

COMMISSION DECISION

of 5 July 2005

on the aid scheme which Italy is planning to implement for the protection of bergamots and bergamot derivatives in Calabria

(notified under document number C(2005) 1814)

(Only the Italian text is authentic)

(2006/218/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,

Whereas:

(6) By letter dated 17 July 2000, registered as received on 25 July 2000, the Italian Permanent Representation to the European Union forwarded to the Commission the Italian authorities' reply to the above letter of 28 June 2000.

(7) By letter dated 6 October 2000, the Commission informed Italy of its decision to initiate the procedure pursuant to Article 88(2) of the EC Treaty in respect of the aid provided for in Law No 39 (the decision itself was taken by the Commission at its meeting on 20 September 2000).

I. PROCEDURE

(1) By letter dated 20 January 2000, registered as received on 25 January 2000, the Italian Permanent Representation to the European Union notified the Commission, pursuant to Article 88(3) of the Treaty, of a draft law laying down standards for the protection of bergamots and bergamot derivatives.

(2) By letter dated 14 March 2000, the Commission asked the Italian authorities for additional information concerning the aid provided for in the draft law.

(3) By letter dated 15 March 2000, registered as received on 28 March 2000, the Italian Permanent Representation to the European Union sent the Commission an extract from the *Gazzetta ufficiale della Repubblica Italiana* showing that the draft law concerned had been published as Law No 39 of 25 February 2000 (hereafter Law No 39) together with a note from the Italian authorities stating that the grant of the proposed aid was subject to Commission approval.

(4) By letter dated 5 June 2000, registered as received on 9 June 2000, the Italian Permanent Representation to the European Union sent the Commission the additional information requested from the Italian authorities by letter of 14 March 2000.

(5) After considering this information the Commission requested new information from the Italian authorities by letter dated 28 June 2000.

(8) The Commission decision to initiate the procedure was published in the *Official Journal of the European Communities* ⁽¹⁾. The Commission called on interested parties to submit their comments on the aid in question.

(9) The Commission did not receive any comments from interested parties.

II. DESCRIPTION

(10) Article 4 of Law No 39 provides for aid in relation to the area cultivated and the quantities of bergamots actually delivered to be granted to agricultural enterprises, individual growers or associations and other persons cultivating bergamots. Detailed rules and procedures for the grant of the aid must be laid down by Order of the Minister of Agriculture and Forestry Policy, after consulting the Region of Calabria, the Bergamot Consortium, the most representative industry associations, the Reggio Calabria establishment for research into citrus species and derivatives and the Acireale Citrus Research Institute. The budget earmarked for financing the aid amounts to ITL 2 billion (EUR 1 032 914).

⁽¹⁾ OJ C 380, 30.12.2000, p. 2.

- (11) Article 6(1) and (2) of Law No 39 provides for aid for the implementation of plans geared to:
- (a) expanding the cultivation of bergamots in place of other citrus species;
 - (b) thinning and grafting combined or not with thinning operations;
 - (c) the development of nurseries and the mechanisation of holdings;
 - (d) the construction of farm buildings;
 - (e) small- and medium-scale infrastructure work in order to lower production costs and encourage the resumption of cultivation;
 - (f) the construction of processing and marketing facilities;
 - (g) studies, research and technical assistance;
 - (h) promotional activities in the commercial sector.
- (12) The plans may be submitted by the Bergamot Consortium, municipalities located in the areas referred to in the register of areas where bergamots are grown and individual growers or associations in those areas.
- (13) The aid, in the form of capital grants, may amount to 75 % of eligible expenditure, up to a total of ITL 6 billion (EUR 3 098 742) in 2000 and ITL 3 billion (EUR 1 549 371) in each year from 2001 to 2004.
- (14) Article 6(3) of Law No 39 provides also for aid to implement plans for the provision of electricity supplies and plans presented by municipalities for repairing roads serving holdings engaged primarily in cultivating bergamots, to improve access and encourage mechanisation.
- (15) The budget earmarked for financing this aid is ITL 4 billion (EUR 2 065 828) in 2000 and ITL 2 billion (EUR 1 032 914) in each year from 2001 to 2004.

III. INITIATION OF THE PROCEDURE PURSUANT TO ARTICLE 88(2) OF THE TREATY

- (16) The Commission initiated the procedure pursuant to Article 88(2) of the Treaty because of doubts about the compatibility of the scheme with the common market. The doubts concerned the following:
- (17) In general, instead of answering the specific questions that had been put to them, the Italian authorities replied that only measures provided for in the regional operational programme within the meaning of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ⁽²⁾, as approved by the Community authorities, would qualify for aid. At the time this information was provided, the programme in question was still under consideration and it was not possible to say what its content would be when approved.
- (18) With regard to Article 4:
- (a) the proposed aid based on the quantity of bergamots delivered appeared to constitute operating aid which is incompatible with the common market, as indicated in point 3.5 of the Community guidelines for State aid in the agricultural sector ⁽³⁾; yet the Italian authorities had never given an express undertaking to withdraw it despite the request to this effect by the Commission in its letter of 14 March 2000 (see the reply referred to in recital 17);
 - (b) the proposed aid based on the area cultivated had been presented as an agri-environmental measure but the Italian authorities failed to provide any information showing that the provisions of Articles 22, 23 and 24 of Council Regulation (EC) No 1257/1999 of 17 May 1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) and amending and repealing certain Regulations ⁽⁴⁾, Articles 12 to 20 of Commission Regulation (EC) No 1750/1999 of 23 July 1999 laying down detailed rules for the application of Regulation (EC) No 1257/1999 on support for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF) ⁽⁵⁾, and point 5.3 of the Guidelines, would be complied with.

⁽²⁾ OJ L 161, 26.6.1999, p. 1. Regulation as last amended by Regulation (EC) No 173/2005 (OJ L 29, 2.2.2005, p. 3).

