value of less than 0,6 in the last financial year
	Short term bank debt/current liabilities	Not less than 0,35 and not more than 0,6 in the last 5 financial years, with an absolute increase in the last financial year of no more than 0,2

Cooperativa Agricola Moderna Scrl meets these requirements. The undertaking was assessed as being in difficulty on the basis of the following relationships: financial charges/turnover, turnover/stocks, (working capital-stocks)/current liabilities, short term bank debt/current liabilities.

E. Restructuring

- (15) *Cooperativa Agricola Moderna Scrl*'s restructuring plan calls for a proportion of the vineyards to be converted to the production of the registered designation of origin wines most representative of the region (Verdicchio dei Castelli di Jesi and Rosso Conero) and for investment in machinery in order to reduce manpower costs and increase profitability. The planned action is as follows:
- renovating and restructuring 10 hectares of vineyard with a registered designation of origin, in accordance with a five-year investment programme, to be carried out in accordance with Community regulations (Regulations (EC) No 1493/1999 and No 1227/2000);
 - establishing (in progress) 10,5 hectares of vineyard to produce wine with a registered designation of origin (2,5 hectares of Verdicchio dei Castelli di Jesi and 8,5 hectares of Rosso Conero);

- c) purchasing a grape harvesting machine at a cost of ITL 386 900 000 (€ 199 820) in order, by mechanising certain harvesting operations, to reduce manpower costs by approximately ITL 184 800 000 (€ 95 440) per year.

- (16) The costs of investments for the vineyard renovation and restructuring to be carried out in the five-year period covered by the plan are as follows:

Description	Amount (in ITL)
Vineyard (10 hectares x ITL 45 million)	450 000 000
[Eligible investment (10 hectares x ITL 40 million)]	[400 000 000]
Investment aid (40% of ITL 400 million)	-160 000 000
Remainder to be financed	290 000 000 (€ 149 773)

- (17) The members of the cooperatives further increased the undertaking's share capital by ITL 100 million (€ 51 650). The share capital therefore increased from ITL 92,7 million (€ 47 880) to ITL 192,7 million (€ 99 520) in the 2000 financial year. In addition, the members granted the cooperative a loan of ITL 500 million (€ 258 230).

- (18) The restructuring aid also covers the costs of consultancy and accompanying the restructuring plan, totalling ITL 120 000 000 (€ 61 975). These tasks were assigned to the Moncaro cooperative for a period of three years. The financial structure of the restructuring plan will therefore be as follows:

A. Previous debt (as shown on the preceding table)	ITL -1 315 514 849
B. Charges borne by the members (reduced reimbursement of production from their land, plus the increase in share capital)	534 233 484
Net debt (A-B)	-781 281 365
50% contribution to the purchase of equipment	-193 450 000
Plan accompaniment costs	-120 000 000
Total	-1 094 731 365

F. Use of the rescue aid

Losses for the operating year 1996	ITL 181 878 103
Difference in public aid for investments	179 363 240
50% contribution to the purchase of equipment	193 450 000
Plan accompaniment costs	120 000 000
Reduction in depreciation fund allocations (part)	225 308 657
Total	900 000 000

- (19) Converting the ITL 900 000 000 (€ 464 811) of rescue aid into a subsidy in the form of a capital grant will make it possible to reduce the aforementioned total debt by ITL 792 000 000 (€ 409 034) and to cover, in part, the purchase of the grape harvesting machine and the costs of accompanying the restructuring plan.
- (20) To offset this, the cooperative has undertaken to reduce its own production capacity in the wine sector. On 31 December 2001 its wine-growing capacity, taking into account the varieties grown and the standards for production stipulated by the chapters on the various wines with a registered designation of origin, was 1 674,10 tonnes. With the planned reduction of 16% over a period of five years, in accordance with point 74(i) of the Guidelines, production capacity will be reduced to 1 406,20 tonnes. This level will be maintained until 2005; the restructuring plan was submitted at the beginning of 2001.

G. *Reasons for initiating proceedings*

The Commission initiated proceedings in respect of the scheme in question for the following reasons:

- (21) The cooperative's annual balance sheet showed profits until 1996. The Commission therefore had doubts regarding the real extent of the indebtedness and difficulties being experienced by the cooperative in the period 1995-1999.
- (22) The Commission had doubts concerning the undertaking's ability to restore viability while reducing its production capacity by 16% and, in particular, concerning the figures provided by Italy, which showed that the reduced production would have a negligible effect on the economic balance of the undertaking (obtained from a fall in sales of just 1-2% in the period 2002-2005).
- (23) The Commission also had doubts regarding the amount of aid planned, which seemed more than the minimum necessary to permit restructuring to be carried out. In particular, for the purposes of calculating real needs, the Commission doubted that the depreciation fund reserves which had not been set aside could be counted as losses and expressed doubts regarding the eligibility, in the context of a restructuring plan, of aid for investment in equipment in an area of production that was not in deficit.
- (24) Lastly, the Commission expressed some uncertainty regarding the restructuring plan accompaniment costs, since it could not be ruled out that the cooperative assigned to carrying out these tasks would receive indirect aid.

III. **COMMENTS FROM ITALY**

- (25) By letter dated 16 September 2002 Italy provided further information and clarifications.
- (26) Regarding the long-standing nature of the cooperative's difficulties, Italy confirmed that *Cooperativa Agricola Moderna Srl* fulfilled the four criteria used by the Region, as approved in the context of State aid N 354/2000. It cited the specific nature of cooperative societies, which generally tend to balance their accounts even if they find themselves in difficulty, as witnessed also by the considerable financial charges following the very high level of debt, and to show an operating income such as to offset the financial charges.
- (27) Italy specified that, in order to balance its accounts in the period 1994-1999, the undertaking had acted on certain items in the accounts: (a) reducing the payments for the production from members' land (to rates lower than market prices), effectively requiring a significant financial contribution (ITL 434 million) from the cooperative members; and (b) cutting the funds set aside to offset depreciation to 50% of what was needed in order to keep machinery and other equipment in proper working order. This meant that there was a lack of financial resources for renewing equipment, which also had adverse effects on financial management.

- (28) In addition, the heavy losses in the 1996 financial year (ITL 182 million, or 13% of turnover) were not offset by earnings in later financial years. In 1998 and 1999 there were contingencies, of ITL 78 million and ITL 134 million, due to revenue from the production of agricultural products being less than estimated.
- (29) On restoring viability in spite of reducing production capacity, Italy stressed and confirmed that the requirement to reduce the undertaking's wine production by 16% over a period of five years (keeping the maximum production within the limit of 1 406,20 tonnes of grapes) did not entail a corresponding percentage reduction in the value of production inasmuch as changing the production mix to better quality grapes would bring about a much more minor reduction of the income from sales. Italy confirmed the calculations submitted in the course of the proceedings.
- (30) Regarding the eligibility of the investment aid for machinery (specifically, the grape harvesting machine), Italy pointed out that this purchase was essential to restoring the viability of the undertaking, since the machine concerned would make it possible to mechanise certain cultivation and harvesting operations, reducing the man-hours necessary for the management of the vineyards and thus reducing production costs (by ITL 185 million), making the wine-growing division of the undertaking profitable again.
- (31) Italy provided a table showing that the real costs of equipment for vineyards in steeply sloping areas in comparison with the reference values for which public aid were disbursed entailed a loss of income of ITL 179 363,240.
- (32) Italy also provided clarifications regarding the costs of the consultancy and accompaniment activities. Specifically, the sum of ITL 120 000 000 covered the costs of analysing the financial situation and assets in the years 1994-1999, drawing up the restructuring plan, drawing up forecast accounts until 2005, the technical and administrative assistance required to implement the action detailed in the plan, monitoring of the action undertaken and evaluation of any corrective action. Concerning the quantification of the costs of consultancy and accompaniment and the appropriateness of the amount, Italy refers to Presidential Decree No 645 of 10 October 1994, which sets the fees for the professional services of economists.

IV. ASSESSMENT OF THE AID

- (33) Article 87(1) of the Treaty provides that any 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 shall, in so far as it affects trade between Member States, be incompatible with the common market.
- (34) The aid in question fits this definition inasmuch as it confers an economic advantage upon a specific undertaking, is funded from the public purse (regional funds) and is likely to affect trade, given Italy's position in the wine sector (Italy is the European Union's second largest wine producer and in 1998 was responsible for 32% of EU production).
- (35) However, in the cases provided for in Article 87(2) and (3) of the Treaty, such measures may, by derogation, be considered compatible with the common market.
- (36) The only possible derogation in the case in point is laid down in Article 87(3)(c), according to which an aid may be considered compatible with the common 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.
- (37) Taking account of its nature, in order to benefit from the above derogation, the aid in question must comply with the conditions set out in the Guidelines.

- (38) The Guidelines stipulate the following general conditions in order for restructuring aid to be authorised:
- a) The firm must qualify as a firm in difficulty;
 - b) A restructuring plan such as to restore the long-term viability of the firm within a reasonable timescale must be presented;
 - c) Measures must be taken to mitigate any adverse effects of the aid on competitors (compensatory measures);
 - d) The amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken;
 - e) The aid must be issued on the “one time, last time” principle.

Cooperativa Agricola Moderna Srl's difficulties

- (39) After noting that there is no Community definition of what constitutes “a firm in difficulty” (point 4), the Guidelines stipulate that, *for the purposes of these Guidelines, the Commission regards a firm as being in difficulty where it is unable, whether through its own resources or with the funds it is able to obtain from its owner/shareholders or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to go out of business in the short or medium term. The usual signs of a firm being in difficulty are increasing losses, diminishing turnover, growing stock inventories, excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value.*
- (40) In the case in point, the undertaking's difficulties were already recognised in the context of a rescue aid scheme (N 354/2000 approved by the Commission by Decision SG(2000) D/106283) on the basis of the assessment method described in point (14) above, which formed an integral part of the authorising decision. The cooperative was declared to be in difficulty on basis of the following criteria: financial charges/turnover, turnover/stocks, working capital-stocks /current liabilities, short term bank debt/current liabilities.
- (41) Nonetheless, the rescue aid previously approved and the restructuring aid covered by this Decision are assessed and authorised in different ways and, in the case in point, rescue and restructuring are two parts of a single operation, even if they involve different processes (point 9 of the Guidelines). The Commission therefore considers that the fact that the firm is in difficulty may be taken as read (inasmuch as this finding has previously been established).
- (42) Indeed, this conclusion is corroborated by detailed analysis of the information provided by Italy. The balancing of the accounts, which gave rise to the Commission's doubts, is an accounting method which, in the case in point and taken in isolation, does not give a complete picture of the undertaking's real financial soundness. The balancing of the *Cooperativa Agricola Moderna Srl's* accounts was artificial, and was achieved thanks to the cooperative members' absorbing a substantial proportion of the losses by accepting lower rates of remuneration ⁽⁷⁾ for the production from their land and thanks to the failure to set aside the necessary depreciation fund reserves, which – although it is permitted under Italian law ⁽⁸⁾ – demonstrates that the undertaking was unable to finance the normal process of renewing production equipment from its own cash flow.

