# COMMISSION DECISION

## of 10 December 2003

## on the State aid which the Campania region of Italy has granted to the agricultural sector

*(notified under document number C(2003) 4469)*

**(Only the Italian text is authentic)**

(2004/341/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 interested parties to submit their comments pursuant to that Article ([1]), and having regard to their comments,

Whereas:

### I. PROCEDURE

(1) By letter dated 31 October 1994, registered as received on 4 November 1994, Italy notified the Commission in accordance with Article 88(3) of the EC Treaty of the aid provided for in Regional Law (Campania) No 24 of 12 August 1993 governing, promoting and developing organic agriculture in Campania.

(2) The law, initially registered under number N 645/94, was later entered in the register of non-notified aids under number NN 140/94, the Commission having noted that the law had already been adopted and had entered into force without a suspension clause.

(3) By letter dated 27 July 1995 (SG(95) D/10012), 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 aid measure concerned.

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

(5) The Commission received comments from Italy in a letter dated 29 September 1995, registered on 3 October 1995.

(6) Comments were received from the Permanent Representative of Denmark to the European Union by letter of 6 December 1995, registered on the same day. These comments were forwarded to Italy by letter No VI/001809 of 8 January 1996 and Italy was given the opportunity to react. No reaction to these comments was received from Italy.

(7) By telex No VI/29692 of 22 July 1996, the Commission invited the Italian authorities to clarify the comments they had submitted at the start of the procedure in their letter of 29 September 1995, registered as received on 3 October 1995. The Commission received no reply to that telex.

(8) With a view to concluding examination of the file, by telex AGR 021605 of 7 August 2003 the Commission sent the Italian authorities a reminder, asking them to provide a reply to the previous telex No VI/29692 of 22 July 1996. The Commission has received no reply.

### II. DETAILED DESCRIPTION OF THE AID

(9) The regional law under examination lays down rules governing the promotion and introduction of organic farming techniques at regional level. The only aid measure provided for therein involves a grant for switching to organic production (Article 19 of Regional Law No 24/93) which is intended to offset losses of income suffered by farmers when switching from traditional farming to organic farming methods as referred to in Regulation (EEC) No 2092/91, over a maximum of four years. The assistance covers up to 75 % of such losses.

([1]) OJ C 292, 7.11.1995, p. 14.
([2]) Cf. footnote 1.

(10) The Commission decided to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the abovementioned aid measure on the following grounds.

(11) The Commission was generally favourable towards aid for converting to organic farming in accordance with Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs ([3]), provided that such aid did not exceed the actual income loss suffered by the farmer as a result of the conversion.

(12) Regulation (EEC) No 2092/91 lays down the binding conditions that must be met in order for agricultural products to be defined as organic and any national or regional provisions in this area must also comply with those conditions.

(13) The regional law in question does not satisfy these conditions, particularly as regards:

(a) the length of the conversion period (the regional law provides for a conversion period of two years for annual and perennial crops, whereas Annex I to Regulation (EEC) No 2092/91 stipulates for perennials a minimum period of three years);

(b) the possibility of incorporating ingredients not obtained by organic production methods (without laying down the maximum percentages to be observed if the indications referring to organic production methods in the sales description of the product or in the list of ingredients are to be used, as specified in Article 5 of Regulation (EEC) No 2092/91);

(c) the inspection authorities (which do not appear on the list of inspection authorities authorised in Italy);

(d) the products listed in the Annexes on production standards (not corresponding to the products listed in the Annexes to Regulation (EEC) No 2092/91).

(14) In addition, Article 12 of the regional law provides that products from outside the region must be accompanied by a certificate issued by the authorities competent for the territory from which they come.

([3]) OJ L 198, 22.7.1991, p. 1.

(15) Organic farming products may move freely in the Community subject to compliance with the rules on production and the provisions on packaging and marketing laid down in Annex III to Regulation (EEC) No 2092/91. The regional law in question was therefore also in breach of Article 12 of Regulation (EEC) No 2092/91, which prohibits any restriction on the marketing of organic farming products.

(16) In view of the fact that regional law (Campania) No 24/93 was at variance on several points with the binding provisions of Regulation (EEC) No 2092/91, the aid provided for in Article 19 of the regional law could not, in the opinion of the Commission, qualify under any of the exceptions laid down in Article 87(2) and (3) of the Treaty.