⁽³⁾ OJ C 232, 12.8.2000, p. 17.

⁽⁴⁾ OJ L 160, 26.6.1999, p. 80. Regulation as last amended by Regulation (EC) No 2223/2004 (OJ L 379, 24.12.2004, p. 1).

⁽⁵⁾ OJ L 214, 13.8.1999, p. 31. Regulation as last amended by Regulation (EC) No 1763/2001 (OJ L 239, 7.9.2001, p. 10).

(19) With regard to Article 6(1) and (2):

- (a) in the absence of details of the nature of the eligible expenditure, certain aid could be operating aid;
- (b) the rate envisaged (75 %) was too high for the measures for the production of bergamots; nor was evidence produced of compliance with point 4.1 of the Guidelines regarding the viability of the holdings or enterprises and the existence of outlets;
- (c) the infrastructure referred to was not sufficiently well defined: some parts of it could concern individual holdings and be subject to point 4.1 of the Guidelines, which provide for rates of aid of less than 75 %;
- (d) as regards the processing of bergamots and the marketing of the oil obtained (non-Annex I product), compliance with the rates of aid and other provisions laid down by the Guidelines on national regional aid ⁽⁶⁾ and those on State aid for small and medium-sized enterprises ⁽⁷⁾ was not demonstrated;
- (e) as regards research and technical assistance, compliance with points 13 and 14 of the Guidelines had not been demonstrated, nor with the Community framework for State aid for research and development ⁽⁸⁾, as amended by the Commission Communication of 1998 ⁽⁹⁾ (the rate of 75 % could be too high if some of the conditions contained in those documents were not met);
- (f) as regards the promotion of bergamot oil (non-Annex I product), compliance with the relevant provisions of the Guidelines on national regional aid had not been shown.

(20) With regard to Article 6(3), no details had been given concerning the proposed rate of aid and the accessibility of the aid despite the request for information in this connection to the Italian authorities from the Commission in its letter of 14 March 2000.

IV. COMMENTS OF THE ITALIAN AUTHORITIES

- (21) By letter dated 26 October 2000, registered as received on 27 October 2000, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities in which they stated, in answer to the letter of 6 October 2000 announcing the initiation of the procedure pursuant to Article 88(2) of the Treaty, that they had suspended the arrangements for the grant of financial resources referred to in Law No 39.
- (22) By letter of 29 November 2000, registered as received on 30 November 2000, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities containing the latter's reply to the Commission's comments on the initiation of the procedure.
- (23) By letter dated 14 February 2001, registered as received on 19 February 2001, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities supplementing their reply referred to in recital 22 above.
- (24) By letter of 21 September 2001, registered as received on 24 September 2001, the Italian Permanent Representation to the European Union forwarded to the Commission a supplement to the reply from the Italian authorities.
- (25) By letter dated 23 April 2002, registered as received on 25 April 2002, the Italian Permanent Representation to the European Union sent the Commission the text of a draft order laying down implementing rules for Law No 39 and taking into account the Italian authorities' reply in their letters referred to in recitals 22, 23 and 24.
- (26) By letter dated 5 November 2003, registered as received on 7 November 2003, the Italian Permanent Representation to the European Union forwarded to the Commission a letter from the Italian authorities in which they stated expressly that, in view of the time that had elapsed since the dispatch of their last letter, they had reason to believe that they were in a situation where 'silence means assent' which made it possible for them to apply the rules as amended in the light of the Commission's comments.
- (27) By letter dated 26 November 2003, the Commission informed the Italian authorities that this approach could be taken only for aid files that have been notified and not for those subject to the procedure pursuant to Article 88 (2) of the Treaty but that, if they so wished, they could ask the Commission to adopt a decision within two months pursuant to Article 7(7) of Council Regulation

⁽⁶⁾ OJ C 74, 10.3.1998, p. 9.

⁽⁷⁾ OJ C 213, 23.7.1996, p. 4.

⁽⁸⁾ OJ C 45, 17.2.1996, p. 5.

⁽⁹⁾ OJ C 48, 13.2.1998, p. 2.

(EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 (now Article 88) of the EC Treaty⁽¹⁰⁾. The Commission departments also stated that after receiving such a request the Commission would adopt a decision within the prescribed period, as indicated in the above provisions.

the European Union forwarded to the Commission a letter from the Italian authorities in which they invoked Article 7(7) of Regulation (EC) No 659/1999 to ask the Commission to adopt a final decision within two months. The Commission will take a decision therefore on the basis of the information available to it, as provided for in that Article.

(28) By letter dated 6 May 2005, registered as received on 11 May 2005, the Italian Permanent Representation to

Contents of the draft order

(29) Article 2 of the draft order provides for the grant of aid for investment in agricultural holdings. The rates of aid and award conditions are as follows:

Expenditure	Less-favoured areas ^(a)	Other areas ^(b)	Requirements
— Construction, purchase (*) or modernisation of immovable property	50 %	40 %	* Calculation based on the value of the property, excluding start-up costs
— Machinery and equipment, including computer programmes	50 %	40 %	for used equipment, see ^(d)
— General expenses (architects', engineers' and consultants' fees; feasibility studies purchase of patents and licences)	50 %	40 %	12 % of total project costs
— Investment in the conservation of traditional landscapes ^(c)	up to 75 %	up to 60 %	without increasing production capacity
	50 + 100 % of additional expenditure	40 + 100 % of additional expenditure	without increasing production capacity ^(e)

^(a) May be raised to 55 % for young farmers, within the meaning of Article 8 of Regulation (EC) No 1257/1999, who make the investment during the five years following setting up.

^(b) May be raised to 45 % for young farmers, within the meaning of Article 8 of Regulation (EC) No 1257/1999, who make the investment during the five years following setting up.