⁽⁷⁾ 50% of the market price as given by the Price observatory (Osservatorio dei prezzi) published by the magazine Terra e Vita, issue No 2, 2002.

⁽⁸⁾ Ministerial Decrees of 29.10.74 and of 31.12.88.

- (43) Evidence that the undertaking was in difficulty should be sought in the short-term debt and lack of cash flow associated with a downturn in turnover. With debts of ITL 1 254 832 000 (€ 648 070) in 2000, loss-making financial management (ITL 238 951 430 (€ 123 408) in 2000) and a liquidity index of 0,555 in 2000, faced with a falling turnover, *Cooperativa Agricola Moderna Srl* seems unable to restore viability through its own resources or those of its members, which have in fact already been used on several occasions (in the form of loans and reduced rates of reimbursement for the production from their land).

Restructuring plan

- (44) *The granting of aid is subject to the establishment of a restructuring plan, the duration of which must be as short as possible, must restore the long-term viability of the firm within a reasonable timescale and on the basis of realistic assumptions as to future operating conditions. In particular, a market study should be carried out. The improvement in viability must derive mainly from internal measures. Restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring (point 32 of the Guidelines).*
- (45) The Italian authorities have presented a restructuring plan accompanied by a market study and by the assessment of the cooperative's prospects with and without the public funding of ITL 900 000 000.
- (46) The restructuring plan described in point (15) and covering three years identifies the reasons for the undertaking's crisis and puts forward a series of internal measures to restore viability.
- (47) The planned action is as follows:
- a) conversion of a section of the vineyard to the production of wine with a registered designation of origin (Verdicchio and Rosso Conero grapes), which market studies have shown to have good commercial prospects, with the help of public aid;
 - b) creation (in progress) of 10,5 hectares of vineyard producing wine with a registered designation of origin (based on replanting rights);
 - c) purchase of a grape harvesting machine to mechanise production and reduce costs.
- (48) The Commission had doubts regarding the eligibility of the aid for investment in equipment which did not seem essential to restoring viability (the grape harvesting machine). However, more detailed examination of the information provided showed that mechanising production is a key element in restoring the viability of the undertaking. According to the calculation provided by Italy, the purchase of this item of equipment would entail annual savings of ITL 185 000 000 in vineyard management, which would generate 80% of the gross saleable production of the cooperative without any increase in production.
- (49) Italy has undertaken to reduce the cooperative's wine production capacity by 16% over a period of 5 years. The Commission had doubts regarding Italy's claim that this reduction in production would not entail significant reductions in the revenue from sales. However, careful examination of the tables submitted by Italy (points 50 and 51) bore out the theory that conversion to registered designation of origin grape varieties (Verdicchio Superiore, Verdicchio Riserva, Verdicchio Passito) with a better market price, would generate greater income, thus offsetting to a large extent the planned reduction in capacity. Restoring the viability of the undertaking is not therefore compromised by the planned reduction in capacity.

(50) Calculation of sales revenue without reduction in capacity:

Grape	ha	t/ha	Production capacity Max/t	Price €/100 kg	Total value
Verdicchio Castelli Jesi	0,62	14,00	8,7	42,09	3 653,52
Verdicchio Castelli Jesi	99,00	14,00	1 386,0	46,48	644 228,34
Verdicchio Superiore	0,00	11,00	0,0	50,61	0,00
Verdicchio Riserva	0,00	11,00	0,0	61,97	0,00
Verdicchio Passito	0,00	11,00	0,0	103,29	0,0
Rosso Conero DOC riserva	2,22	14,00	31,1	87,80	27 287,52
Esino rosso	8,96	15,00	134,4	33,31	44 770,62
Marche IGT bianco	4,89	18,00	88,0	20,66	18 183,41
Marche IGT rosso	1,44	18,00	25,9	22,21	5 756,22
TOTAL	117,13	14,29	1 674,1		743 879,62
Total ITL					1 440 351 800

(51) Calculation of sales revenue with the reduction in capacity:

Grape	ha	t/ha	Production capacity Max/t	Price €/100 kg	Total value
Verdicchio Castelli Jesi	0,62	12,32	7,6	42,09	3 215,10
Verdicchio Castelli Jesi	59,00	12,60	743,4	46,48	345 540,65
Verdicchio Superiore	20,00	10,45	209,0	50,61	105 780,70
Verdicchio Riserva	15,00	10,45	156,8	61,97	97 145,54
Verdicchio Passito	5,00	9,22	46,1	103,29	47 607,00
Rosso Conero DOC riserva	9,18	12,60	115,7	87,80	101 553,81
Esino rosso	2,00	12,60	25,2	33,31	8 394,49
Marche IGT bianco	4,89	16,20	79,2	20,66	16 365,07
Marche IGT rosso	1,44	16,20	23,3	22,21	5 180,60
TOTAL	117,13	12,01	1 406,3		730 782,97
Difference					-1,76%

- (52) Point 32 of the Guidelines stipulates that restructuring must involve the abandonment of activities which would remain structurally loss-making even after restructuring. In the case in point, the relevant production activities are not structurally loss-making, since the undertaking's difficulties are essentially financial in nature and, with the purchase of the equipment in question, the cooperative can increase its profit margins from wine growing. The restructuring plan is not, therefore, at variance with the terms of the Guidelines.

Avoidance of undue distortions of competition

- (53) In line with points 35-39 of the Guidelines, measures must be taken to mitigate as far as possible any adverse effects of the aid on competitors (compensatory measures) usually in the form of a limitation on the presence which the company can enjoy on its market. The methods for applying such a general principle to the agricultural sector are specified in Chapter 5 of the Guidelines. In principle, because even aid to very small undertakings in the agricultural sector can distort competition, the Commission requires a compensatory measure to be undertaken by all beneficiaries of restructuring aid, in the form of a reduction in capacity. In the event of primary production, either reduction in capacity or closure for a minimum period of five years is required.
- (54) For measures targeted on particular products or operators, the production capacity reduction must normally attain 16% of that for which the restructuring aid is effectively granted. The figure may be reduced to 14% in assisted areas. In the case in point, Italy has provided for capacity to be reduced by 16% of the undertaking's production capacity for a period of 5 years. The condition is accordingly met.

Aid limited to the minimum necessary

- (55) According to point 40 of the Guidelines, the amount and intensity of the aid must be limited to the strict minimum needed to enable restructuring to be undertaken in the light of the existing financial resources of the company. Therefore, aid beneficiaries will normally be expected to make a significant contribution to the restructuring plan from their own resources, or from external commercial financing. To limit the distortive effect, the form in which the aid is granted must be such as to avoid providing the company with surplus cash which could be used for aggressive market-distorting activities not linked to the restructuring process.
- (56) In examining whether this requirement under the Guidelines has been fulfilled, the Commission took the following factors into account:
- (57) Overall, the restructuring plan will benefit from the following public aid:
- ITL 900 000 000 (€ 464 810) as a subsidy in the form of a capital grant, plus
 - ITL 160 000 000 (€ 82 630) for the establishment of the vineyards (40% of the eligible expenditure).
- (58) Part of the ITL 900 000 000 will cover the real costs already incurred (losses due to adverse weather conditions, loss-making investments, inadequate depreciation fund reserves) and part will be used towards implementing the restructuring plan (accompaniment costs and a contribution towards the purchase of equipment). In essence, the aid will be limited to clearing the undertaking's debts and funding the investments necessary to restructuring.
- (59) The business plan submitted by the undertaking shows that, in the financial years following the restructuring, the cash flow generated will not be sufficient to allow the undertaking to carry out aggressive operations not directly linked to the investments provided for in the restructuring plan. Furthermore, the small scale of the undertaking and its minor importance in the Region's wine sector (0,38% of the region's production) ensure that the aid will have a negligible impact on competition.
- (60) The explanations provided by Italy (viz. point 31 above) with regard to the plan accompaniment costs have convinced the Commission that the planned fees are appropriate and have dispelled any doubts that the sums paid to the Moncaro cooperative, which is to perform the relevant services, may be viewed as aid.

Cooperativa Agricola Moderna Srl's contribution to the restructuring

- (61) As to the contribution made by the cooperative and its members to the restructuring plan, it should be pointed out that the investments under the restructuring plan will be financed up to at least 50% by the cooperative itself. In order to generate the necessary resources, the members increased the share capital by ITL 100 000 000 in 2000 and gave the cooperative a loan of ITL 500 000 000. The relevant requirement under the Guidelines can therefore be considered to have been met.

"One-off" aid

- (62) Point 48 of the Guidelines states that *restructuring aid should be granted once only*. Italy has confirmed that it will adhere to this principle.

V. CONCLUSIONS

- (63) The measure is in line with the Community Guidelines on State aid for rescuing and restructuring firms in difficulty,

HAS ADOPTED THIS DECISION:

Article 1

The State aid of ITL 900 000 000 (€ 464 810) which Italy is planning to implement for *Cooperativa Agricola Moderna Srl* is compatible with the common market.

Implementation of the aid is accordingly authorised.

Article 2

This Decision is addressed to the Italian Republic.

Done at Brussels, 6 October 2004.

For the Commission

Franz FISCHLER

Member of the Commission

COMMISSION DECISION

of 2 March 2005

on the aid scheme implemented by Italy for the reform of the training institutions

(notified under document number C(2005) 429)

(Only the Italian version is authentic)

(Text with EEA relevance)

(2006/225/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular the first subparagraph of Article 88(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having regard to the decision C(2003)793fin⁽¹⁾, by which the Commission decided to initiate the procedure laid down in Article 88(2) of the Treaty, in respect of the aid C22/2003 (ex NN168/2002),

Having called on interested parties to submit their comments pursuant to the provisions cited above, and having regard to their comments,

Whereas:

initiate the procedure laid down in Article 88(2) of the EC Treaty in respect of the aid scheme at hand, implemented not only by Piemonte Region but almost all over the Country.

(5) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* ⁽²⁾. The Commission called on interested parties to submit their comments.

(6) By letter of 06.06.2003 (A/33954), the Commission received comments from interested parties. They were transmitted to Italy by letter D/55630 of 04.09.2003. A demand for prorogation of the delay for reply was sent by Italy by letter A/37007 of 10.10.2003. By letter A/37736 of 11.11.2003 Italy submitted its comments.

(7) After a meeting between the Italian authorities and the Commission's Services, which took place on 16 April 2003, the comments of Italy to the opening of proceedings were submitted by letter of 13.06.2003 (A/34148).

(8) By letter of 18.12.2003 (D/58151) the Commission asked Italy for further information to be submitted.

(9) The Italian authorities asked, by letter A/31204 of 19.02.2004, for a prorogation of the deadline, which was accepted by the Commission (D/51435 of 26.02.2004), and supplied the requested elements by letters A/32487 of 07.04.2004 and A/32628 of 14.04.2004.