## III. **COMMENTS FROM INTERESTED PARTIES**

(17) Comments were received from the Permanent Representative of Denmark to the European Union by letter of 6 December 1995, registered on the same day.

(18) In its comments the Danish Ministry of Agriculture and Fishery said that it shared the objections expressed by the Commission in its decision to open the procedure on the aid concerned. It also said that aids in favour of organic farming should only be granted to agricultural undertakings which complied with Regulation (EEC) No 2092/91.

(19) The Ministry of Agriculture's letter also expressed concern that the Italian provisions provided for a restriction on the import of organic products to the region concerned. As regards the method for calculating the aid in the Italian law, the Ministry noted that the commitments made by the beneficiaries ought to have been maintained for at least five years (and not a maximum of four), as required by Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside ([4]).

## IV. **COMMENTS FROM ITALY**

(20) The Commission received comments from Italy on behalf of the Campania Region, by letter dated 29 September 1995, registered on 3 October 1995.

([4]) OJ L 215, 30.7.1992, p. 85. Regulation repealed by Regulation (EC) No 1257/1999 (OJ L 160, 26.6.1999, p. 80).

(21) In their comments the Italian authorities indicated that the law had not been implemented since its application was suspended by Decision of the Regional Government No 1073 of 28 March 1995, partly due to the lack of timely notification to the Commission pursuant to Article 88(3) of the Treaty and partly due to the need to adapt the law to bring it into line with the Community rules on organic production.

(22) In order to meet the second need a draft law had been prepared. However due to the end of the mandate of the regional parliament this draft law was not pursued.

(23) In their comments the Italian authorities indicated that they shared the objections of the Commission, which was for them a further incentive to proceed with the revision of Regional Law No 24/93. The Italian authorities also confirmed that its application would remain suspended.

## V. **ASSESSMENT OF THE AID**

(24) Pursuant to Article 87(1) of the 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 is, in so far as it affects trade between Member States, incompatible with the common market.

(25) The measure under examination provides for the grant of aid, through public resources, to specific agricultural undertakings which are undeniably granted an undue economic and financial advantage to the detriment of other undertakings not receiving the same contribution. The Court of Justice has held that an improvement in the competitive position of an undertaking as a result of State financial aid can lead to a distortion of competition compared with other competing undertakings not receiving such assistance ([5]).

(26) The measure affects trade between Member States in that there is substantial intra-Community trade in agricultural products as indicated by the table below ([6]), which lists the overall value of agricultural imports and exports between Italy and the EU in the period 1993 to 2001 ([7]). Within Italy, Campania is a significant producer of agricultural products.

*(ECU/EUR million)*

| Total agricultural sector | | |
|---|---|---|
| | Exports | Imports |
| 1993 | 6 714 | 12 741 |
| 1994 | 7 360 | 13 390 |
| 1995 | 8 364 | 13 629 |
| 1996 | 9 191 | 14 525 |
| 1997 | 9 459 | 15 370 |
| 1998 | 9 997 | 15 645 |
| 1999 | 10 666 | 15 938 |
| 2000 | 10 939 | 16 804 |
| 2001 | 11 467 | 16 681 |

(27) It should also be recalled that the Court of Justice has held that aid to an undertaking may be such as to affect trade between the Member States and distort competition where that undertaking competes with products coming from other Member States even if it does not itself export its products. Where a Member State grants aid to an undertaking, domestic production may for that reason be maintained or increased with the result that undertakings established in other Member States have less chance of exporting their products to the market in that Member State. Such aid is therefore likely to affect trade between Member States and distort competition ([8]).

([5]) See the judgment of the European Court of Justice in Case C-730/79, *Philip Morris* v *Commission* [1980] ECR 2671, grounds 11 and 12.

([6]) Source: Eurostat.

([7]) Consistent case-law holds that the condition of the effect on the trade is met since the benefiting company carries out an economic activity which is the subject of trade between the Member States. The simple fact that aid strengthens the position of this company in relation to other competing companies in intra-Community trade makes it possible to consider that this trade was affected. As regards State aid to the agricultural sector, settled case-law holds that, regardless of the relatively small amount of total aid involved and its distribution among many farmers, there is an impact on intra-Community trade and competition (see the judgments of the Court of Justice in Case C-113/2000, *Kingdom of Spain* v *Commission*, [2002] ECR 7601, grounds 30 to 36 and 54 to 56, and in Case C 114/2000, [2002] ECR 7657, grounds 46 to 52, 68 and 69.