^(c) Small infrastructure investments designed to protect holdings against erosion, together with work requiring engineering needed for water management, are also eligible.

^(d) The following conditions must be met: the seller must provide a statement attesting to the origin of the equipment and to the fact that no aid has been collected in respect of it; it must be shown that the purchase is particularly advantageous for carrying out the project or is justified on exceptional grounds; there must be a reduction in costs and continued value for money; the technical and technological features of the equipment must be consistent with the needs of the project.

^(e) The rates of 40 and 50 % may be raised by 5 % for young farmers. Additional expenditure is that attributable to the use of traditional materials.

⁽¹⁰⁾ OJ L 83, 27.3.1999, p. 1.

(30) Aid will be available only to individual holdings or associations thereof:

- whose profitability is demonstrated where the net income per work unit is 60 % or more of the reference income determined by ISTAT, in accordance with the operational programme for the region of Calabria,
- which satisfy the minimum Community standards for the environment, health and animal welfare,
- whose tenants have the necessary knowledge and skills,
- which undertake to use the investments for the purposes set by the draft order for 10 years in the case of immovable property and five years in the case of moveable property.

(31) Aid will not be available for investments geared to increasing the production of products for which there are no market outlets, or those which infringe any restrictions on production or limitations on Community support provided for under the common organisation of markets.

(32) Article 3 of the draft order provides for the grant of aid for investment in the processing and marketing sector. The rates of aid and award conditions are as follows:

Eligible expenditure	Maximum rate of aid
— Construction, purchase ^(a) or modernisation of immovable property	50 %
— Machinery and equipment, including computer programmes ^(b)	50 %
— General expenses (architects, engineers and consultants fees; feasibility studies; purchase of patents and licences)	50 %

^(a) Calculation based on the value of the immovable property, excluding start-up costs.

^(b) In the case of leasing without reservation of title, with purchase within four years and in any event before the expiry of the deadline for making the investments.

(33) Aid will be available only to processing and marketing enterprises:

- whose profitability is demonstrated where the return on investment (ratio between the income of the holding and the capital invested) is equal to the return on investment for each section of activity (in the case of new enterprises, profitability should

be demonstrated when activities reach their normal rate, in accordance with the information contained in the regional operational programme — ROP — for Calabria),

- which satisfy the minimum Community standards for the environment, health and animal welfare,
- which guarantee positive economic consequences for basic producers, through supply contracts for a term of at least three years from the date of completion of the investments,
- which undertake to ensure the use of the investments for the intended purposes for 10 years in the case of investments in immovable property, and five years in the case of other investments.

(34) If the beneficiaries are themselves producers, at least 60 % of the raw material must come from outside the holding.

(35) Aid is not available for investments:

- designed to increase the production of products for which there are no market outlets or which are counter to any restrictions on production or limitations on Community support under the common organisation of markets,
- concerning retail trade.

(36) Article 4 of the draft order lays down provisions on the introduction and continuation of organic farming methods, in compliance with the conditions laid down in the operational programme for the region of Calabria approved by the Commission ⁽¹¹⁾. It provides that the grant of aid is subject to the following conditions:

- the conclusion, with the Region, of a contract providing for the application of organic farming methods over the whole of the area cultivated annually, together with the keeping of the farm records provided for in Council Regulations (EEC) No 2092/91 ⁽¹²⁾ and (EC) No 1804/1999 ⁽¹³⁾,
- the requirement that the beneficiary apply good agricultural practice on the land and for crops that are not covered by the contract concerned.

⁽¹¹⁾ Decision C(2000) 1600 of 15 June 2001.

⁽¹²⁾ OJ L 198, 22.7.1991, p. 1.

⁽¹³⁾ OJ L 222, 24.8.1999, p. 1.

(37) The financial allocation provided for under this measure comes from the resources available under the operational programme for the region of Calabria.

(38) Article 5 of the draft order provides for the grant of aid to the new consortiums and associations representing bergamot producers who wish to carry on activities in the field of quality production as referred to in Council Regulation (EEC) No 2081/92 ⁽¹⁴⁾ and (EEC) No 2092/91, in compliance with the Community guidelines for State aid in the agricultural sector. These consortiums and associations may also receive aid for the introduction of quality and certification systems for PDO and organic products.

(39) The procedure for the grant of start-up aid and the extension of activities referred to in recital 38 is the following:

Start-up and extension of activities ^(a) Eligible expenditure	Maximum rate of aid
— Hire of premises ^(b)	The aid is granted for a maximum of five years; it may not exceed 100 % of the costs borne during the first year, followed by a reduction of 20 % per year.
— Purchase of office equipment (including data-processing facilities)	
— Staff costs	
— Operating costs	
— Administrative expenses	

^(a) Aid may not be granted for expenditure incurred beyond the seventh year following setting up. In the event of a significant extension of activities, expenditure arising from any additional activities of the beneficiary will be considered admissible. The addition of new members is not considered to be a significant extension of activities save where it entails a 30 % increase in the volume of activities of the beneficiary.

^(b) In the event of purchase, eligible expenses are limited to the hire costs at the market price.

(40) The procedures for the grant of aid for the introduction of quality systems and systems for the certification of PDO and organic products, referred to in recital 38, are as follows:

Eligible expenditure	Maximum rate of aid
ISO and HACCP standards: Costs associated with the introduction of quality assurance standards and environmental audit systems; training given to people who will have to apply those standards	100 % of certified expenditure (the overall amount of aid may not exceed EUR 100 000 per beneficiary for each three-year period ^(a))
Setting up of control systems and certification of quality systems (Regulations (EEC) No 2081/92 and (EEC) No 2092/91)	100 % of expenditure certified in the first year, followed by a reduction of around 16,7 % per year until fully paid (after six years)
Cover of fees requested by recognised certification bodies for the initial certification of quality assurance and similar systems	100 % of expenditure certified in the first year, followed by a reduction of around 16,7 % per year until fully paid (after six years)
Control and certification of organic farming methods	100 % of certified expenditure

^(a) The service is intended for the beneficiary. If services are provided by associations, they must be accessible to all interested parties.