I. PROCEDURE

(1) By letter dated 27 May 2002, registered on 31 May 2002 (A/14263), the Commission received a complaint concerning the Decision No 57-5400, of the Regional Executive of the Region Piemonte, of 25 February 2002.

(2) A request for information was addressed to the Italian authorities by letter D/55115 of 13 September 2002. The complainant, who has been informed of the follow-up given to the complaint by letter of the Commission D/55127 of 16 September 2002, submitted additional information by letter A/38090 of 05.11.2002.

(3) By letter No 12998 of 24 October 2002, registered on 8 November 2002 (A/38204), the Italian authorities replied.

(4) By letter dated 21.03.2003 (SG(2003)D/229057), the Commission informed Italy that it had decided to

II. DETAILED DESCRIPTION OF THE AID

(10) According to the complainant, illegal aid would have been awarded to certain training institutions, active on the territory of the Region Piemonte, pursuant to Decision No57-5400, of the Regional Executive of the Region Piemonte, of 25 February 2002, which would have been put into effect in contravention of Article 88(3) of the Treaty.

⁽¹⁾ OJ C110 8.5.2003, p. 8.

⁽²⁾ See footnote 1

- (11) Nevertheless, it soon came out, from the documentation attached to the reply of the Italian authorities to the request for additional information of the Commission (A/38204), that the Decision 57-5400/2002, which resulted in the complaint, only constituted the implementing rule, as regards the Piemonte Region, of the national Ministerial Order (decreto ministeriale) 173/2001 (hereinafter referred to as MO 173/2001), and particularly of one of its sub-programmes, i.e. "grants for payment of past burdens".
- (12) Aid provided by the above mentioned sub-programme is mainly targeted to reimburse debts of the training institutions for financial burdens and bygone wage costs. It is provided in the form of non-repayable grants. In receipt of aid are training institutions, constituted in different forms, both profit-making and no-profit; large enterprises are not excluded.
- (13) Further sub-programmes are also provided for by MO 173/2001 as follow:
- (a) "incentive to voluntary departure of personnel"
 - (b) "adaptation of buildings and equipment to compulsory security standard and for improvement of access to disabled"
 - (c) "improvement of information equipment"
 - (d) "training of trainers, in order to comply with the accreditation requirements"
- (14) The Italian authorities confirmed, by letter A/38204 of 8 November 2002, that the aid at hand has been granted through a national fund, of the global amount of 180 billion ITL (about EUR 93 million €), implemented and distributed among the Italian Regions by MO 173/2001. The latter is the implementing rule of national law 388 of 23 December 2000, "Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2001)" (hereinafter referred to as law 388/2000), stipulating at Article 118(9), the reform of the Italian training institutions in view of their certification.
- (15) By the same letter, it has been confirmed that the aforementioned measure was not deemed, by the Italian authorities, to constitute State aid, as in their view it was intended to support non-market activities of general interest.
- (16) Italy also pointed out the certification system to be implemented was, at least de facto, tied to the reform of the training institutions, by means of the agreement of May 2000, between central Government and Italian regions, pursuant to the provision of Article 17 of the law of 24 June 1997, No 196 (hereinafter referred to as law 196/97). This formulation was confirmed by Article 118, par.9 of law 388/2000 and implemented by MO 173/2001.
- (17) According to Italy, training institutions funding was intended to remove the correspondent organisation shortcomings of the beneficiaries, possibly susceptible to undermine the success of the certification process. As a matter of fact, only the certificated training agencies have been, in principle, allowed to implement training activities financed by public resources from July 2003 onward.
- (18) On the other hand, the training institutions were already free to supply "private" training -which is to say market training services on a competitive basis- since 1997, further to the evolution of the relevant legal national framework (namely the "pacchetto Treu"; national law 144/99 and the State-Regions agreement of March 2000) and in several cases indeed implemented it.
- (19) Nevertheless, according to Italy, the measure under scrutiny would not result in a competitive advantage, as it is intended to preserve the expertise and know-how of the "historical" agencies (for example, at least 3 to 5 years running covenant with the funding public body are asked to be eligible for aid) and was necessary at that stage to make them fulfil the conditions set down for certification in order to keep them carrying on training, on a liberalized market. In addition, these agencies, operating mostly at local (sub regional) level, would be, in its opinion, incapable to affect trade.
- (20) As it concerns the enforcement of the measure under assessment over the territory of the Country, according to the information supplied by Italy, the Regions Friuli Venezia Giulia, Sicily and Campania have not implemented at all the scheme at hand. Sardinia and the Autonomous Province of Trento put the measure into effect pursuant to Commission Regulation (EC) No 69/2001 of 12 January 2001, on the application of Articles 87 and 88 of the EC Treaty to de minimis aid⁽³⁾, while Toscana and Umbria did the same them after the opening of proceedings on the present case. Only the Autonomous Province of Bolzano was not allowed any funding under M.O. 173/2001 and consequently did not implement the measure at all. Some other regions actually implemented only part of the sub-measures in cause.

⁽³⁾ O.J. L10 of 13.01.2001, p.30

III. GROUNDS FOR INITIATING THE PROCEDURE

- (21) First of all, the Commission observed that only training agencies were in receipt of the aid, granted from a fund expressly conceived by a national rule. In addition they were selected on the basis of specific criteria, stipulated by the Regions, thus the measure was to be considered selective and implying public expenditure.
- (22) Secondly, the Commission expressed strong doubts as to whether vocational training in its whole, could be considered as a non-market activity of general interest, as pointed out in the beginning by the Italian authorities. In that respect, the Commission took the view that these contributions were able to improve the financial situation of the recipients of the aid, as they reduced the costs that the beneficiaries would have normally had to bear by themselves.
- (23) Finally, although training is likely to constitute a limited object of intra-community exchanges, it could not be excluded that some training companies were active at the community level. These undertakings might be interested to enter the Italian training market.
- (24) The Commission therefore considered that the measure might constitute State aid within the meaning of Article 87(1) of the Treaty.
- (25) Provided it had to be qualified as State aid, the measure at hand should have been assessed on the basis of the provisions of the Treaty and of the other relevant Community rules.
- (26) In this respect, the Commission took the view that just part of the aid for the adaptation of premises and equipment, might benefit of an exemption, provided it referred to additional costs of employment of disabled workers. Likewise, aid under the sub-programme "training of trainers" might benefit of an exemption, as long as it met the criteria laid down in Commission Regulation (EC) No68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽⁴⁾.
- (27) On the contrary, at that stage of the dossier, all the other measures had to be qualified, to the Commission's mind, as operating aid, hence not susceptible to be granted any exemption, under any provisions of the Treaty.

IV. COMMENTS FROM INTERESTED PARTIES

- (28) Comments from interested parties has only been submitted to the Commission by an Italian training

agency, allegedly active at least at national level, which is also a beneficiary of the measure taken into consideration.

- (29) While it is of the opinion that the Italian rules for accession to the training market are the same for national and other Community undertakings, it also points out that the operational units of the training institutions are requested, in order to be charged with training supported by public funding, to have reached an efficiency threshold in the activity carried on in the past and to have a close link with the productive and social environment, according to criteria established by the Regions. This is why no foreign training agency would have been able to fulfil the conditions set down.

V. COMMENTS FROM ITALY

- (30) According to Italy, the measure at hand does not affect trade between Member States, as the certification system (sistema di accreditamento), which is based on objective criteria laid down in regional implementing rules, does not establish any barrier or limit to the establishment right of agencies coming from other regions or MS.
- (31) Moreover, to the Italian authorities' mind, the newcomers would not be damaged by the aid allowed to the Italian agencies which are supposed to be already in trouble to serve their own area, as confirmed by the losses suffered in the past, the measure under examination was intended to compensate for. Thus, in particular, aid in the form of compensation for losses suffered in the past, engendered by the implementation of vocational training, the training institutions were entrusted with, given in the framework of the public educational system, would not constitute aid in the meaning of Art.87§1, according to Italy.
- (32) Furthermore, in Italy's view, there would be no interest for foreign undertakings to enter the Italian "public" training market, because of its lack of profitability. This would be proved *inter alia* by the need for the aid under examination.
- (33) Finally, non-profitable vocational training, subsidised by public resources, not directly paid by the beneficiaries, given in the framework of the public educational system, should not be qualified as market activity, in Italian authorities' opinion, in this in particular in the light of the case law "Humbel" ⁽⁵⁾ and "Wirth" ⁽⁶⁾.

⁽⁴⁾ O.J. L10 of 13.01.2001, p.20, and amended by Commission Regulation (EC) No363/2004 of 25 February 2004 (OJ L63 of 28.02.2004,p.20)

⁽⁵⁾ judgment of the Court of 27 September 1988 on the case C263/86, E.C.R. 1988, p.5365, points 9-10; 15-18

⁽⁶⁾ judgment of the Court of 7 December 1993 on the case C109/92, E.C.R. 1993, p.I-6447

(34) Piemonte region, while agreeing that the measure is selective and involves State resources, denied that advantage and effects on intra-community trade were involved. With regard to the former, it took the view that the grants allowed only represented the compensation for services provided by the training agencies, as long as training supplied in the framework of public education is at stake; concerning the latter, in its opinion there is no training services trade among MS, the major obstacles being represented by language and lack of link to the territory. On the contrary a community market of the "private" training (i.e. competitive market training services), in its mind, can indeed exist.

(35) In any event, no prejudice would be brought to the newcomers by these measures, as they would have not had to undertake the costs the beneficiaries of the aid were obliged to face in the past. And, even if this advantage would be proved, it would be, in the view of the Region Piemonte, matter of distortion of a merely local market, so that, in its opinion, Art.87(1) would not be applicable.

VI. ASSESSMENT OF THE AID

(36) The Commission's analysis concerns the aid scheme constituted by the general measures in question, and not individual grants of aid to particular subjects. Since the opening of the procedure, the Italian authorities have been fully aware of the Commission's doubts concerning the scheme. If they considered that some particular cases should have been assessed on an individual basis, they should have had informed the Commission of their specific features and provided all the information needed for an individual assessment to be made.

VI.1. Existence of aid under Article 87(1) of the EC Treaty

(37) Article 87(1) of the EC Treaty states that "any 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 shall, insofar as it affects trade between Member States, be incompatible with the common market".

(38) The aid under scrutiny is realised through the grant of public resources from a fund of 180 billion ITL (about 93million EUR) which was expressly conceived by a national rule and shared among almost all the Italian regions, as it comes out from the annexe to the MO 173/2001. Therefore there is public fund expenditure.

(39) Only training agencies are beneficiaries of the aid scheme. Furthermore the recipients of the aid are selected on a regional basis, in the light of the available budget and of possible additional criteria, in respect of each Italian region, thus the selectivity of the measure is twofold.

(40) The presence of selectivity and public resources have been also confirmed by Italy, in its observations.

VI.1.1 Presence of economic activity

(41) It has first to be underlined that, in general terms, "the concept of undertaking, in the context of competition law, covers any entity engaged in an economic activity, regardless of the legal status (e.g. non-profit-making) and of the entity or the way in which it is financed" and that "any activity consisting in offering goods and services on a given market is an economic activity" ⁽⁷⁾

(42) This view was also expressed in the 1996 ⁽⁸⁾ and 2000 ⁽⁹⁾ communications by the Commission on services of general interest in Europe as well as in the Commission report to the Laeken European Council ⁽¹⁰⁾.