([8]) Judgment of the Court of Justice in Case 102/87, *French Republic* v *Commission* ECR [1988] 4067.

(28) The Commission therefore concludes that the measure is caught by the prohibition in Article 87(1) of the EC Treaty.

(29) The prohibition in Article 87(1) is followed by exemptions in Article 87(2) and (3).

(30) The exemptions listed in Article 87(2)(a), (b) and (c) are manifestly inapplicable given the nature of the aid measures in question and their objectives. Indeed, Italy has not submitted that either Article 87(2)(a), (b) or (c) is applicable.

(31) Article 87(3)(a) is also inapplicable since the aids are not intended to promote the development of areas where the standard of living is abnormally low or where there is serious underemployment.

(32) Article 87(3)(b) is equally inapplicable as the aids in question are not intended to promote the execution of an important project of common European interest or to remedy a serious disturbance in Italy's economy.

(33) The aid under examination is not intended to achieve or suitable for achieving the objectives referred to in Article 87(3)(d).

(34) Considering the nature of the aid under examination and its objectives the only exemption which may be applicable is the one provided for by Article 87(3)(c) of the Treaty.

**Applicable provisions**

(35) The applicability of the abovementioned exception needs to be assessed in the light of the provisions applicable to the grant of State aids in the agriculture sector, namely the Community guidelines for State aid in the agriculture sector ([9]) (hereinafter 'the Guidelines'), which entered into force on 1 January 2000.

(36) According to point 23.3 of the guidelines, the Community will apply them with effect from 1 January 2000 to new notifications of State aid and to notifications which are pending on that date. Unlawful aid within the meaning of Article 1(f) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 (new Article 88) of the EC Treaty ([10]) will be assessed in accordance with the rules and the guidelines in force at the time the aid is granted.

(37) It should be noted that 'to implement' means not only the actual grant of the aid but the conferral of powers that allow the aid to be provided without any further formalities ([11]).

(38) In the light of the above considerations the examination of the aid measure concerned falls within the scope of the State aid rules which were applicable to this type of measure before the entry into force of the Community guidelines for State aid to the agriculture sector ([12]).

(39) The measure under examination, which is provided for in Article 19 of Regional Law No 24/93, is an aid for conversion to organic production and is intended to offset losses of income suffered by farmers when switching from traditional farming to organic farming methods as referred to in Regulation (EEC) No 2092/91, over a maximum period of four years. The aid covers up to 75 % of such losses.

(40) Before the adoption of the guidelines which are currently applicable, the Commission assessed the compatibility of this type of aid measure by analogy with the provisions of Regulation (EEC) No 2078/92 ([13]).

(41) Article 2 of Regulation (EEC) No 2078/92 laid down that, subject to positive effects on the environment and the countryside, aid could be granted for farmers who undertook to reduce substantially their use of fertilisers and/or plant protection products, or to keep to the reductions already made, or to introduce or continue with organic farming methods.

(42) Article 10 of that regulation laid down that Member States were not precluded from implementing, except in the field of application of Article 5(2), additional aid measures for which the conditions of granting of aid differed from those laid down therein or the amounts of

([9]) OJ C 232, 12.8.2000, p. 19.

([10]) OJ L 83, 27.3.1999, p. 1.

([11]) See Commission letter SG(89) D/5521 of 27 April 1989.

([12]) See footnote 9.

([13]) See footnote 4.

which exceeded the limits stipulated therein ([14]), provided that those measures complied with the objectives of that regulation and with Articles 92, 93 and 94 (now Articles 87, 88 and 89) of the Treaty.

(43) As indicated in the decision initiating the procedure in this case, the Commission was generally favourable towards aid for converting to organic farming methods in accordance with Regulation (EEC) No 2092/91, provided that it did not exceed the actual income loss suffered by the farmer as a result of the conversion.