(41) Article 6 of the draft order provides for the grant of aid for the repair of municipal and local roads (to provide access for machinery to holdings), and to provide electricity supplies in areas where bergamots are grown.

(42) The procedure for the grant of the aid referred to in recital 41 is the following:

Type of investment and beneficiaries	Maximum rate of aid
Investments in infrastructure by public bodies: rural roads and electrification	100 %
Investments in new roads serving rural areas ^(a) , with private participation	75 %

^(a) Measures of general interest (infrastructure accessible to the public).

(43) Article 7 of the draft order provides for the grant of research aid to new consortiums and/or bodies representing agricultural producers.

⁽¹⁴⁾ OJ L 208, 24.7.1992, p. 1.

(44) The procedure for the grant of the aid referred to in recital 43 is the following:

For bergamot as a citrus plant

Research and development	Maximum rate of aid
<ul style="list-style-type: none"> — Staff expenditure (research workers, technicians and back-up staff employed exclusively on research), — cost of instruments, equipment, land and premises used exclusively for the research (save in the event of transfer on a commercial basis), — cost of consultants' and equivalent services used exclusively for the research activity, including the research, technical skills, patents, licence fees, etc. purchased, — additional overhead costs incurred directly as a result of the research activity, — other operating expenses (e.g. cost of materials, supplies and similar products) incurred directly as a result of the research activity. 	<p>100 % of eligible expenditure in compliance with Commission Communication 98/C 48/2 ^(a)</p>

^(a) The project will have to be of general interest to the sector and not create distortions of competition; the information will be published in appropriate publications distributed at least in the region; operators may be notified in real time of the research results; the research results will be made available for use by all interested parties on an equal basis in terms of costs and time; the aid will comply with the relevant terms of the agreement on agriculture concluded during the Uruguay Round multilateral trade negotiations.

For bergamot essence

Research and development (OJ C 45, 17.10.1996)	Maximum rate of aid and eligible expenditure ^(a)
— Industrial research and technical feasibility studies prior to industrial research	up to 50 % of eligible expenditure
— Precompetitive activities	up to 25 % of eligible expenditure

^(a) Staff expenditure (research workers, technicians and back-up staff employed exclusively on research); cost of instruments, equipment, land and premises used exclusively for the research (save in the event of transfer on a commercial basis); cost of consultants and equivalent services used exclusively for the research activity, including the research, technical skills, patents, licence fees, etc. purchased; additional overhead costs incurred directly as a result of the research activity; other operating expenses (e.g. cost of materials, supplies and similar products) incurred directly as a result of the research activity.

(45) Article 8 of the draft order provides for the grant of aid for the promotion ⁽¹⁵⁾ of bergamots and bergamot derivatives. The beneficiaries are recognised producer associations or consortiums and/or bodies representing producers operating in the field of PDO production. The procedure for the grant of the aid is the following:

Advertising campaigns

The associations and bodies representing producers must ensure access for all producers to advertising measures on equal terms.

- Advertising means any operation designed to encourage economic operators or consumers to purchase a given product, any material distributed directly to consumers for the same purpose, and publicity measures organised for consumers at sales points. Advertising does not include promotion measures within the meaning of point 8 of the Community guidelines on State aid for the advertising of products falling within Annex I to the Treaty and certain products not falling within Annex I ^(a).
- Advertising measures focusing on a common theme, which are allocated an annual budget of more than EUR 5 million and which concern new quality control systems or new brands, or refer to the national or regional origin of the products, must be notified to the European Commission.
- Article 2 of Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of food-stuffs ⁽¹⁶⁾ must be observed.
- The Community rules applicable to the products concerned must be observed in accordance with the point 25 of the above Guidelines.
- The following conditions must be met in the case of products bearing quality marks: accessibility of the mark to all Community producers, with no geographical restriction associated with the product's origin and no geographical reference in the mark; recognition, on the basis of equivalence, of checks carried out by bodies recognised by other Member States; secondary nature of the origin, in the advertising message (this rule applies also to products with no mark).

^(a) Operations that are not covered include those such as the dissemination of scientific knowledge, the organisation of fairs and exhibitions and participation in similar events or other public relations initiatives, including opinion polls and market studies.

⁽¹⁵⁾ As shown in the tables attached to Article 8, this includes both promotion and advertising measures.

⁽¹⁶⁾ OJ L 109, 6.5.2000, p. 29. Directive as last amended by Directive 2003/89/EC (OJ L 308, 25.11.2003, p. 15).

Type of aid	Maximum rate of aid
Advertising of high-quality products in compliance with Article 28 of the Treaty. Advertising of products with a designation of origin within the meaning of Regulation (EEC) No 2081/92. Advertising of products with a designation of origin within the meaning of Regulation (EEC) No 2092/91.	Up to 50 % of eligible expenditure with the possibility of an increase to 75 % for SMEs ^(a) in Objective 1 areas.

^(a) SMEs satisfying the definition in 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 ⁽¹⁷⁾.

In all cases:

- aid will not be granted to individual enterprises,
- enterprises which conduct advertising campaigns will be selected on the basis of a procedure that complies with Directive 92/50/EEC or, if that Directive does not apply, on the basis of transparent and non-discriminatory procedures,
- in all cases, campaigns will comply with at least one of the positive criteria laid down, since they will concern organic or high-quality products or products with a designation of origin.

Promotion and dissemination of general information

Type of aid	Maximum rate of aid
— Organisation of competitions, exhibitions and fairs	up to EUR 100 000 per beneficiary ^(a) and per three-year period or, in the case of SMEs ^(b) , 50 % of eligible expenditure, the larger amount applying
— Market studies	
— Dissemination of information	

^(a) The service is intended for the beneficiary. Services provided by bodies representing producers must be accessible to all farmers.