(43) As regards in particular the distinction between services of an economic nature and services of a non-economic nature, it has been recently underlined by the Commission (see in particular point 44 of the green paper on SGI ⁽¹¹⁾), quoted, among others in the white paper on SGI ⁽¹²⁾ that any activity consisting in offering goods and services on a given market is an economic activity. Thus, economic and non-economic services can co-exist within the same sector and sometimes even be provided by the same organisation. The internal market, competition and state aid rules apply to the former.

(44) On the contrary, internal market and competition rules do not apply to non-economic activities and therefore have no impact on services of general interest to the extent that these services indeed constitute non-economic activities. With regard to national education the European court of Justice ruled that the State, in establishing and maintaining such a system, is not seeking to engage in gainful activity but is fulfilling its duty towards its own population in the social, cultural and educational field ⁽¹³⁾.

⁽⁷⁾ see judgments in joined Cases C-180/98 to C-184/98 Pavlov and others [2000] ECR I-6451, paragraphs 74 and 75.

⁽⁸⁾ OJ C281 of 26.09.1996, p.3.

⁽⁹⁾ OJ C17 of 19.01.2001, p.4.

⁽¹⁰⁾ COM(2001) 598fin

⁽¹¹⁾ COM(2003) 270 of 21.5.2003

⁽¹²⁾ COM(2004) 374fin.

⁽¹³⁾ see footnote 5

- (45) Judgement Humbel in particular stipulates that courses taught in a technical institute under the national education system cannot be regarded as services for the purposes of Article 50 of the EC Treaty. Actually the first paragraph of the latter Treaty provides that only services “normally provided for remuneration” are to be considered to be services within the meaning of the Treaty.
- (46) Judgement Wirth ⁽¹⁴⁾ confirms the findings of the Court in Case Humbel, according to which the essential characteristic of remuneration lays in the fact that it constitutes consideration for the service in question, and is normally agreed upon between the provider and the recipient of the service. In the same judgment the Court considered that such a characteristic was absent in the case of courses provided under the national education system.
- (47) More in general, according to the case law of the Court of Justice, many activities conducted by organisations performing largely social functions, which are not profit oriented and which are not meant to engage in industrial or commercial activity, will normally be excluded from the Community competition and internal market rules ⁽¹⁵⁾.
- (48) In the case at hand, it resulted, from the information supplied by Italy, that the activity carried out by the training institutes concerned was twofold. On the one hand they assured institutional, social targeted vocational training, they had been entrusted with, addressed to individuals, delivered in the framework of public education system and paid by the State or its regions on the basis of the mere reimbursement of certain eligible costs. On the other hand they were entitled to, and, in several cases, indeed exploited market training activities, addressed both to undertakings and their employees and individuals, paying a market price. Accordingly, an obligation to separate the accounts, related to these two fields of activity, had been imposed by Italy to the beneficiaries.
- (49) Thus, the former can be considered not to involve any economic activity. This would result in the activity in cause not being subject to the competition and internal market rules, thus not falling under the scope of Article 87(1).
- (50) Nevertheless the Commission notes that recent case law also shows that the concept of economic activity is an evolving concept linked in part to the political choices of each Member State. Member States may decide to transfer to undertakings certain tasks traditionally regarded as falling within the sovereign powers of States. Member States may also create the conditions necessary to ensure the existence of a market for a product or service that would otherwise not exist. The result of such state intervention is that the activities in question become economic and fall within the scope of the competition rules.
- (51) In its judgment in “Ambulanz Glockner” ⁽¹⁶⁾ case, the Court pointed out that the transport of patients is an activity offered against remuneration by various operators on the market for emergency transport services and patient transport services. In the case in point, these services were provided by non-profit making bodies. However, the Court recalled that these particular characteristics are not such as to rule out classification as an undertaking within the meaning of Article 87 of the EC Treaty in cases where those bodies carry out an economic activity.
- (52) In its judgment on “Henning Vedfeldt” ⁽¹⁷⁾ case, the Court ruled that the manufacture within a hospital of a substance used in the course of a medical service at the hospital constitutes an economic activity. The fact that the service is not paid for directly by the patient but is financed from public funds does not affect its classification as an economic activity.
- (53) This approach has been confirmed in two other Court judgments ⁽¹⁸⁾, in which certain Member States argued that medical services did not constitute economic activities on the ground that the patient receiving treatment in a hospital needs not necessarily to pay for the services provided. The Court ruled that medical activities are economic activities, irrespective of whether the services need not to be paid for directly by the patients but by the public authorities or sickness funds.
- (54) Moreover, the presence of an element of solidarity does not necessarily rule out the possibility of carrying out an activity in a profit making capacity. Some operators may agree to take such aspects of solidarity into account in the light of other benefits they may obtain from intervening in the sector under consideration. Conversely, non-profit-making entities may compete with profit-making undertakings and may, therefore, constitute undertakings within the meaning of Article 87 of the EC Treaty.
- (55) As a consequence the Commission can not exclude that some activities carried out by the training institutions, even in the case of vocational training given in the framework of the public education system, were to be qualified as economic activities.

⁽¹⁴⁾ see footnote 6

⁽¹⁵⁾ see footnote 6

⁽¹⁶⁾ judgment of 25 October 2001, on case C475/99, point 19, ECR 2001, I-09089

⁽¹⁷⁾ judgment of 10 May 2001, on case C-203/99, ECR 2001, I-3569

⁽¹⁸⁾ judgments of 12 July 2001 on cases B.S.M. Smits/Stichting Ziekenfonds, C-157/99 [2001] ECR I-5473) and Abdon Vanbraekel, C-368/98 [2001] ECR I-5363

- (56) Should the latter be the case, Art.86(2) of the Treaty - undertakings entrusted with the operation of services of general economic interest - would apply. The quoted provision states that such undertakings are subject to the rules of the Treaty, in particular to the rules on competition, in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. It further stipulates that the development of trade must not be affected to such an extent as would be contrary to the interest of the Community.
- (57) Accordingly, given the training institutions were entrusted with a public service mission, within the framework of the relevant national and regional rules, by means of binding acts, i.e. through the covenants entered into among Italian regions and training institutions, and there was no risk of overcompensation, i.e. as aid could not exceed the amount of the relevant costs, according to the separate accounting established, an exemption can be accorded pursuant to Article 86(2) of the Treaty.
- (58) On the contrary, the Commission draws the conclusion that the presence of economic activity is sufficiently proved with respect to the second type of activity listed at point 48 above, and this on the basis of the data supplied by the Italian authorities themselves.

VI.1.2 Distortion of competition and effects on trade

- (59) In order to fall within the scope of Article 87, aid must distort or threaten to distort competition, insofar trade between Member States is affected. As far as State aid is concerned, these two conditions are often linked.
- (60) As it concerns, in particular, intra-community trade, the Court of First Instance⁽¹⁹⁾ recalled that when financial aid strengthens the position of an undertaking compared with other undertakings competing in intra-Community trade, the latter must be regarded as affected by that aid. This is so where the undertaking receiving the aid is actively involved in trade between Member States or participates in contracts awarded following a tendering procedure in several Member States.
- (61) Moreover, aid may also be of such a kind as to affect trade between Member States and distort competition even if the recipient undertaking, which is in competition

with undertakings from other Member States, does not itself participate in cross-border activities. Where a Member State grants aid to an undertaking, internal supply may be maintained or increased, with the consequence that the opportunities for undertakings established in other Member States to offer their services to the market of that Member State are reduced.

- (62) Thus, neither direct participation to the export activities by the recipients⁽²⁰⁾, nor proof of actual exchanges, in the same market segment, between Member States are necessary to prove the affectation of trade. In addition, neither the relatively small amount of aid nor the relatively small size of the recipient allow to draw, *a priori*, the conclusion that trade is not affected.
- (63) In this respect, the Commission notes that in the case under examination, some of the beneficiaries are active at least at regional or supra-regional (sometimes national) level and have a sizeable economic turnover which is deemed to allow them to bridge the barriers to training services supply being spread over the community market. Furthermore, the Commission observes that some beneficiaries are already active at a supra-national level.
- (64) Thus, in particular, a single recipient of the aid is already operating in some Member States like Belgium (4 seats), France (7 seats), Germany (4 seats) and U.K. (1 seat), non Member States (Switzerland) and non European Countries (Argentina) as well. It is furthermore partner in the "Exemplo" international network, composed by 14 European Training agencies, which is intended to reach some targets as knowledge sharing, benchmarking, cooperation in the framework of the European projects, the development of a specific market segment for e-commerce and on-line training.
- (65) In the light of the above and as far as the effects on trade are at stake, the Commission comes to the conclusion that the qualification of State aid, in the meaning of Art.87§1 of the EC Treaty, with respect to the measures at hand, is to be confirmed, as intra-community trade is indeed susceptible to be affected.

VI.2. Assessment of the legality of the aid

- (66) The Commission observes that the notification obligation pursuant to Article 88(3) of the EC Treaty has not been fulfilled in the present case.

⁽¹⁹⁾ judgment of 29 September 2000, on case T-55/99, *Confederacion Espanola de Transporte de Mercancias*, [2000] ECR II-03207.

⁽²⁰⁾ see among others judgment of 13.7.1988 on case 102/87 French Rep v/s CCE, ECR 1988, p.04067 and judgment of 24.7.2003 on case C280/00 Altmark, ECR 2003, p.07747, points 77 and 78.

- (67) Having not been previously notified to the Commission as regards its compatibility with the State aid rules, the aforementioned scheme has been put into effect in contravention of Article 88(3) of the Treaty. It is consequently unlawful.

VI.3. Assessment of the compatibility with Article 87 of the EC Treaty

Grants for payment of past burdens

- (68) While the sub-programme "grants for payment of past burdens" could in principle qualify as "de minimis" ⁽²¹⁾, as neither the sectors which are not covered by the "de minimis" Regulation, nor aid to export related activities or contingent upon the use of domestic goods are taken into consideration by the scheme, it has to be stressed that the amount of the aid often exceeds the ceiling of 100 000€.

- (69) Thus, the Commission holds the view that the measure under consideration could not be deemed to be in compliance with the "de minimis" Regulation. Furthermore, the Italian authorities did never invoke the qualification of the scheme at hand as "de minimis".

- (70) As the present sub-programme does not take in consideration any of the eligible costs laid down at Article 4, point 7, letters a) to f) of the Regulation on training aid ⁽²²⁾, it could not be granted an exemption on the basis of the above mentioned Regulation. Furthermore, it has not been qualified as training aid by the Italian authorities themselves.

