II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 16 March 2004

concerning the aid which Italy is planning to implement in order to tackle the peach-growing crisis in Piedmont

(notified under document number C(2004) 473)

(Only the Italian text is authentic)

(2005/313/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,

After having asked the parties concerned to submit their comments in accordance with that Article,

Whereas:

I. PROCEDURE

(1) By letter dated 20 September 2002, recorded as received on 25 September 2002, the Italian Permanent Representation to the European Union notified the Commission of aid intended to tackle the peach-growing crisis in Piedmont.

(2) By letters dated 10 April 2003, recorded as received on 15 April 2003, and 7 August 2003, recorded as received on 8 August 2003, the Italian Permanent Representation to the European Union forwarded to the Commission the additional information it had requested from the Italian authorities by letters of 13 November 2002 and 5 June 2003.

(3) By letter dated 2 October 2003 the Commission informed Italy of its decision to initiate the procedure provided for in Article 88(2) of the Treaty in respect of the aid concerned.

(4) The Commission decision to initiate the procedure was published in the Official *Journal of the European Union* [1]. The Commission invited interested parties to submit their comments on the aid in question.

(5) The Commission has received no comments on the aid concerned from interested parties.

II. DESCRIPTION

(6) The measure under consideration had been presented as a result of the adverse weather conditions, and in particular the hailstorms, which affected Piedmont in 2002 and damaged the peach and nectarine crops. It consisted initially of the withdrawal from the market of 6 000 tonnes of fruit (peaches and nectarines) to be made into compost. According to the Italian authorities the measure should have qualified for the derogation provided for in Article 87(2)(b) of the Treaty.

(7) The withdrawal operations took place on 25, 26, 27 and 30 September 2002. The quantities withdrawn amounted to 204,16 tonnes of peaches (value: EUR 18 782) and 977,94 tonnes of nectarines (value: EUR 89 970,48). The total quantity withdrawn amounted therefore to 1 182,10 tonnes of fruit. As the aid envisaged was EUR 0,092 per kilo withdrawn, the budget allocation set aside for the measure was EUR 108 752.

[1] OJ C 266, 5.11.2003, p. 3.

(8) According to the information contained in the notification, the producers to whom the measure would apply are members of the Asprofrut [2] organisation who, as a result of the abovementioned adverse weather conditions, incurred losses in excess of 30 % of their average historical production.

(9) The average regional production for the previous three years totalled 144 692 tonnes (86 059 tonnes of peaches and 58 633 tonnes of nectarines).

(10) In the light of the information contained in the notification it appears that the reason for the use of State aid is the fact that:

— Council Regulation (EC) No 2200/96 of 28 October 1996 on the common organisation of the market in fruit and vegetables [3] provides for withdrawals in each marketing year representing a maximum of 10 % of products marketed by individual producer organisations, which may be increased by three percentage points on condition that the average remains at 10 % over three years;

— the producer organisations in the region had already had recourse to the three points increase within the authorised limits.

III. INITIATION OF THE PROCEDURE PROVIDED FOR IN ARTICLE 88(2) OF THE TREATY

(11) The Commission has initiated the procedure provided for in Article 88(2) of the Treaty because it doubted the compatibility of the scheme with the common market.

(12) The first factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that, according to the information provided by the Italian authorities during the exchange of correspondence with the Commission, it became increasingly clear that the difficult situation was not due to weather conditions but to the unfavourable development of trade, in other words a factor falling within the normal risks associated with farming (for example, in their letter of 7 August 2003 the Italian authorities said that the difficult situation was due more to market conditions than to a fall in production; in addition, the loss has been calculated in terms of turnover and not of production — see recital 13 below).

(13) The second factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that the Italian authorities, after referring to a loss in relation to average historical production, acknowledged that the loss had been calculated in relation to the turnover of the undertakings, while point 11.3 of the Community guidelines for State aid to the agricultural sector (hereafter called the guidelines) [4], which serve as a basis for the assessment of aid to compensate farmers for losses caused by adverse weather conditions, describes a method of calculating losses which concerns production losses (the 'price' factor is taken into consideration only when the loss at production level has been determined).