^(b) SMEs satisfying the definition in 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..

(46) Article 9 of the draft order provides that aids, of indeterminate duration, may be aggregated in compliance with the maximum rates shown in the tables above.

(47) Article 11 of the draft order establishes the allocations available for financing the aid described above. The allocations are as follows:

- ITL 2 billion (EUR 1 032 914) for the measures provided for in Article 4 (in accordance with Article 4 of Law No 39),
- ITL 6 billion (EUR 3 098 742) for the measures provided for in Articles 2, 3, 5, 7 and 8 (in accordance with Article 6(2) of Law No 39),
- ITL 4 billion (EUR 2 065 828) for the measures provided for in Article 6 (in accordance with Article 6(3) of Law No 39).

V. EVALUATION

(48) Article 87(1) of the Treaty stipulates 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.

(49) The measures provided for first by Law No 39 and then in the draft order notified by the Italian authorities in their letter of 23 April 2002 correspond for the most part to this definition (for the exceptions, see below) in that they are financed through public resources, favour the production of certain goods (bergamots and bergamot derivatives) and may affect trade given the position Italy occupies in the sector concerned (Italy is the largest producer of bergamots and bergamot essence in the Union and part of its production is exported to other Member States).

(50) However, in the cases provided for in Article 87(2) and (3) of the Treaty, certain measures may, by derogation, be considered to be compatible with the common market.

(51) In the case under consideration, in view of the nature of the measures described above, the only derogation that may be relied on is that contained in Article 87(3)(c) of the Treaty, which stipulates that aid to facilitate the development of certain economic activities may be considered to be compatible with the common market or of certain economic areas where it does not adversely affect trading conditions to an extent contrary to the common interest.

⁽¹⁷⁾ OJ L 10, 13.1.2001, p. 33. Regulation as last amended by Regulation (EC) No 364/2004 (OJ L 63, 28.2.2004, p. 22).

(52) In view of the content of the draft order notified by the Italian authorities, the applicability of the derogation provided for in Article 87(3)(c) of the Treaty will be examined in the light of the following rules:

- in the case of the aid provided for in Articles 2, 4, 5, 6 and 8 of the draft order (concerning promotion in the broad sense), the Community guidelines for State aid in the agricultural sector, hereinafter called 'the Guidelines' ⁽¹⁸⁾ (in the case under consideration, the evaluation cannot be made in the light of the provisions of Commission Regulation (EC) No 1/2004 of 23 December 2003 on the application of Articles 87 and 88 of the Treaty to State aid to small and medium-sized enterprises active in the production, processing and marketing of agricultural products ⁽¹⁹⁾, since Article 20(3) states that where its conditions are not fulfilled, the Commission will examine notifications pending at the time of its entry into force under the Guidelines and that, in this case, under the draft order it cannot be excluded that enterprises other than small and medium-sized ones may also qualify for aid),
- in the case of the aid referred to in Article 3 of the draft order, the Guidelines on national regional aid ⁽²⁰⁾ and 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 ⁽²¹⁾ which, pursuant to Article 9a(1) ⁽²²⁾, applies to notifications pending, other than those concerning aid for research and development,
- in the case of the aid referred to in Article 7 of the draft order, the Community Framework for State aid for research and development ⁽²³⁾ and the 1998 Commission Communication amending the Community framework for State aid for research and development ⁽²⁴⁾,

— in the case of the aid for promotion and advertising referred to in Article 8 of the draft order:

- the Community Guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products ⁽²⁵⁾, in the case of advertising measures for bergamot as a fruit, and the Community guidelines on national regional aid, in the case of advertising measures for bergamot essence,
- the Guidelines, in the case of promotion/technical assistance measures in favour of bergamot producers, and the Guidelines on national regional aid together with Regulation (EC) No 70/2001, in the case of promotion/technical assistance measures in favour of producers of essential bergamot oil.

Aid provided for in Article 2 of the draft order

(53) The aid provided for in this Article is aid for investment in agricultural holdings and are therefore governed by point 4.1 of the Guidelines, which provide for:

- an aid rate of 40 % of eligible expenditure for investments in less-favoured areas and of 50 % for investments in less-favoured areas with the possibility of a 5 % increase in the rate for investments made by young farmers during the five years following setting up (the rates of aid expressing a gross subsidy equivalent),
- a list of eligible expenditure consisting of the purchase, acquisition or improvement of immovable property, the purchase of new material and equipment, including software (the purchase of used equipment may be considered eligible where the following four conditions are met: a certificate from the seller confirming the exact origin of the equipment and attesting that it has not qualified for national or Community aid; the purchase of the equipment must be particularly advantageous for the programme or project and be justified by exceptional circumstances such as the absence of available new equipment within the required time; the costs involved, and therefore the amount of aid, must be low compared with the costs of the same equipment purchased new, while maintaining value for money; the used equipment must have the technical and/or technological characteristics necessary to comply with the project specification) and the overheads (architects, engineers and experts fees, feasibility studies, purchases of trade marks and licences, etc.) up to 12 % of the two items of expenditure mentioned previously,

⁽¹⁸⁾ See footnote 3.

⁽¹⁹⁾ OJ L 1, 3.1.2004, p. 1.

⁽²⁰⁾ See footnote 6.

⁽²¹⁾ See footnote 17.

⁽²²⁾ Inserted by Article 1(9) of Commission Regulation (EC) No 364/2004 amending Regulation (EC) No 70/2001 as regards the extension of its scope to include aid for research and development (OJ L 63, 28.2.2004, p. 22).