- (71) If the aid is assessed on the basis of Commission Regulation (EC) No 70/2001 of 12 January 2001, on the application of articles 87 and 88 of the EC Treaty to State aid to small and medium-sized enterprises ⁽²³⁾, the Commission notes that no investment aid is foreseen by the present sub-programme, either in tangible or in intangible assets. On the contrary it just aims to reduce the current expenses, through the granting of aid related to past burdens, to be qualified as operating aid, which does not normally enjoy a favourable prejudice by the Commission.

- (72) In particular, the grant of operating aid, not linked to any extra-cost engendered by the accomplishment of a mission of public service, is susceptible to result in a

decrease of the general costs the undertakings have normally to bear by themselves.

- (73) As a matter of fact, operating aid may exceptionally be granted only in regions eligible to the derogation of Article 87(3)(a), provided that requirements set down at point 4.15 of the regional aid guidelines ⁽²⁴⁾ are met. In the case at hand, it is to be stressed that the relevant national rule is applicable, unchanged, over the whole territory of the Member State, without any distinction aiming to bridge regional gaps.

- (74) The Commission takes the view that the scheme under consideration does not satisfy any of the above mentioned requirements. In addition, neither the SME Regulation nor the regional aid guidelines have been invoked by the Italian authorities with respect to a possible compatibility of the scheme.

- (75) Furthermore, the aid in question does not seem to promote any other horizontal Community objective according to Article 87(3)(c) of the Treaty, such as research and development, employment, environment or rescue and restructuring, within the meaning of the relevant guidelines, frameworks and regulations.

- (76) The derogations laid down at Article 87(2) (a) to (c) ⁽²⁵⁾ of the Treaty are clearly not applicable in the present file. The same conclusion may be drawn with respect to the exemptions set down at Art.87(3), letters b) and d) ⁽²⁶⁾.

Concerning sub-programmes "incentive to voluntary departure of personnel" and "improvement of information equipment"

- (77) The reasoning applied with respect to sub-programme "grants for payment of past burdens" is also applicable for these sub-programmes.

⁽²⁴⁾ Guidelines on national regional aid, published in the O.J. C74 of 10.03.1998, p.9.

⁽²⁵⁾ Article 87(2) stipulates that the following aid shall be compatible with the common market: (a) aid having a social character, granted to individual consumers, provided that such aid is granted without discrimination related to the origin of the products concerned; (b) aid to make good the damage caused by natural disasters or exceptional occurrences; (c) aid granted to the economy of certain areas of the Federal Republic of Germany...

⁽²⁶⁾ Article 87(3) declares compatible with the common market b) aid to promote the execution of an important project of common European interest; c) "aid to remedy a serious disturbance in the economy of a Member State", and d) "aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest".

⁽²¹⁾ see footnote 3

⁽²²⁾ see footnote 4

⁽²³⁾ O.J. L10 of 13.01.2001, p.33

(78) In fact, the Commission takes the view that the most part of these aids have to be qualified as operating aid; hence they can not be granted any exemption.

(79) In particular, aid to encourage voluntary resignations of the employees, which appears to confer an undue competitive advantage to the extent that it allows training agencies in receipt of aid to decrease artificially their personnel costs with respect to their competitors is not deemed to qualify for any exemption, either in the light of Commission Regulation No2204/2002 of 12 December 2002, on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽²⁷⁾ or on the basis of any other relevant rule.

(80) Likewise, the expenses for the improvement of information equipment are not susceptible to qualify for an exemption, as they neither constitute an initial investment in the meaning of the SMEs Regulation ⁽²⁸⁾, nor represent a tool for the regional development, in the sense of the guidelines on national regional aids ⁽²⁹⁾.

Concerning sub-programmes “adaptation of buildings and equipment to compulsory security standard and for improvement of access to the disabled” and “training of trainers”

(81) Aid for the adaptation of buildings and equipment to compulsory security standard may not be allowed any exemption under any of the State aid rules in force at present, for the reasons outlined at points 68 to 76 above.

(82) On the contrary, the part of the aid for the adaptation of premises and equipment, referring to additional costs of employment of disabled workers, may benefit of an exemption, under the Employment Regulation ⁽³⁰⁾, in particular Art.6, par.2, letters (a) and (c).

(83) Likewise, aid under sub-programme “training of trainers” can enjoy an exemption, in the light of the training Regulation ⁽³¹⁾.

VII. CONCLUSIONS

(84) To the extent that vocational training making part of the public education system given to individuals, as set out at

previous points 44-49, and according to the separate accounts maintained, is not considered to be an economic activity, aid granted vis-à-vis costs related to such activity does not fall under the provision of Art.87(1) of the Treaty, thus not qualifying as State aid.

(85) On the other hand, should some activities carried out in the framework of the public education system, be considered as an economic activity, further to the evolution of the concept of economic activity as highlighted at points 50 to 55 above, they can be granted an exemption under Article 86(2) of the Treaty.

(86) On the contrary, aid towards costs engendered by market activities fulfils all the requirements to be qualified as State aid, thus falling under the provision of Art.87(1) of the Treaty.

(87) The Commission regrets that, having been implemented, to the extent it constitutes State aid in the sense of Article 87(1), in breach of Article 88(3) of the Treaty, the aid scheme for the reform of the training institutions is consequently unlawful.

(88) Sub-programmes “adaptation of buildings and equipment to compulsory security standard and for the improvement of access to the disabled”, for the part concerning additional costs of employment of disabled workers, and “training of trainers” may be granted an exemption pursuant respectively to Commission Regulation (EC) No2204/2002 of 12 December 2002 on the application of Articles 87 and 88 of the EC Treaty to State aid for employment ⁽³²⁾ and Commission Regulation (EC) No68/2001 of 12 January 2001 on the application of Articles 87 and 88 of the EC Treaty to training aid ⁽³³⁾.

(89) Aid granted pursuant to sub-programmes “grants for payment of past burdens”, “incentive to voluntary departure of personnel”, “improvement of information equipment”, “adaptation of buildings and equipment to compulsory security standard and for the improvement of access to the disabled” -for the part concerning adaptation to compulsory security standard- are incompatible with the common market.

⁽²⁷⁾ O.J. L337 of 13.12.2002, p.3.

⁽²⁸⁾ see footnote 23

⁽²⁹⁾ see footnote 24

⁽³⁰⁾ see footnote 27.

⁽³¹⁾ see footnote 4

⁽³²⁾ see footnote 27

⁽³³⁾ see footnote 4

(90) The commission observes that “de minimis” Regulation No 69/2001⁽³⁴⁾ could in principle apply to all the measures concerned, as neither the sectors which are not covered by the regulation itself, nor aid to export related activities or contingent upon the use of domestic goods are taken into consideration. Consequently, provided all the requirements of Regulation (EC) No 69/2001 are met, and in particular the threshold of 100 000 EUR in any relevant three years period, is observed with respect to the single beneficiaries, the aid allowed pursuant to the measures at hand can be qualified as “de minimis” aid, thus not falling under the provision of Article 87(1) of the Treaty.

(91) This Decision concerns the aid scheme in question and must be implemented immediately. It is the Commission’s long established practice, in accordance with Article 87 of the EC Treaty, to require recovery from the recipient of aid which under Article 88 of the EC Treaty, has been unlawfully granted and is incompatible. This practice has been confirmed by Article 14 of the Council Regulation (EC) No 659/1999⁽³⁵⁾.

(92) Commission also notes that a decision on aid schemes is without prejudice to the possibility that individual measures may not constitute aid (because the individual grant of aid is covered by the de minimis rules) or may be deemed, wholly or partially, compatible with the common market on its own merits (for instance, by virtue of a block exemption regulation).

(93) In the light of Article 14(2) of the Council Regulation (EC) No 659/1999, the aid to be recovered pursuant to a recovery decision shall include interest at an appropriate rate fixed by the Commission. Interest shall be payable from the date on which the unlawful aid was at the disposal of the beneficiary until the date of its actual recovery.

(94) The interest shall be calculated in conformity with the provisions laid down in Chapter V of 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⁽³⁶⁾.

(95) To this end, Italy shall enjoin to the potential beneficiaries of the scheme, within the two months of this decision, to reimburse the aid with the interests as specified below. The total recovery shall be completed at the latest at the end of the first fiscal year following the date of notification of the present decision.

(96) Italy shall provide the information requested using the questionnaire attached in annex 1 of the decision, setting up a list of the beneficiaries concerned and indicating clearly the measures planned and already taken to obtain an immediate and effective recovery of the illegal state aid. The Commission asks Italy to submit within the two months of the decision all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the illegal aid (such as circulars, recovery orders, etc.).

HAS ADOPTED THIS DECISION:

Article 1

1. Aid granted by Italy, under law 388/2000 implemented by MO 173/2001, vis-à-vis costs related to vocational training activities given to individuals, making part of the public education system, according to the separate accounts maintained, does not fall under the provision of Art.87(1) of the EC Treaty, thus not qualifying as State aid, to the extent that these activities do not qualify as economic activities.

2. Aid referred to at paragraph 1 above, granted vis-à-vis economic activities, carried out in the framework of the public education system, can be granted an exemption under Article 86(2) of the Treaty.

Article 2

1. As long as it falls under the scope of Article 87(1) of the EC Treaty, the aid scheme which Italy has implemented on the basis of national law 388/2000, Art.118, par.9, Ministerial Order (Decreto Ministeriale) No 173 of 30 May 2001, and related implementing rules put into force by the Italian Regions, having not been previously notified to the Commission pursuant to Article 88(3) of the EC Treaty, is unlawful.

2. The aid scheme referred to at paragraph 1 above, is compatible with the common market with respect to sub-programmes “adaptation of buildings and equipment for the improvement of access to disabled” and “training of trainers”.

3. The aid scheme, referred to at paragraph 1 above, is incompatible with the common market, with respect to sub-programmes “grants for payment of past burdens”, “incentive to voluntary departure of personnel”, “improvement of information equipment”, “adaptation of buildings and equipment to compulsory security standard”.

⁽³⁴⁾ see footnote 3

⁽³⁵⁾ JO L83 of 27.3.1999, p.1.

⁽³⁶⁾ OJ, L 140, 30.4.2004, p.1.

Article 3

1. Italy shall take all necessary measures to recover from the beneficiaries the aid referred to in Article 2, par.3 and unlawfully made available to the beneficiaries.
2. Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective implementation of the decision.
3. The recovery shall be completed at the latest at the end of the first fiscal year following the date of notification of the present decision.
4. The sums to be recovered shall bear interest throughout the period running from the date on which they were first put at the disposal of the beneficiaries until their actual recovery.
5. The interest shall be calculated in conformity with the provisions laid down in Chapter V of 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.
6. Within a time period of two months from the notification of the decision, Italy shall enjoin to all beneficiaries from the aid

mentioned in Article 2, par.3 to reimburse the illegal aid and the interests.

Article 4

The Republic of Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures already taken and planned to comply with it. It will provide this information using the questionnaire attached in Annex 1 of this Decision.

Italy shall submit within the same period of time, all documents giving evidence that the recovery proceedings have been initiated against the beneficiaries of the illegal aid.

Article 5

This Decision is addressed to the Republic of Italy.

Done in Brussels, 2 March 2005.