(44) In the light of the applicable rules it appears that the measure under examination, which is designed to encourage a switch to the organic farming methods laid down in Regulation (EEC) No 2092/91, may be considered to pursue the objectives of Article 2(a) of Regulation (EEC) No 2078/92 (favouring the introduction or continuation of organic farming methods).

(45) However, the measure under examination simply provides for an aid to offset up to 75 % of the losses of income suffered by farmers when switching from traditional farming to organic farming techniques, over a maximum period of four years. No indication was provided on how such losses, which constitute the basis for the quantification of the aid, are assessed and calculated, so as to allow the Commission to verify that the aid does not exceed the actual income loss suffered by the farmer as a result of the conversion.

(46) Moreover, taking into account the comments submitted by the Danish authorities, it must be considered that the Italian authorities failed to provide a clear indication of the length of the commitment to convert to organic farming (which would appear to be a maximum of four years) or on the terms on which the aid could be granted where the farmer was personally unable to give an undertaking for the minimum period required (which, pursuant to Regulation (EEC) No 2078/92, was five years) ([15]).

(47) Furthermore, as it was indicated by the Commission in its decision to open the procedure on the aid measure concerned, Regulation (EEC) No 2092/91 lays down mandatory conditions to be met if agricultural products are to be deemed organic and any national (or regional) provisions in this area must comply with those conditions.

(48) As the Italian authorities acknowledged in their letter of 29 September 1995, the regional law in question does not meet these conditions, particularly as regards:

(a) the length of the conversion period (the regional law provides for a conversion period of two years for both annual and perennial crops, while Annex I to Regulation (EEC) No 2092/91 indicates for perennials a minimum period of three years);

(b) the possibility of incorporating ingredients not obtained by organic production methods (without laying down the maximum percentages to be observed if the indications referring to organic production methods in the sales description of the product or in the list of ingredients are to be used, as specified in Article 5 of Regulation (EEC) No 2092/91);

(c) the inspection authorities (which do not appear on the list of inspection authorities approved by Italy);

(d) the products listed in the Annexes on production standards (not corresponding to the products listed in the Annexes to Regulation (EEC) No 2092/91).

(49) Although repeatedly requested, the Italian authorities have not provided any information on the actual amendments made to the regional law under examination with a view to making it compliant with Regulation (EEC) No 2092/91.

(50) In the light of the above assessment the Commission must therefore conclude that the doubts expressed in its decision to open the procedure on the measure concerned are confirmed, as the aid measure under

([14]) Article 4 of Regulation (EEC) No 2078/92 provided for the grant of an annual aid per hectare or livestock unit removed from a herd to farmers who gave one or more of the undertakings listed in Article 2 for at least five years, in accordance with the programme applicable in the zone concerned. The aid had to be granted in accordance with conditions laid down in the regulation. In particular Article 5 laid down that, in order to achieve the regulation's objectives, the Member States had to determine (a) the conditions for the grant of aid; (b) the amount of aid, on the basis of the undertaking given by the beneficiary and of the loss of income and of the need to provide an incentive; (c) the terms on which the aid for the upkeep of abandoned land as referred to in Article 2(1)(e) may be granted to persons other than farmers, where no farmers are available; (d) the conditions to be met by the beneficiary to ensure that compliance with the undertakings may be verified and monitored; (e) the terms for the grant of aid in cases where the farmer is personally unable to give an undertaking for the minimum period required. No aid could be granted under the regulation for areas subject to the set-aside scheme which were being used for the production of non-food products. While ensuring that the incentive content of the scheme was retained, the Member States could limit the aid to a maximum amount per holding and differentiate according to holding size.

([15]) Article 5 of Regulation (EEC) No 2078/92, see footnote 4.

examination does not satisfy the State aid rules appying before 1 January 2000 to aid for switching to organic farming methods as referred to in Regulation (EEC) No 2092/91.

(51) The Commission's assessment of the aid measure does not change even under the new guidelines applicable to State aids.

(52) Firstly, although recently reminded by telex AGR 021605 of 7 August 2003, the Italian authorities have still not provided any information on the actual amendments made to the regional law under examination with a view to making it compliant with Regulation (EEC) No 2092/91.