⁽²³⁾ See footnote 8. The Framework continues to apply in the case under consideration since Commission Regulation (EC) No 364/2004 provides expressly, by inserting a new Article 9a in Regulation (EC) No 70/2001, that notifications concerning aid for research and development pending on 19 March 2004 (which is the situation in this case) will continue to be assessed under the Community framework for State aid for research and development.

⁽²⁴⁾ See footnotes 9 and 23.

⁽²⁵⁾ OJ C 252, 12.9.2001, p. 5.

— the need, for the beneficiary holdings, to be viable on the basis of their prospects and to comply with the minimum environmental, health and animal welfare standards.

(54) These provisions are supplemented by another, more general one according to which the aid schemes should provide that no aid may be granted in respect of work begun or activities undertaken before an application for aid has been properly submitted to the competent authority concerned, the reason being that aid which is granted retrospectively in respect of activities which the beneficiary has already undertaken cannot be considered to include the necessary incentive element that must be contained by any non-compensating aid in order to be declared compatible with the common market ⁽²⁶⁾.

(55) In the light of the provisions of recitals 29 to 31 above, the Commission notes that all the requirements set out in recitals 53 and 54 are met, provided that the rates of aid indicated in the draft order express a gross subsidy equivalent and that the aid continues to include an incentive element and is not retrospective, in other words, is granted in respect of work undertaken before an application has been properly submitted.

(56) Against this background, the Commission, having been called upon to give its comments on the basis of the information available to it, notes that the proposed aid will be compatible with the common market if it is reserved for beneficiaries who begin work only after an aid application has been submitted to the competent authority and if the rates of aid proposed in the draft order express a gross subsidy equivalent.

Aid provided for in Article 3 of the draft order

(57) On the initiation of the procedure pursuant to Article 88 (2) of the Treaty in respect of the aid provided for in Article 6(1) and (2) of Law No 39 for the processing of bergamots and the marketing of the essential oil obtained, it was emphasised that compliance with the rates of aid and other provisions laid down by the Guidelines on national regional aid and those on State aid for small and medium-sized enterprises had not been demonstrated.

(58) Article 3 of the draft order admittedly provides details of the rate of financing for the proposed measures.

(59) The rate of aid mentioned (50 %) is acceptable therefore as it matches, regardless of the proposed subsidy equivalent, that approved by the Commission for Calabria in the context of the review of the Italian regional aid map ⁽²⁷⁾, and the nature of the eligible expenditure described shows that it is an aid for initial investment within the meaning of point 4.4 of the Guidelines.

(60) Similar considerations apply also if the aid is examined in the light of Regulation (EC) No 70/2001. However, irrespective of which Community text applies, the Commission is not in a position to determine whether the aid application will be made before implementation of the investment projects starts.

(61) In these circumstances, the Commission will be able to remove the doubts it has expressed concerning the compatibility with the common market of the aid for processing and marketing examined only if the aid are granted solely to those who have submitted an aid application before starting their investments.

Aid provided for in Article 4 of the draft order

(62) The Commission notes, in the light of the information contained in recital 36, that the public financial assistance proposed constitutes a financial contribution from the Member State towards the joint financing of rural development measures, within the meaning of Article 51 of Regulation (EC) No 1257/1999 ⁽²⁸⁾, and consequently does not constitute, by virtue of that Article, State aid within the meaning of Article 87(1) of the Treaty.

Aid provided for in Article 5 of the draft order

(63) With regard to the start-up aid for which the award procedure is described in recital 39, the Commission notes that the text of the draft order contains an express undertaking regarding compliance with the Guidelines (see recital 38). However, it should be made clear that the aid must comply in particular with point 10.3 of the Guidelines, which lay down the rules that must be applied by producer groups in order to be eligible for aid. Secondly, it should be specified that the intensities provided for in Table B.I of the draft order, which refers to a 20 % reduction in aid each year, should be calculated in accordance with point 10.5 of the Guidelines, with 20 percentage points reduction each year, and not by reducing by 20 % the percentage applicable the previous year.

(64) Regarding the aid for the introduction of quality and certification systems for PDO and organic products for which the award procedure is described in recital 40, the Commission notes that all aspects of the relevant provisions of the Guidelines (in the case under consideration, those in recital 13) are observed. Consequently, the aid for the control and certification of organic cultivation methods complies with the last paragraph of point 13.4 of the Guidelines and may therefore qualify for the derogation provided for in Article 87(3)(c) of the Treaty as aid intended to facilitate the development of certain activities or of certain economic areas without adversely affecting trading

⁽²⁶⁾ See point 3.6 of the Guidelines.

⁽²⁷⁾ OJ C 175, 24.6.2000, p. 11.

⁽²⁸⁾ See footnote 4.

conditions to an extent that is contrary to the common interest, in the same way as aid to establish control and certification systems for quality systems pursuant to Regulation (EEC) No 2081/92, which is paid degressively during a sufficient period until it is eliminated as also provided for in point 13.4 referred to above.

- (65) Similarly, the aid intended to cover expenditure on the introduction of ISO and HACCP quality assurance programmes complies with the majority of the requirements arising under point 13.2 of the Guidelines. However, the ceiling of EUR 100 000 per beneficiary for each three-year period provided for in the third paragraph of point 13.2 represents the sum of the aid applicable to various expenditure headings which includes the costs associated with the introduction of quality assurance standards and environmental audit systems and the cover of fees requested by recognised certification bodies; but, according to Table B.II attached to Article 5 of the draft order, that maximum amount is assumed to apply only to the costs associated with the introduction of quality assurance standards and environmental audit systems, while the cover of fees requested by recognised certification bodies is not subject to any maximum with the result that an overrun of the EUR 100 000 may occur if the aid for these two expenditure headings is added together. Approval of the aid should be conditional therefore on all the aid in question actually observing the maximum.
- (66) In view of all these factors, the Commission is obliged to conclude that the aid for the control and certification of organic cultivation methods and the aid for the establishment of control and certification systems for quality systems pursuant to Regulation (EEC) No 2081/92 may qualify for the derogation provided for in Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities or of certain economic areas which do not adversely affect trading conditions to an extent that is contrary to the common interest, subject to the requirement regarding compliance with the maximum amount provided for in the third paragraph of point 13.2 of the Guidelines.