(14) The third factor which led the Commission to doubt the compatibility of the aid with the common market was the fact that, according to the estimates provided by the Italian authorities, the average production of peaches and nectarines in 2002 was going to be above that for the three previous years, while according to point 11.3.1 of the guidelines aid is permitted only if the damage reaches 20 % of normal production in the less-favoured areas and 30 % in other areas (as indicated in recital 9, the average regional production for the three years preceding the event relied on had totalled 144 692 tonnes, 86 059 tonnes for peaches and 58 633 tonnes for nectarines; for 2002 it had been estimated at 147 300 tonnes, 86 300 tonnes for peaches and 61 000 tonnes for nectarines).

(15) The fourth factor which led the Commission to doubt the compatibility of the aid with the common market was the choice of years used for determining the production for a normal year for the purpose of calculating the loss incurred. According to point 11.3.2 of the guidelines, the gross production in a normal year should be calculated by reference to the average gross production in the previous three years, excluding any year in which compensation was payable as a result of adverse weather conditions. The Italian authorities have calculated the loss incurred by reference to the three years preceding that of the adverse weather referred to above, whereas, by their own admission, while no specific compensation was granted in the peach and nectarine sectors, holdings producing these two types of fruit nevertheless obtained, over the three years in question, interest rate subsidies on loans granted to compensate for damage due to adverse weather representing at least 35 % of the gross production that could be marketed. In view of this information it was difficult to imagine that the peach and nectarine crops had been spared the adverse weather conditions that had affected the entire holding and that, as a corollary, a farmer whose entire holding had been affected could have received aid for all his crops except peaches and nectarines.

[2] According to the information provided by the Italian authorities, two producer organisations applied for assistance, Asprofrut and Lagnasco Group. The latter later withdrew its application.

[3] OJ L 297, 21.11.1996, p. 1.

[4] Republished in full, following amendment, in OJ C 232, 12.8.2000, p. 17.

(16) The fifth factor which led the Commission to doubt the compatibility of the aid with the common market was the appropriateness of the method of calculating the aid. In order to calculate the amount of aid payable (EUR 0,092 per kilo), the Italian authorities had used only the average market prices in September 2002 for fresh packaged products (EUR 0,5 per kilo for nectarines and EUR 0,45 per kilo for peaches) and not the average prices for the three years preceding that of the event excluding any year in which compensation had been paid as a result of adverse weather conditions, as prescribed in point 11.3.2 of the guidelines. According to the Italian authorities this method was to help prevent overcompensation for losses incurred by farmers, given that the loss was due to the failure to sell the products and that the cost price per kilo of product could be estimated at approximately 50 % of the market price. In view of this information the Commission could only find that point 11.3.2 of the guidelines appeared not to have been observed and conclude that the aid seemed to be intended to compensate for losses that were due not to a loss of production but to the unfavourable development of the market.

(17) On this point too, the Commission has expressed doubts about the appropriateness of the basis for calculating the aid because the Italian authorities had not provided any details of deductions for costs not incurred by the farmer owing to the adverse weather or of any amounts received under an insurance policy and of any direct aid received, whereas these reductions are prescribed in points 11.3.2 and 11.3.6 of the guidelines.

(18) The sixth factor which led the Commission to doubt the compatibility of the aid with the common market concerned compliance with point 11.3.8 of the guidelines, according to which, where aid is paid to a producer organisation, the amount must not exceed the actual loss incurred by the farmer. The concept of actual loss was called into question in view of the doubts referred to above (loss of turnover and not of production; method of calculating losses not entirely reliable). In addition, since the Italian authorities have indicated that the producer organisation would pay the aid in full to the farmers, after deducting the costs it had incurred, the Commission has been unable, in the absence of fuller details, to determine whether the costs in question, whose nature remained to be specified, were not excessive, and if the aid paid to the producer organisation concerned had been transferred to the latter in proportion to the losses it had incurred.

(19) The seventh factor which led the Commission to doubt the compatibility of the aid with the common market concerned the existence of a presumption of an infringement of the rules governing the common organisation of the market in fruit and vegetables established by Regulation (EC) No 2200/96. Given that the producer organisations in the region of Piedmont had already exhausted the withdrawal possibilities provided for in that Regulation (see recital 10), the grant of State aid for withdrawals that included an overrun of the possibilities set, would have been contrary to the rules governing the common organisation of the market in fruit and vegetables and would have disturbed the smooth operation of the common market. According to point 3.2 of the guidelines, the Commission cannot, under any circumstances, approve an aid which is incompatible with the rules governing a common organisation of the market or which would interfere with its proper functioning.