(53) Secondly, consideration should also be given to the fact that point 5.3 (agri-environmental aid) of the Community guidelines for State aid in the agricultural sector ([16]), applicable to this kind of aid, cross-refer to Articles 22, 23 and 24 of Regulation (EC) No 1257/1999 ([17]), which repeals and replaces Regulation (EEC) No 2078/92, as well as the relevant implementing rules now laid down in Commission Regulation (EC) No 445/2002 of 26 February 2002 laying down detailed rules for the application of Council Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ([18]).

(54) The new provisions currently applicable to this type of aid, in addition to new requirements which do not appear to be met by the measure under examination ([19]), provide for the same basic requirements as those in Regulation (EEC) No 2078/92.

(55) These basic requirements, as demonstrated above, are not satisfied by the aid measure provided for in Article 19 of Regional Law No 24/93, particularly as regards the need to demonstrate to the Commission the losses of income suffered by the farmer, the way such losses are calculated and the length of the commitments made by the farmers.

([16]) OJ C 232, 12.8.2000.

([17]) OJ L 160, 26.6.1999. Regulation as last amended by Regulation (EC) No 1783/2003 (OJ L 270, 21.10.2003, p. 70). This latter Regulation completely replaces Chapter VI of Regulation (EC) No 1257/1999 as regards agri-environmental measures.

([18]) OJ L 74, 15.3.2002, p. 1. Regulation as last amended by Regulation (EC) No 963/2003 (OJ L 138, 5.6.2003, p. 32). See in particular Articles 13 to 21 of Regulation (EC) No 445/2002.

([19]) See footnote 18 and in particular Articles 13 to 21 of Regulation (EC) No 445/2002. For example, pursuant to Article 20 of Regulation (EC) No 445/2002, a farmer who gives an agri-environmental commitment for part of his holding must adhere to at least the standard of usual good farming practice throughout the farm.

(56) In the light of the above assessment the aid provided for in Article 19 of Regional Law No 24/93 does not satisfy the State aid rules applicable to aid for conversion to organic farming methods as referred to in Regulation (EEC) No 2092/91 and cannot therefore benefit from a derogation pursant to Article 87(3)(c) of the Treaty. As demonstrated in recitals 30 to 33, the aid cannot benefit from any other derogation provided for by the Treaty and must therefore be considered incompatible with the common market.

(57) However, since the application of the law was suspended by the Italian authorities (see recital 21 of this decision) there is no need for the Commission to order recovery of the aid.

(58) Regarding Article 12 of the regional law (which provides that products from outside the region must be accompanied by a certificate issued by the authorities competent for the territory from which they come), the following should be noted. Organic farming products may move freely in the Community subject to compliance with the rules on production and the provisions on packaging and marketing in Annex III to Regulation (EEC) No 2092/91. It follows therefore that the regional law in question was also in breach of Article 12 of Regulation (EEC) No 2092/91, which prohibits any restriction on the marketing of organic farming products. However, this is not an issue which appears to affect the compatibility of the aid with the common market, but rather a separate violation of Community law, which could be subject to infringement proceedings (Article 226 of the EC Treaty). The Commission reserves its right to intervene on this point, but since the application of the law was suspended by the Italian authorities, there appears to be no need to institute such proceedings.

## VI. **CONCLUSIONS**

(59) In the light of the above, the aid measure provided for by Article 19 of Law No 24/93 of the Campania Region to offset losses of income suffered by farmers when switching from traditional farming to organic farming as referred to in Regulation (EEC) No 2092/91 cannot benefit from any of the derogations to Article 87(1) provided for by the Treaty and is therefore incompatible with the common market.

(60) According to the information provided by the Italian authorities, regional law No 24/93 was not implemented.

(61) Ordering recovery is therefore unnecessary,

HAS ADOPTED THIS DECISION:

*Article 1*

The State aid provided for by Article 19 of Regional Law No 24/93 of the Campania Region which Italy intended to implement to offset losses of income suffered by farmers when switching from traditional farming to organic farming as referred to in Regulation (EEC) No 2092/91 is incompatible with the common market.

This aid cannot be implemented.

*Article 2*

Italy shall inform the Commission, within two months of notification of this Decision, of the measures taken to comply with it.

*Article 3*

This Decision is addressed to the Italian Republic.

Done at Brussels, 10 December 2003.

*For the Commission*

Franz FISCHLER

*Member of the Commission*