Aid provided for in Article 6 of the draft order

- (67) According to the information contained in the table attached to Article 6, public financial assistance will only apply to infrastructure of general interest.
- (68) That assistance may be considered therefore not to constitute State aid within the meaning of Article 87(1) of the Treaty.

Aid provided for in Article 7 of the draft order

- (69) Regarding the aid for research on bergamot as a citrus fruit, the Commission notes, in the light of the table attached to Article 7, that the conditions laid down in the

Commission Communication of 1998 relating to the amendment of the Community framework for State aid for research and development are met. That aid may qualify therefore for the derogation provided for in Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

- (70) With regard to the aid for research on bergamot essence, the Commission notes, in the light of the table attached to Article 7, that the eligible expenditure and the rates of aid are in line with those laid down in the Community framework for State aid for research and development. The concepts of industrial research and precompetitive activities are not defined, but the table contains a reference to the Community framework. To be absolutely clear, it should be decided that the proposed aid for research on bergamot essence may qualify for the derogation provided for in Article 87(3)(c) of the Treaty on condition that the concepts of industrial research and precompetitive activities are in line with those set out in Annex I to the above framework.

Aid provided for in Article 8 of the draft order

- (71) With regard to the advertising measures, the Commission notes that the proposed aid will be granted both for bergamots as fruit and for products derived from them (in other words, bergamot essence).

Advertising of bergamots as fruit

- (72) With regard to the advertising of bergamots as fruit, the Community guidelines on State aid for the advertising of products falling within Annex I to the Treaty and certain products not falling within Annex I lay down a number of conditions so that aid may qualify for the derogation provided for in Article 87(3)(c) of the Treaty: the proposed advertising campaign must not meet any of the negative criteria set out (advertising which over-emphasises the origin of the products, advertising for individual enterprises, campaigns that are contrary to secondary Community law) and must satisfy at least one of the positive criteria laid down (in the agricultural sector, advertising focusing on surplus products or under-exploited species, on new products or replacement products that are not yet in surplus, on high-quality products — including those manufactured or obtained in accordance with environmentally-friendly production methods, such as organic products — on the development of certain areas, on the development of small and medium-sized enterprises). In addition, the rate of aid must be 50 % of the costs and, in order to take account of the importance of some of the positive criteria referred to, may be raised to 75 % of the expenditure, in the case of advertising in favour of products manufactured by SMEs located in areas that may qualify for aid pursuant to Article 87(3)(a) of the Treaty.

(73) The Commission notes that the aid will be granted in compliance with at least one of the positive criteria (advertising for organic products) set out in the Community guidelines for State aid for advertising of products listed in Annex I to the EC Treaty and of certain non-Annex I products, and without any of the negative criteria listed in the same guidelines (secondary nature of the origin in the message disseminated, exclusion of all advertising for individual enterprises, compliance with the rules applicable to the products referred to and of Directive 2000/13/EC). The proposed rate of aid of 50 % corresponds also to that provided for by the latter, as does the increase to 75 % for small and medium-sized enterprises, since Calabria is an assisted area within the meaning of Article 87(3)(a) of the Treaty.

(74) In view of all these factors, the Commission concludes that the proposed advertising aid for bergamots as fruit could qualify for the derogation provided for in Article 87(3)(c) of the Treaty.

Advertising of bergamot essence

(75) Concerning the advertising of bergamot essence, the Commission emphasised, on the initiation of the procedure pursuant to Article 88(2) of the Treaty, that compliance with the relevant provisions of the Guidelines on national regional aid had not been shown (see recital 19(f)). However, it should be noted that bergamot essence is a non-Annex I product with a content made up predominantly of products falling within Annex I. Consequently, it is also covered by the Community guidelines on State aid for the advertising of products falling within Annex I to the Treaty and certain products not falling within Annex I, in accordance with recital 9.

(76) Since the draft order submitted by the Italian authorities provides for identical aid for bergamot essence and for bergamots as fruit, the Commission concludes that the advertising aid for bergamot essence may also qualify for the derogation provided for in Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities or of certain economic areas without adversely affecting trading conditions to an extent contrary to the common interest.

(77) Concerning the aid for the promotion and dissemination of general information, the Commission notes that

beneficiaries may be both producers of bergamots and producers of essential bergamot oil.

Promotion and dissemination of general information for bergamot producers

(78) The Commission notes that the services covered fall within point 14 of the Guidelines. It also notes, in the light of the table attached to Article 8, that all the relevant requirements for those points (rate or amount of aid, accessibility of services) are met.

(79) The aid may qualify therefore for the derogation provided for in Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities or of certain economic areas that does not adversely affect trading conditions to an extent contrary to the common interest.

Promotion and dissemination of general information for bergamot producers

(80) The Commission notes that Table E attached to Article 8 of the draft order is also based on the provisions of the Guidelines where the aid concerns producers of essential bergamot oil. But, as indicated above, essential bergamot oil does not fall within Annex I to the Treaty and the aid for it, regardless of its form, cannot be covered by the Guidelines, but should be governed by the provisions referred to in the fourth indent of recital 52.