For the Commission

Neelie KROES

Member of the Commission

ANNEX

Information regarding the implementation of the Commission Decision C(2005)429**1. Total number of beneficiaries and total amount of aid to be recovered**

1.1. Please explain in detail how the amount of aid to be recovered from individual beneficiaries will be calculated?

— The principal

— The interests

1.2. What is the total amount of unlawful aid granted under this scheme that is to be recovered (gross aid equivalents; prices of ...):

1.3. What is the total number of beneficiaries from which unlawful aid granted under this scheme is to be recovered:

2. Measures planned and already taken to recover the aid

2.1. Please describe in detail what measures are planned and what measures have already been taken to effect an immediate and effective recovery of the aid. Please also indicate where relevant the legal basis for the measures taken/planned.

2.2. By what date will the recovery of the aid be completed?

3. Information by individual beneficiary

Please provide details for each beneficiary from whom unlawful aid granted under the scheme is to be recovered in the table overleaf.

Identity of the beneficiary	Amount of unlawful aid granted (*) Currency: ...	Amounts reimbursed (°) Currency: ...

(*) Amount of aid put at the disposal of the beneficiary (in gross aid equivalents; in prices of ...).

(°) Gross amounts reimbursed (including interests).

COMMISSION DECISION**of 7 December 2005****Investments of Shetland Leasing and Property Developments Ltd in the Shetland Islands
(United Kingdom)***(notified under document number C(2005) 4649)***(Only the English text is authentic)****(Text with EEA relevance)***(2006/226/EC)*

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

the European Union on 10 June 2005 ⁽²⁾. The Commission invited any interested parties to submit their observations on the case. No comments were received.

Having regard to the Treaty establishing the European Community and in particular the first paragraph of Article 88 (2) thereof,

II DESCRIPTION

Having regard to Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty ⁽¹⁾, and in particular Article 14 thereof,

(4) The Shetland Islands Council (SIC), a public authority in Shetland, set up two trusts, the Shetland Development Trust (Development Trust) and the Shetland Islands Council Charitable Trust (Charitable Trust).

Having invited interested third parties to present their observations, in accordance with the first subparagraph of Article 88 (2),

(5) The Development Trust was established to serve as the main means for financing economic development projects in Shetland; it makes funding available through loans. The trustees are the councillors of SIC plus two independent trustees.

Whereas:

I PROCEDURE

(1) In January 2004 the Commission was informed by a citizen of the United Kingdom of investments made with the involvement of authorities of the Shetland Islands of the United Kingdom which possibly constituted State aid. By letters of 17 February 2004 and of 1 September 2004 the Commission requested the United Kingdom to provide information about these investments, to which the United Kingdom replied by letters of 30 April 2004 and 13 December 2004.

(6) The Charitable Trust is the trust fund of the SIC that grants loans for charitable purposes. The trustees of the Charitable Trust are the councillors of SIC, plus two independent trustees.

(2) The Commission informed the United Kingdom by letter of 20 April 2005 of the decision to initiate the formal investigation procedure under Article 88 (2) of the EC Treaty. The United Kingdom gave its comments on the case by letter of 19 May 2005.

(7) The funding of both the Charitable Trust and the Development Trust is derived from a reserve fund set up by the SIC. This reserve fund itself is funded from an agreement concluded on 12 July 1974 between the SIC and oil companies using the harbour facilities of Sullum Voe. This agreement states that fees are paid by these companies 'in respect of the import of crude oil and as compensation for disturbance caused thereby'.

(3) The Commission decision to initiate the formal investigation procedure was published in the *Official Journal of*

(8) For commercial and development activities the SIC has set up Shetland Leasing and Property Ltd (SLAP), which is a trading company with limited liability, operating for profit and wholly owned by Charitable Trust. The tasks of SLAP are to take equity holdings in local businesses, to make loans to local industry at commercial rates and to construct industrial buildings for lease at commercial rents.

⁽¹⁾ OJ L 83, 27.3.1999, p. 1. Regulation as amended by the 2003 Act of Accession.

⁽²⁾ OJ C 141, 10.6.2005, p. 12.

- (9) As a commercial limited company wholly owned by the Charitable Trust, SLAP obtains the funding for its activities from the Charitable Trust and from its own profits. For some specific projects funds are also provided by the Development Trust.
- (10) In 1999 the board of SLAP decided to invest in a company named Shetland Seafish Ltd. This company was established on 7 October 1999 as a result of a financial merger between Williamson Ltd and Ronas Ltd. Both companies were loss-making at the time and were considered insolvent. By setting up Shetland Seafish Ltd and merging both loss-making companies it was expected that profits would grow and that the new company would be profit making within a short time. It was projected that by the end of 2002 Shetland Seafish Ltd would be generating a profit in excess of GBP 460 000.
- (11) SLAP invested in Shetland Seafish Ltd by acquiring 156 250 shares (62,5 %) of the ordinary shares of GBP 1 each and 1 000 000 preference shares of GBP 1 each (100 %). The other shareholders of ordinary shares were the Shetland Seafish Producers Organisation Ltd (43 750 shares), Mr. L.A. Williamson (18 750 shares), Mr. R.A. Carter (18 750 shares) and the Shetland Fisheries Centre Ltd (12 500 shares).
- (12) In June 2000 the board of SLAP decided to invest once more in Shetland Seafish Ltd when the company decided to take over the activities of Whalsay Ltd, a loss-making fish-processing company based in Shetland. The funding of this takeover by SLAP consisted in SLAP's acquiring 2 000 000 additional preference shares in Shetland Seafish Ltd, which were subscribed by SLAP in two tranches; in November 2000 SLAP acquired 1 200 000 Preference Shares and on 16 February another 800 000 Preference Shares.
- (13) As from 16 February 2001, the issued shared capital of Shetland Seafish Ltd thus comprised 250 000 Ordinary shares and 3 000 000 Preference shares, held in the same proportions and by the same shareholders as at the initial issuing of shares in 1999.
- (14) According to a special resolution adopted in 17 December 1999 by the board of Shetland Seafish Ltd the preference shares in Shetland Seafish Ltd have 'the right to a fixed non-cumulative preferential dividend at the rate of 10 % (net of associated tax credit) per annum on the capital for the time being paid up or credit as paid up thereon accruing from the date of subscription therefore and to be paid (to the extent that there are profits available for distribution) annually on 31 January in each year in respect of the 12 months ending on that date; and may be redeemed at par (i.e. at 1 per preference share) plus any unpaid preferential dividend, at the option of the Company at any time after the first anniversary of the date of the allotment of the preference shares.'
- (15) From the data provided it is clear that Shetland Seafish Ltd has been loss making since 1999.
- (16) In its letters of 30 April 2004 and 13 December 2004, the United Kingdom stated that the investments should be considered as private investments, as SLAP is a private body and at the time of the investments both the SIC and SLAP had legitimate expectations that the monies involved should be considered as private funds.
- (17) Secondly the United Kingdom stated that if the monies involved are considered to be public funds, the investments made by SLAP are investments which could have been decided upon by a normal private operator. To support this statement the United Kingdom had provided two reports issued with regard to the investments in question: the Shetland Seafish Merger Report and the Whalsay Report.
- Shetland Seafish Merger Report**
- (18) The Seafish Merger Report of 27 September 1999 is a report by Mr. M. Goodlad and Mr. S. Gillani to the Directors of SLAP on 'A proposed restructure and merger of L.A. Williamson & Sons (Shetland) Limited & Ronas Fisheries Limited'.
- (19) According to the figures and the prognoses in the report, the merger of L.A. Williamson & Sons (Shetland) Limited & Ronas Fisheries Limited, through the establishment of Shetland Seafish Ltd would begin to yield profits within three years.
- Whalsay Report**
- (20) The Whalsay Report is a report by Mr. John Inkster, who at that time held the position of Managing Director of Whalsay Fish Processors Ltd, issued in June 2000. This report gives an analysis of the situation of the companies involved, the developments in the market and possible advantages for Shetland Seafish Ltd to acquire Whalsay Ltd.

Grounds of the formal investigation procedure

- (21) The Commission considered that it could not be established from the figures and data contained in the reports submitted by the authorities of the United Kingdom whether these investments could be considered to be profitable investments and whether SLAP had acted like a normal private investor. As, furthermore, the investments were clearly for the benefit of the companies involved and those companies were in direct competition with other fish-processing companies both within the United Kingdom and in other Member States, the Commission considered that the investments appeared to be State aid within the meaning of Article 87 of the EC Treaty.

- (22) As the investments were made in 1999 and 2000, they were assessed in the light of the 1997 Guidelines for the examination of State aid to fisheries and aquaculture⁽¹⁾. According to point 2.3 of those Guidelines, aid that does not fulfil the conditions laid down therein must be assessed on a case-by-case basis. According to point 1.2., State aid which is granted without imposing any obligation on the part of the recipients and which is intended to improve the situation of undertakings and increase their business liquidity and which has the effect of improving the recipient's income is, as operating aid, incompatible with the common market. According to the Guidelines, operating aid can only be declared compatible with the common market if such aid is linked to a restructuring plan compatible with the common market. As such a restructuring plan was not submitted, the Commission considered that the investments were incompatible with the common market.

III COMMENTS FROM THE UNITED KINGDOM

- (23) In its reply of 19 May 2005, the United Kingdom contends that SLAP should be considered as a private body. It further states that all evidence concerning the case had already been forwarded to the Commission, that the information contained in the Seafish Merger Report is considered sufficient as a basis for the assumptions made, that the assumptions made in the report should be considered conservative and prudent, and that the original business case for the mergers as set out in the report was justifiable in the context of SLAP's capacity as a private investor.
- (24) The United Kingdom maintains that if the Commission adopts a negative decision, recovery of the aid should not be required, as it would be contrary to the principle of the protection of legitimate expectations. With reference to Commission Decision 2003/612/EC of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands (United Kingdom)⁽²⁾, the United

Kingdom closes by saying that the UK authorities have consistently acted in such a way that it could reasonably be concluded that the fund is a private fund under the rules governing the Community Structural Funds.

IV ASSESSMENT

- (25) It must be determined first whether the measure can be regarded as State aid and, if this is the case, whether this aid is compatible with the common market.

A. Existence of State aid

- (26) According to Article 87(1) of the EC Treaty, 'save as otherwise provided in this Treaty, any 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 shall, insofar as it affects trade between Member States, be incompatible with the common market'. Four conditions are required for classifying a measure as a State aid: first, the measure must provide some advantage to the undertakings which benefit from it; second, the aid must be granted by the State or through State resources; third, it must distort or threaten to distort competition by favouring certain undertakings; and, finally, must affect trade between Member States.