(20) Lastly, the Commission has been unable, in the absence of adequate information, to determine whether the aid had already been paid and whether it could be aggregated with other aids with the same objectives.

IV. **COMMENTS BY ITALY**

(21) By letter dated 16 January 2004, recorded as received on 19 January 2004, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities in which the latter submitted their comments on the aid concerned following the initiation of the procedure provided for in Article 88(2) of the Treaty.

(22) With regard to the deduction of costs not incurred by the farmer (see recital 17 above), the Italian authorities have stressed that since the problem was not one of non-production, all the stages of cultivation had been completed and their costs had been incurred.

(23) With regard to the need to avoid overcompensation for the loss incurred (see recitals 15 and 16), the Italian authorities said that, leaving aside the inappropriateness of the method of calculation used, they considered that they had provided figures which made it highly unlikely that there would be any over-compensation. They reiterated also that, in view of the disproportion between the amount of the aid and the market price used, and the fact that the cost price corresponds to around half the market price, it was difficult to consider that the losses in the sector were too small for aid to be granted.

(24) Lastly, with regard to compliance with point 11.3.8 of the guidelines (see recital 18), the Italian authorities said that the aid would be allocated in relation to the loss incurred (determined on the basis of the quantity delivered) by the members of the producer organisation, and that they would have seen to it that the share of the aid retained by the producer organisation was intended to cover solely the costs it had incurred.

(25) The letter sent on 16 January 2004 by the Italian Permanent Representation to the European Union also contains the reactions of the producer organisation which could have qualified for the aid (Asprofrut). The latter states that 2002 was a particularly difficult year, mainly on account of the weather conditions in the region in August and the storms that affected the countries of central Europe at the same time which are among its usual clients. It emphasised that it had applied to the Region, and had been authorised, to withdraw from the market a product that was not damaged by hail, and in compliance with Community marketing rules, although it had been regraded as an industrial product on account of the deterioration that had occurred between the date of submission of the application for withdrawal and the start of the actual withdrawal operations.

V. **ASSESSMENT OF THE AID**

(26) According to Article 87(1) of the Treaty, any aid granted by States 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. The measure under consideration corresponds to this definition in that it concerns certain types of production and may affect trade by virtue of the position Italy occupies in relation to the products in question (in 2001 Italy was the Union's second largest producer of peaches and largest producer of nectarines).

(27) However, in the cases provided for in Article 87(2) and (3) of the Treaty, certain measures may be considered, as an exception, to be compatible with the common market.

(28) In the case under consideration, the Italian authorities had explained that the damage to the products in question had been caused by adverse weather conditions.

(29) As indicated in recital 12, during the exchange of correspondence with the Italian authorities the Commission had come round to the view that the event responsible for the difficult situation was not a meteorological event but the unfavourable development of the market, in other words, a factor that fell within the normal risks associated with farming.

(30) The comments from the Italian authorities following the initiation of the procedure under the former Article 88(2) of the Treaty did not provide any information making it possible to consider this idea less convincing. On the contrary, with reference to the information from the Italian authorities which states that, since the difficult situation was not due to a problem of non-production, all stages of cultivation had been completed, and above all the explanations from the Asprofrut organisation, which says that it applied to the Region, and was authorised, to withdraw from the market a product that was not damaged by hail and in compliance with the Community marketing rules, although it had been regraded as an industrial product on account of the deterioration that had occurred between the date of submission of the application for withdrawal and the start of the actual withdrawal operations (see recitals 22 and 25), the Commission can only remain doubtful about the link between the withdrawal operation that accompanied the aid and a loss of production due to adverse weather conditions. The measure appears to be linked more to the unfavourable development of the market, in other words, to an event falling within the normal risks associated with farming.

(31) With regard to the doubts set out in recitals 13, 14 and 15, all of which concern the appropriateness of the method of calculating the losses, the Commission, even if it were to adopt the approach taken by the Italian authorities of compensating for losses caused by natural disasters without taking account of the considerations set out in recital 30, could not find in the comments of those authorities any information that enables it to glimpse a justification for the use of a method of calculating losses that is based on turnover instead of production, or for the choice of reference years.