(81) On this point, the Commission notes that the promotional aid for producers of essential bergamot oil may qualify for the derogation pursuant to Article 87(3)(c) of the Treaty as aid to facilitate the development of certain activities or of certain economic areas which does not adversely affect trading condition to an extent contrary to the common interest where the beneficiary is a small or medium-sized enterprise, on condition that it satisfies the requirements of Article 5 of Regulation (EC) No 70/2001, under which:

— for services provided by outside consultants the aid must not exceed 50 % of the costs of such services; the services concerned must not be ongoing or periodic nor relate to the enterprise's usual operating expenditure, such as routine tax consultancy services, regular legal services, or advertising,

- in the case of participation in fairs and exhibitions, the gross aid must not exceed 50 % of the additional costs incurred in renting, setting up and running the stand (this exemption applies only to the first participation of an enterprise in a particular fair or exhibition).
- (82) Irrespective of the size of the beneficiary, the measure would not be regarded as State aid if all the substantive and formal requirements laid down by Regulation (EC) No 69/2001 were met.

VI. CONCLUSIONS

(83) The above examination shows that:

- the aid provided for in Article 2 of the draft order is compatible with the common market on condition that it is reserved for beneficiaries who start work only after an aid application has been submitted to the competent authority, and that the proposed rates of aid express a gross subsidy equivalent,
- the aid provided for in Article 3 of the draft order is compatible with the common market on condition that they are granted only to those who have submitted an aid application before starting their investments,
- the aid provided for in Article 4 of the draft order does not constitute State aid within the meaning of Article 87(1) of the Treaty,
- the aid provided for in Article 5 of the draft order for the checks carried out in the organic products sector and for the establishment of control and certification systems of quality systems pursuant to Regulation (EEC) No 2081/92 is compatible with the common market,
- the aid provided for in Article 5 of the draft order to launch or extend the activities of producer groups and the aid provided for in that Article to cover the fees requested by recognised certification bodies for the initial certification of quality assurance and similar systems is compatible with the common market on condition that all the aid to cover expenditure on the introduction of ISO and HACCP quality assurance programmes and the fees requested by certification bodies is limited to EUR 100 000 per beneficiary for each three-year period,
- the aid provided for in Article 6 of the draft order does not constitute State aid within the meaning of Article 87(1) of the Treaty,

- the aid provided for in Article 7 of the draft order for bergamots as fruit is compatible with the common market,
- the aid provided for in Article 7 of the draft order for bergamot essence will be compatible with the common market if the concepts of industrial research and precompetitive activities are in line with those listed in Annex I to the Community framework for State aid for research and development,
- the aid provided for in Article 8 of the draft order for advertising of bergamots as fruit and bergamot essence is compatible with the common market,
- the aid provided for in Article 8 of the draft order for promotion and the dissemination of general information to bergamot producers is compatible with the common market,
- the aid provided for in Article 8 of the draft order for promotion and the dissemination of general information for producers of essential bergamot oil which correspond to the Community definition of small and medium-sized enterprise is compatible with the common market provided that the conditions set out in Article 5 of Regulation (EC) No 70/2001 are met,
- irrespective of the size of the beneficiary, the aid provided for in Article 8 of the draft order for promotion and the dissemination of general information for producers of essential bergamot oil does not constitute State aid within the meaning of Article 87(1) of the Treaty on condition that all the substantive and formal requirements laid down by Regulation (EC) No 69/2001 are met.

(84) Since the Italian authorities have indicated that they have suspended the arrangements for the grant of the financial resources referred to in Law No 39 (see recital 21), there is no need to consider the recovery of unduly collected aid,

HAS ADOPTED THIS DECISION:

Article 1

The aid provided for in Article 4 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 4 of the draft order sent by the Italian authorities following the initiation of the procedure provided for in Article 88(2) of the Treaty in respect of Articles 4 and 6 of that Law, does not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 2

The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 2 of the draft order, is compatible with the common market on condition that it is reserved for beneficiaries who start work only after an aid application has been submitted to the competent authority, and that the rates of aid proposed in the draft order express a gross subsidy equivalent.

Article 3

The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 3 of the draft order, is compatible with the common market on condition that it is granted only to those who have submitted an aid application before starting their investments.

Article 4

The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 5 of the draft order, is compatible with the common market on condition that all the aid to cover expenditure on the introduction of ISO and HACCP quality assurance programmes and the fees requested by certification bodies is limited to EUR 100 000 per beneficiary for each three-year period.

Article 5

The aid provided for in Article 4 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 6 of the draft order, does not constitute State aid within the meaning of Article 87(1) of the Treaty.

Article 6

1. The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 7 of the draft order, is compatible with the common market where they concern bergamots as fruit.

2. The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 7 of the draft order, is

compatible with the common market where they concern essential oil of bergamot on condition that the concepts of industrial research and precompetitive activities correspond to those listed in Annex I to the the Community framework for State aid for research and development.

Article 7

1. The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 8 of the draft order, is compatible with the common market where it concerns advertising measures.

2. The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 8 of the draft order, is compatible with the common market where it concerns promotional measures and measures for the dissemination of general information for the benefit of bergamot producers.

3. The aid provided for in Article 6 of Law No 39 of 25 February 2000, the detailed rules for the application of which are laid down in Article 8 of the draft order, is compatible with the common market where it concerns promotional measures and measures for the dissemination of general information for producers of essential bergamot oil which correspond to the Community definition of small and medium-sized enterprise, provided that the requirements of Article 5 of Regulation (EC) No 70/2001 are met.

4. Irrespective of the size of the beneficiary, the aid provided for in Article 8 of the draft order for promotion and the dissemination of general information for producers of essential bergamot oil does not constitute State aid within the meaning of Article 87(1) of the Treaty on condition that all the substantive and formal requirements laid down by Regulation (EC) No 69/2001 are met.

Article 8

Italy shall inform the Commission, within two months of the date of notification of this Decision, of the measures taken to comply with the requirements of Articles 2, 3, 6 and 7.

Article 9

This Decision is addressed to the Italian Republic.

Done at Brussels, 5 July 2005.

For the Commission
Mariann FISCHER BOEL
Member of the Commission