State resources

- (27) The funds of SLAP which have been used for the investment are derived from funding by the Charitable Trust. The Charitable Trust was created by the SIC to receive and hold, on behalf of the Shetland community, disturbance receipts which the oil industry had agreed to pay.
- (28) As was already pointed out by the Commission in its decision of 3 June 2003 on loans for the purchase of fishing quotas in the Shetland Islands, these monies, which are directly related to the disturbance caused to the Shetland Islands population and not to the actual provision of the harbour facilities, cannot be regarded as private funds but must be regarded as 'State resources' for the purposes of Article 87 of the EC Treaty.
- (29) The investments of SLAP currently under investigation are funded from the same type of funding. With regard to the conclusions of the Commission in its decision mentioned in paragraph (24) and the fact that the United Kingdom has not provided any additional evidence that these funds are private funds, the Commission considers that the investments must be regarded as funded from State resources.

⁽¹⁾ OJ C 100, 27.3.1997, p. 12.

⁽²⁾ OJ L 211, 21.8.2003, p. 63.

Imputability

- (30) In its decision mentioned above, the Commission also pointed out that the trustees of the Charitable Trust are the councillors of the SIC. Although these councillors act as trustees ex officio, the fact that they are nominated by the SIC means that the latter is able to exercise a dominant influence over the trust and SLAP as well as over the funds at their disposal. There is therefore a set of indicators showing that decisions cannot be taken without regard to the requirements of the public authority.
- (31) Therefore, in the light of the *Stardust* case⁽¹⁾ and given the fact that the funds of SLAP are derived from public funding and that the public authority is able, directly or indirectly, to exercise a dominant influence over both the Charitable Trust and its funds, the decisions regarding those funds must be regarded as decisions imputable to the public authority and granted through State resources.

Advantage for the beneficiary and the Market economy investor principle

- (32) Public investments are regarded as State aid if the investments are decided upon in circumstances which would not be acceptable to a private investor acting under normal market-economy principles.
- (33) According to the United Kingdom, SLAP acted like a normal market-economy investor in investing in Shetland Seafish Ltd and the takeover of Whalsay Ltd by Shetland Seafish Ltd. This allegedly follows from two reports submitted to the board at the time of the investments: the Shetland Seafish Merger Report and the Whalsay Report.
- (34) An investment can be considered to be in line with the market economy investor principle if the investment is made in circumstances that would be acceptable to a private investor operating under normal market economy conditions. An investment would not be considered in line with the principle where the financial position of the company, and particularly the structure and volume of its debt, is such that a normal return cannot be expected within a reasonable time from the investment.

Shetland Seafish Merger Report

- (35) The prognoses of profit contained in the Seafish Merger Report of 27 September 1999 are based on a number of

assumptions, for which insufficient arguments are provided. The report contains a projected profit-and-loss account, a projected balance sheet and a projected cash flow statement for 2000, 2001 and 2002. The data in those sheets show that Shetland Seafish Ltd would become profitable and that the turnover was expected to increase, relative to 2000, by more than 16 % in 2001 and by 26 % in 2002. However, the report does not contain sufficient figures and arguments to demonstrate the reliability of these projections, since the requisite figures on supply, prices and production needed to support these expectations are not contained in the report.

- (36) Apart from the fact that the Commission is not able to establish the credibility of these projections and assumptions, even if they could be considered accurate and reliable, without such figures on supply, prices and production they would be insufficient for any normal private investor wishing to invest in such an operation.

- (37) It is mentioned in the report that '*the new management organisation and production strategy have been carefully devised to address previous shortfall within the two companies concerned. But the core of the new philosophy is the recognition that only a market led approach will ensure success and continued whitefish processing in Shetland*', which according to the United Kingdom demonstrates that the intent at the time when the investments were made was to ensure that the companies were operating in a manner consistent with their market in order to ensure the long term viability of the companies.

- (38) From the figures and data contained in the report the Commission observes that the UK's arguments have not been applied correctly and thoroughly. In absence of comprehensive data pointing to the decision to invest, the Commission considers, indeed, that the investment cannot be considered a profitable investment and thus that SLAP had not acted like a normal private investor.

Whalsay Report

- (39) The Whalsay report was issued by the managing director of Whalsay Ltd and cannot be considered to be an independent report on Whalsay and on the possible acquisition of the company by Shetland Seafish Ltd. In the report it is stated that both companies clearly suffer from the restrictive supplies of salmon on the market and that a merger between the two companies '*offers not only the best, but maybe the only chance of securing continued and sustainable employment in this industry*'.

⁽¹⁾ Case C 482/99 *France v Commission*, [2002] ECR I-4397.

(40) The report furthermore concludes that *'The decision of the Board of SLAP, should it approve proposals to invest in the merger between Seafish and Whalsay, must therefore be to a background of ensuring that salmon supplies are secured on an enduring basis; the risk of not achieving this must make approval of the merger a highly risky decision and leave both SLAP and Seafish vulnerable.'*

(41) The report clearly expresses doubts as to the profits following from the merger between the companies and the reference to securing employment in this industry. Furthermore, the report does not contain sufficient data to show the profitability of the investment in question. It shows that no additional information has become available and been used when deciding to invest; the United Kingdom has explicitly confirmed that the decision to invest was indeed taken solely on the basis of this report. Therefore, in particular having regard to the doubt expressed in the report and the lack of additional data proving otherwise, the Commission can only conclude that this investment would likewise not have been decided upon by a normal private investor.

(42) With regard to the foregoing, the Commission considers that the investments in Shetland Seafish Ltd made in 1999 and 2000 by SLAP are not normal commercial investments which could have been decided upon by any normal private investor.

(43) From the information available, the Commission concludes that the companies involved, L.A. Williamson Ltd and Ronas Ltd, merged into Shetland Seafish Ltd and Whalsay Ltd, would not have been able to continue operating without the investments concerned. In any case, the investments have strengthened their position on the market, which would not have occurred otherwise.

Selectivity and distortion of competition

(44) The investments are for the benefit of the companies involved, and these companies are in direct competition with other fish processing companies both within the United Kingdom and in other Member States; therefore they distort or threaten to distort competition.

Conclusion

(45) In the light of the foregoing the investments of SLAP in Shetland Seafish Ltd are regarded as State aid within the meaning of Article 87 of the EC Treaty.

B. Compatibility with the common market

(46) State aid can be declared compatible with the common market if it complies with one of the exceptions set out in the EC Treaty. As regards State aid to the fisheries sector, State aid measures are deemed to be compatible with the common market if they comply with the conditions of the 2004 Guidelines for the examination of State aid to fisheries and aquaculture⁽¹⁾. According to point 5.3 of those Guidelines, an 'unlawful aid' within the meaning of Article 1(f) of Regulation (EC) No 659/1999 will be appraised in accordance with the guidelines applicable at the time when the administrative act setting up the aid has entered into force.

(47) As the investments made by SLAP took place in 1999 and 2000, the compatibility of the aid will have to be assessed under the Guidelines for the examination of State aid to fisheries and aquaculture of 1997 (hereinafter referred to as 'the Guidelines'; see point 22)), which were in force at the time.

(48) According to point 2.3 of the Guidelines, aid to investment in the processing and marketing of fishery products may be deemed compatible with the common market provided that the conditions for granting it are comparable with those laid down in Regulation (EC) No 3699/93 and are at least as stringent, and provided further that the level of the aid does not exceed, in subsidy equivalent, the overall level of the national and Community subsidies permitted under those rules. In addition, if the aid concerns investments that are, according to Regulation (EC) No 3699/93, not eligible for Community assistance, the Commission has to assess its compatibility with the objectives of the Common Fisheries Policy on a case-by-case basis.

(49) According to Article 11(1) of Regulation (EC) No 2468/98, which replaced Regulation (EC) No 3699/93 on 3 November 1998⁽²⁾, Member States may under the conditions of Annex II to that regulation take measures to encourage capital investment in the field of processing and marketing of fishery and aquaculture products. Point 2.4 of Annex II states that eligible investments for processing and marketing shall in particular relate to the construction and acquisition of buildings and installations, to the acquisition of new equipment and installations needed for the processing and marketing of fishery and aquaculture products between the time of landing and the end-product stage or to the application of new technologies intended in particular to improve competitiveness and add value.

⁽¹⁾ OJ C 229, 14.9.2004, p. 5.

⁽²⁾ Council Regulation (EC) No 2468/98 of 3 November 1998 laying down the criteria and arrangements regarding Community structural assistance in the fisheries and aquaculture sector and the processing and marketing of its products (OJ L 312, 20.11.1998, p. 19).

(50) The investments of SLAP cannot be considered to be investments relating to either of these issues and should thus in accordance with point 2.3 of the Guidelines be assessed on a case-by-case basis.

(51) As the investments have the effect of improving the general financial situation of Shetland Seafish Ltd, this aid should be viewed as operating aid.

(52) According to the general principles laid down in point 1.2 of the Guidelines, aid which is granted without imposing any obligations on the part of recipients and which is intended to improve the situation of undertakings and increase their business liquidity, or is calculated on the quantity produced or marketed, products prices, units produced or the means of production, and which has the effect of reducing the recipient's production costs or improving the recipient's income is, as operating aid, incompatible with the common market.

(53) With regard to such operating aid, it is pointed out in that point of the Guidelines that the Commission is required to assess it on a case-by-case basis where it is linked to a restructuring plan considered to be compatible with the common market.

(54) The United Kingdom has not provided any restructuring plan for the Commission to assess. Since, according to the Guidelines, operating aid can only be declared compatible with the common market if such aid is linked to a restructuring plan compatible with the common market, the investments do not comply with the Guidelines.

C. Recovery of the aid.

(55) Under Article 14(1) of Regulation (EC) No 659/1999, where negative decisions are taken in case of unlawful aid, the Commission must decide that the Member State concerned must take all necessary measures to recover the aid from the beneficiary. The Commission should not require recovery of the aid if that would be contrary to a general principle of Community law. The principle of protection of legitimate expectations is a general principle of Community law. The Commission

considers that, in the present case, that principle precludes recovery for the following reasons.

(56) On 3 June 2003 the Commission, by Decision 2003/612/EC, took a negative decision regarding loans granted for the purchase of fishing quotas in the Shetland Islands⁽¹⁾. In its decision the Commission stated that whilst there was no necessary link between actions and decisions of the Commission in relation to the Community Structural Funds in the context of Council Regulation (EC) No 1260/1999⁽²⁾ and Commission decisions on State aid, in the specific circumstances in the case in question, legitimate expectations as to the private nature of the fund in question may have been created through the combination of a number of events.

(57) The Commission found that both it and the United Kingdom government had consistently acted in such a way as to suggest that the fund was a private fund for the purposes of the rules governing the Community Structural Funds, and that even if, legally speaking, there was no automatic link between the two issues, this may have led to a reasonable assumption on the part of the national authorities and fishermen, that grants from such a fund did not fall under the rules on State aid, thus creating legitimate expectations in this respect.

(58) In addition, it considered in its Decision that, in the European Regional Development Fund (ERDF) under the Highlands and Islands Objective I programme 1994-1996, the funding from SLAP was regarded as a private contribution. Furthermore, given the close links between Orkney and Shetland, the Shetland Islands authorities were probably aware of the fact that the parallel Orkney Reserve Fund (Case C 87/2001⁽³⁾) was considered in practice by the United Kingdom authorities and the Commission as being of a private nature, thus making it permissible to provide a private co-financing contribution in the context of financing from the European Agriculture Guidance and Guarantee Fund (EAGGF).