(32) With regard to the choice of the method of calculation, it should be stressed that, while point 11.3.2 of the guidelines provides for the possibility of adopting a method of calculating losses other than the one recommended, this alternative method must make it possible to determine a loss of production (see the rule [5]) according to which 'the Commission will (...) accept alternative methods of calculation of normal production, including regional reference values, provided it is satisfied that these are representative and not based on abnormally high yields'). The reference to turnover cannot be justified therefore in the light of the provisions of point 11.3.2 of the guidelines.

(33) The Commission notes also that in their letter of 16 January 2004 the Italian authorities gave no justification for the choice of reference years used for calculating the loss and no reply to the question how a loss of production of 20 or 30 % was possible, while the estimates of production for the region showed, for 2002, a production higher than that for the three years used as a reference for the calculation of the losses.

[5] Point 11.3.2. of the guidelines. See footnote 4.

(34) In the absence of this information the Commission still does not know why the Italian authorities used, as a point of reference, years during which, by their own admission, certain holdings producing peaches and nectarines had obtained interest subsidies on loans granted to compensate for damage caused by adverse weather conditions and representing at least 35 % of the gross production that could be marketed (as stated in recital 15, it is difficult to imagine that crops of peaches and nectarines could have been spared the bad weather that affected the whole of a holding and that, as a corollary, a farmer whose entire holding was affected could have received aid for all his crops except peaches and nectarines). The Commission does not understand either how the Italian authorities could justify a loss of 20 or 30 % on the grounds of adverse weather conditions while, apart from the fact that the production estimates for 2002 appeared more favourable than the figures for the three previous years used as a reference, it is clear from the comments of Asprofrut that the products withdrawn had not been damaged by hail but had been regraded as industrial products on account of the deterioration that had occurred between the date the application for withdrawal was submitted and the start of the actual withdrawal operations (see recital 31).

(35) In this situation, even if the Commission had been able to consider the approach to compensating for losses due to natural disasters taken by the Italian authorities to be valid, it would in any case have continued to doubt the appropriateness of the arrangements for calculating the loss threshold triggering entitlement to the aid, of the overrun of that threshold and of the eligibility of the peach and nectarine producers for aid under point 11.3 of the guidelines. In effect, the use of turnover (in other words, a factor involved distinctly downstream of weather conditions) only reinforces the finding in recital 30, namely that the withdrawal measure that accompanied the aid appears to be linked more to the unfavourable development of the market, i.e. to an event that falls within the normal risks associated with farming.

(36) With regard to the doubts set out in recital 16, concerning the appropriateness of the method of calculation of the aid, the Italian authorities in their letter of 16 January 2004, themselves acknowledged that it was inappropriate before underlining that the figures provided should make it possible for the Commission to find that there could be no overcompensation for the loss incurred. Again, in this case, if the Commission had been able to consider the approach to compensating for losses due to natural disasters taken by the Italian authorities to be valid, faced with the acknowledged inappropriateness of the method of calculation it could only doubt the compatibility of the proposed aid with the common market.

(37) In actual fact, the fundamental problem again resides in the fact that, as the Italian authorities indicated, the loss incurred by the holdings in question is attributable to the lack of sales of the product (see recital 16) and not to the absence of production (see recital 30). Once again, therefore, the Commission can only suspect that the planned aid is being used for purposes other than to compensate for a lack of earnings due to the unfavourable development of the market, which falls within the normal risks associated with farming.

(38) With regard to the doubts set out in recitals 17 and 18 (concerning the appropriateness of the basis for calculating the aid, because the Italian authorities had provided no details of the deduction of costs not incurred by the farmer as a result of the adverse weather conditions, or of any amounts received under an insurance policy or any direct aid received), the Commission notes that, in their letter of 16 January 2004, the Italian authorities simply stated that the aid they intend to grant would not be reduced by the amount of costs not incurred by the farmer because, since it was not a question of a lack of production, all the cultivation stages had been completed and the relevant costs had been incurred.

(39) In the light of this response, the Commission notes that, while the question of the deduction of costs not incurred by the farmers has been dealt with, no details have been given regarding the deduction of any direct aid received or of any other amount received under an insurance policy. While the Commission had been able to consider the approach taken by the Italian authorities referred to above on several occasions to be valid, this absence of detailed information would have been sufficient in itself for it to continue to harbour doubts about the compatibility of the measure with the common market since it could not have been sure that all the conditions in point 11.3 of the guidelines had been met.