(59) Accordingly, the Commission took the view that those elements, taken together, had created a legitimate expectation among the Shetland authorities and the bodies involved, as well as among the fishermen; the Commission concluded that, in view of that, they might have wrongly assumed that the State aid rules of the Treaty did not apply, even if legally speaking there was no automatic link between the two issues.

⁽¹⁾ OJ L 211, 21.8.2003, p. 63.

⁽²⁾ OJ L 161, 26.6.1999, p. 1.

⁽³⁾ OJ C 38, 12.2.2002, p. 2.

(60) The investments of SLAP currently under investigation are funded from the same type of funding, during the same timeframe. Just as in that case, the actions of SLAP were considered to be the actions of a private company, concerning private funding from the Shetland Islands Charitable Trust. In addition, given the circumstances and the specific features of the Shetland community, Shetland Seafish Ltd must have been aware of the loan scheme for the purchasing of fishing quotas and in particular the explanatory leaflet referred to in paragraph 68 of Decision 2003/612/EC, stating that the grants and loans from the Charitable Trust would be regarded as private contributions.

(61) It is established case law that there can be no legitimate expectations in favour of the beneficiary of an aid deriving from the behaviour of a national authority when the procedure laid down in Article 88 of the Treaty had not been followed (judgment of the Court in *Alcan Deutschland* ⁽¹⁾). However, since the Commission has also consistently acted in such a way as to suggest that the fund is a private fund, the Commission considers that, given the circumstances of the case and the decision of the Commission referred to above, both SLAP and Shetland Seafish Ltd, the beneficiary of the aid, could assume that only private funds are involved and that, therefore, the State aid rules of the Treaty did not apply.

(62) On those grounds and on the basis of Article 14(1) of Regulation (EC) No 659/1999, since the principle of protection of legitimate expectations is a 'general principle of Community law', recovery of the aid from which Shetland Seafish Ltd has benefited will not be required.

V CONCLUSION

(63) In the light of the assessment made in Section IV, the Commission finds that the United Kingdom has, in

breach of Article 88(3) of the EC Treaty, unlawfully granted aid to Shetland Seafish Ltd by acquiring shares in the company under circumstances and conditions that would not have been acceptable to a normal private market-economy investor.

(64) The Commission considers that these investments are not compatible with the common market inasmuch as they cannot be considered normal commercial investments which could have been decided upon by any normal private investor,

HAS ADOPTED THIS DECISION:

Article 1

The aid granted in 1999 and 2000 by way of investments made by Shetland Leasing and Property Ltd in Shetland Seafish Ltd is not compatible with the common market.

Article 2

The aid mentioned in Article 1 does not have to be recovered.

Article 3

This Decision is addressed to the United Kingdom of Great Britain and Northern Ireland.

Done at Brussels, 7 December 2005.

For the Commission

Mariann FISCHER BOEL

Member of the Commission

⁽¹⁾ Case 24/95, *Land Rheinland-Pfalz v. Alcan Deutschland* [1997] ECR I-01591.

COMMISSION DECISION

of 17 March 2006

concerning certain interim protection measures in relation to a suspicion of highly pathogenic avian influenza in Israel*(notified under document number C(2006) 902)***(Text with EEA relevance)**

(2006/227/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

ratites, farmed and wild feathered game birds, live birds other than poultry and hatching eggs of these species from Israel.

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 91/496/EEC of 15 July 1991 laying down the principles governing the organisation of veterinary checks on animals entering the Community from third countries and amending Directives 89/662/EEC, 90/425/EEC and 90/675/EEC ⁽¹⁾, and in particular Article 18 (1) thereof,

Having regard to Council Directive 97/78/EC of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries ⁽²⁾, and in particular Article 22 (1) thereof,

Whereas:

(1) Avian influenza is an infectious viral disease in poultry and birds, causing mortality and disturbances which can quickly take epizootic proportions liable to present a serious threat to animal and public health and to reduce sharply the profitability of poultry farming. There is a risk that the disease agent might be introduced via international trade in live poultry and poultry products.

(2) Israel has notified to the Commission the isolation of an H5 avian influenza virus collected from a clinical case. The clinical picture allows the suspicion of highly pathogenic avian influenza pending the determination of the neuraminidase (N) type.

(3) In view of the animal health risk of disease introduction into the Community, it is therefore appropriate as an immediate measure to suspend imports of live poultry,

(4) As Israel is authorised for imports of game trophies and eggs for human consumption, imports into the Community of these products should be suspended as well because of the animal health risk involved.

(5) Furthermore the importation into the Community from Israel should be suspended for fresh meat of poultry, ratites and wild and farmed feathered game and importation of meat preparations, minced meat, mechanically separated meat and meat products consisting of or containing meat of those species.

(6) Certain products derived from poultry slaughtered before 15 February 2006 should also continue to be authorised, taking into account the incubation period of the disease.

(7) Commission Decision 2005/432/EC ⁽³⁾ laying down the animal and public health conditions and model certificates for imports of meat products for human consumption from third countries and repealing Decisions 97/41/EC, 97/221/EC and 97/222/EC lays down the list of third countries from which Member States may authorise the importation of meat products and establishes treatment regimes considered effective in inactivating the respective pathogens. In order to prevent the risk of disease transmission via such products, appropriate treatment must be applied depending on the health status of the country of origin and the species the product is obtained from. It appears therefore appropriate, that imports of poultry meat products originating in Israel and treated to a temperature of at least 70 °C throughout the product should continue to be authorised.

(8) The situation shall be reviewed at the next meeting of the Standing Committee on the Food Chain and Animal Health,

⁽¹⁾ OJ L 268, 24.9.1991, p. 56. Directive as last amended by the 2003 Act of Accession.

⁽²⁾ OJ L 24, 31.1.1998, p. 9. Directive as last amended by Regulation (EC) No 882/2004 of the European Parliament and of the Council (OJ L 165, 30.4.2004, p. 1; corrected version in OJ L 191, 28.5.2004, p. 1).

⁽³⁾ OJ L 151, 14.6.2005, p. 3.

HAS ADOPTED THIS DECISION:

Article 1

1. Member States shall suspend the importation from the territory of Israel of:

- live poultry, ratites, farmed and wild feathered game, live birds other than poultry as defined in Article 1, third indent, of Decision 2000/666/EC, and hatching eggs of these species,
- fresh meat of poultry, ratites, farmed and wild feathered game,
- minced meat, meat preparations, mechanically separated meat and meat products consisting of or containing meat of those species,
- raw pet food and unprocessed feed material containing any parts of those species,
- eggs for human consumption, and
- non-treated game trophies from any birds.

2. By way of derogation from paragraph 1, Member States shall authorise the importation of the products covered by paragraph 1 first to fourth indent, which have been obtained from birds slaughtered before 15 February 2006.

3. In the veterinary certificates/commercial documents accompanying consignments of the products referred to in paragraph 2 the following words as appropriate to the species shall be included:

‘Fresh poultry meat/fresh ratite meat/fresh meat of wild feathered game/fresh meat of farmed feathered game/meat product consisting of, or containing meat of poultry, ratites, farmed or wild feathered game meat/meat preparation

consisting of, or containing meat of poultry, ratites, farmed or wild feathered game meat/raw pet food and unprocessed feed material containing any parts of poultry, ratites, farmed or wild feathered game (A) obtained from birds slaughtered before 15 February 2006 and in accordance with Article 1(2) of Commission Decision 2006/227/EC (*).

(A) Delete as appropriate.

(*) OJ L 81, 18.3.2006, p. 35.’

4. By derogation from paragraph 1, third indent, Member States shall authorise the importation of meat products consisting of or containing meat of poultry, ratites, farmed and wild feathered game under the condition that the meat of these species has undergone at least one of the specific treatments referred to under points B, C or D in Part IV of Annex II to Commission Decision 2005/432/EC.

Article 2

Member States shall amend the measures they apply to imports so as to bring them into compliance with this Decision and they shall give immediate appropriate publicity to the measures adopted. They shall immediately inform the Commission thereof.

Article 3

This Decision shall apply until 31 May 2006.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 17 March 2006.

For the Commission

Markos KYPRIANOU

Member of the Commission

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL DECISION 2006/228/JHA

of 9 March 2006

fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism ⁽¹⁾, and in particular to Article 2(4) thereof,

Whereas:

- (1) Decision 2005/211/JHA specifies that the provisions of Article 1 of that Decision shall apply from a date fixed by the Council, as soon as the necessary preconditions have been fulfilled, and that the Council may decide to fix different dates for the application of different provisions. Those preconditions have been fulfilled in respect of Article 1(7) of Decision 2005/211/JHA, new Article 100(3)(f).
- (2) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ⁽²⁾, which falls in the area referred to in Article 1(G) of Decision 1999/437/EC ⁽³⁾ read in conjunction with

Article 4(1) of the Council Decisions 2004/849/EC ⁽⁴⁾ on the signing on behalf of the European Union and 2004/860/EC ⁽⁵⁾ on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement,

HAS DECIDED AS FOLLOWS:

Article 1

Article 1(7) of Decision 2005/211/JHA, new Article 100(3)(f), shall apply from 31 March 2006.

Article 2

This Decision shall take effect on the date of its adoption. It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 9 March 2006.

For the Council
The President
J. PRÖLL

⁽¹⁾ OJ L 68, 15.3.2005, p. 44.

⁽²⁾ Council doc. 13054/04 accessible on <http://register.consilium.eu.int>

⁽³⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁴⁾ OJ L 368, 15.12.2004, p. 26.

⁽⁵⁾ OJ L 370, 17.12.2004, p. 78.

COUNCIL DECISION 2006/229/JHA**of 9 March 2006****fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism ⁽¹⁾, and in particular to Article 2(4) thereof,

Whereas:

- (1) Decision 2005/211/JHA specifies that the provisions of Article 1 of that Decision shall apply from a date fixed by the Council, as soon as the necessary preconditions have been fulfilled, and that the Council may decide to fix different dates for the application of different provisions. Those preconditions have been fulfilled in respect of Article 1(7) of Decision 2005/211/JHA, new Article 100(3)(e).
- (2) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement signed between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ⁽²⁾, which falls in the area referred to in Article 1, point G

of Council Decision 1999/437/EC ⁽³⁾ read in conjunction with Article 4(1) of Council Decisions 2004/849/EC ⁽⁴⁾ on the signing on behalf of the European Union and 2004/860/EC ⁽⁵⁾ on the signing on behalf of the European Community, and on the provisional application of certain provisions of that Agreement,

HAS ADOPTED THIS DECISION:

Article 1

Article 1(7) of Decision 2005/211/JHA, new Article 100(3)(e), shall apply from 31 March 2006.

Article 2

This Decision shall take effect on the date of its adoption. It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 9 March 2006.

For the Council
The President
J. PRÖLL

⁽¹⁾ OJ L 68, 15.3.2005, p. 44.

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