(40) With regard to the doubts set out in recital 18, which are linked to compliance with point 11.3.8 of the guidelines, the Commission notes the details provided by the Italian authorities, according to which the aid would be allocated in relation to the loss incurred by the members of the producer organisation (determined on the basis of the quantity delivered), and that they would see to it that the share of the aid withheld by the producer organisation was to cover only the costs it had incurred. That being so, even if it had been able to consider the approach taken by the Italian authorities, mentioned above, to be valid, the Commission could

only have continued to harbour doubts about compliance with point 11.3.8 of the guidelines, given that the quantity delivered would not have been an objective factor in determining the loss incurred, since the withdrawal operations concerned fruit that had not been damaged by hail but had been regraded as an industrial product on account of the deterioration that occurred between the date of submission of the application for withdrawal (see recital 30) and the start of the actual withdrawal operations, and because without information, which had nevertheless been requested, concerning the nature of the costs incurred by the Asprofrut producer organisation, it could not have been sure that these costs had not been over-estimated, which would have entailed the grant of operating aid to that organisation.

(41) With regard to the doubts set out in recital 19, which are based on the existence of a presumption of an infringement of the rules governing the common organisation of the market in fruit and vegetables established by Regulation (EC) No 2200/96, the Commission can only state that the Italian authorities have not made any submissions that allow this presumption to be overturned. In view of the circumstances in which withdrawal took place, namely at a time when the producer organisations in Piedmont had already exhausted the withdrawal possibilities provided for in that Regulation (see recital 10 above), the Commission can only conclude that the grant of State aid for withdrawals which entail an overrun of the possibilities set would be contrary to the rules governing the common organisation of the market in fruit and vegetables and would disturb the smooth operation of the common market.

(42) Lastly, with regard to the question of the payment of the aid and any aggregation of payment, the Commission notes that in their letter of 16 January 2004 the Italian authorities said that the aid had not been paid and the producer organisation Asprofrut confirmed that no amount had been received. No response has been given, however, to the question of whether the aid could be aggregated with other aid pursuing the same ends. Aggregation could lead to overcompensation for a loss claimed, which would be contrary to point 11.3 of the guidelines.

VI. **CONCLUSIONS**

(43) The observations set out above show that the proposed aid for the Asprofrut producer organisation to cover an operation for the withdrawal of peaches and nectarines cannot be regarded as intended to compensate for losses caused by adverse weather conditions but constitutes a means of offering certain producers compensation for a loss of earnings owing to the unfavourable development of the market, which falls within the normal risks associated with farming. Covering a normal risk associated with farming with an aid is equivalent to granting a beneficiary or beneficiaries operating aid which is incompatible with the common market.

(44) Even if the approach taken by the Italian authorities of compensating for a loss caused by adverse weather could have been considered valid, there are too many grey areas in the explanations provided by those authorities for the Commission to be able to consider that the aid had been granted in compliance with point 11.3 of the guidelines. From this point of view, therefore, the aid could not have qualified for the derogation provided for in Article 87(2)(b) of the Treaty relied on by the Italian authorities, or for that provided for in Article 87(3)(c), since it would not have contributed to facilitating the development of the sector. It would have been incompatible, therefore, with the common market.

(45) There remains, lastly, the presumption of an infringement of the provisions of Regulation (EC) No 2200/96. Since withdrawal took place at a time when the withdrawal possibilities for the producer organisations in Piedmont had been exhausted, the grant of aid to finance an operation that goes beyond the limits set in a regulation designed to govern the market in fruit and vegetables at European level would risk disturbing the smooth operation of that market. According to point 3.2 of the guidelines the Commission cannot under any circumstances approve an aid that is incompatible with the provisions governing a common organisation of the market or which would interfere with the proper functioning of the common organisation. The aid must be regarded therefore as incompatible with the common market.

(46) The Commission need not require recovery of the aid since it has not been paid,

HAS ADOPTED THIS DECISION:

Article 1

The State aid amounting to EUR 108 752 which Italy is planning to implement in order to help cope with the difficulties facing the cultivation of peaches in the region of Piedmont is incompatible with the common market.

The aid in question cannot therefore be implemented.

Article 2

Italy will inform the Commission, within two months of the date of notification of this decision, of the measures that have been taken to comply with it.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 16 March 2004.

For the Commission
Franz FISCHLER
Member of the Commission