COMMISSION DECISION

of 15 September 1980

concerning the partial taking-over by the State of employers' contributions to sickness insurance schemes in Italy

(Only the Italian text is authentic)

(80/932/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular the first subparagraph of Article 93 (2) thereof,

After giving the parties concerned formal notice to submit their comments,

Whereas :

I

By Decree No 353 of 6 July 1978 (1), which later became Law No 502 of 5 August 1978 (2), the Italian Government introduced a scheme under which the State took over part of the burden of employers' sickness insurance contributions for manufacturing undertakings and for certain undertakings in the services sector. Although originally intended to run for a temporary six-month period ending on 31 December 1978, the scheme was extended by Decree No 20 of 30 January 1979 (3), which became Law No 92 of 31 March 1979 (4), until 30 June 1979 and subsequently by Law No 375 of 13 August 1979 (5) until 31 December 1979, and was made permanent by Decree No 663 of 30 December 1979 (6).

The scheme covers undertakings in the manufacturing and extractive industries and certain branches of the services sector (mainly tourism and commercial undertakings where exports account for over 40 % of their sales).

The operation of the scheme results in a reduction in such undertakings' sickness insurance contributions. Before the scheme was made permanent, the reduction was fixed at a standard Lit 24 500 per month for each male employee. For female employees, however, employers were exempt from payments to sickness insurance schemes in respect of the first Lit 400 000 of wages and salaries per person per month, which amounted to a potential reduction of Lit 64 000, since employers' sickness insurance contributions are set at 16 % of wages and salaries.

When the scheme was made permanent, the level of employers' sickness insurance contributions was reduced by four percentage points for male employees and by 10 percentage points for female employees.

II

In the comments which it submitted to the Commission under the procedure of Article 93 (2) of the EEC Treaty, which was initiated on 21 December 1979, the Italian Government argued that the present system of partial taking-over by the State of sickness insurance costs was only the first stage in a radical reorganization of the social security system in Italy which would eventually exempt all undertakings from these costs. Because of budgetary constraints this operation would have to be implemented gradually, it had not initially been possible to extend the present system to the whole economy, and that system had had to be confined to industrial undertakings and certain undertakings in the services sector.

The Italian authorities further argued that the differential between the rates of reduction in respect of male and female employees was justified by more absenteeism on the part of women than of men in Italy and by the very advanced social security legislation in Italy, the aim of which was to afford protection for female labour. This measure was ultimately intended to lower the level of social security costs in Italy, which were higher than in any other Community country, but budget resources did not at the moment allow the rate of reduction for male labour to be aligned with the rate for women.

Whereas the decision of the Italian Government to lower by an additional 2 % the employers' contribution for male employees to the sickness insurance scheme, as communicated to the Commission by letter from its Permanent Representation dated 24 July 1980, reduces but does not eliminate the difference between male and female workers.

(1) *Gazetta Ufficiale* No 192, 11. 7. 1978.
(2) *Gazzetta Ufficiale* No 246, 2. 9. 1978.
(3) *Gazzetta Ufficiale* No 30, 31. 1. 1979.
(4) *Gazzetta Ufficiale* No 91, 1. 4. 1979.
(5) *Gazzetta Ufficiale* No 225, 17. 8. 1979.
(6) *Gazzetta Ufficiale* No 355, 31. 12. 1979.

Other Member States and other interested parties have submitted numerous comments under the procedure of Article 93 (2) of the EEC Treaty and have expressed their industries' concern regarding this measure.

III

By excluding certain branches of economic activity from its scope of application, the present scheme as described above may well lose its general nature, the only thing which prevents it from being regarded as an aid within the meaning of Article 92 (1) of the EEC Treaty. However, considering that it forms part of a general reform aimed at eventually extending the system to all branches of the Italian economy, the Commission recognizes that implementation by stages may be necessary and that the present scheme is already sufficiently general in nature since it is being applied to the whole of industry.

On the other hand, as regards the bigger reduction in employers' sickness insurance costs for female employees, the present system is such as to favour the production of certain Italian goods in which the use of female labour is particularly important, for example, in the textile, clothing, footwear and leather industries, and therefore amounts to a State aid within the meaning of Article 92 (1) of the EEC Treaty.

Women represent 70 % of the labour force in these four industries as against only 25 % in Italian industry as a whole, and the extra reduction in employers' sickness insurance costs for female employees therefore substantially and directly affects the production costs of firms in those industries and thus their competitiveness *vis-à-vis* competitors in the other Member States. Such an objective was clearly formulated by the Italian authorities, since the deliberations of the Interministerial Committee for Coordination of Industrial Policy (CIPI) on 21 December 1978 on a programme of support for the fashion industry [1] recommended 'making unit production costs competitive through harmonization of the labour-cost structure with that of the other European countries, taking account first and foremost of the need to make the present system of taking-over by the State of social security costs for female labour permanent'.

Although the general conditions under which undertakings are operating may well vary from one Community country to another, this does not entitle a Member State to single out any specific factor and offset by aid the additional costs borne by its undertakings as compared with their competitors in other Member States.

The textile, clothing, footwear and leather industries, which are the particular beneficiaries of the aid in question, are known to be industries which are experiencing difficulties throughout the Community and in which there is very keen competition between Member States.

IV

In view of the above factors, this type of aid is therefore liable to affect trade between Member States and to distort or threaten to distort competition within the meaning of Article 92 (1) of the EEC Treaty.

The provisions of the EEC Treaty stipulate that aid falling within the criteria set out in Article 92 (1) is incompatible with the common market. The derogations provided for in Article 92 (3), the only derogations relevant to the case in point, specify objectives which must be pursued in the interest of the Community and not only in that of particular branches of a national economy. The derogations must be interpreted strictly in examining both regional or sectoral aid schemes and specific cases to which general aid systems are applied. In particular, the derogations may be allowed only in cases where the Commission is able to establish that the aid is necessary in order to achieve one of the objectives specified in the abovementioned Article.

If these derogations were allowed in respect of aid which did not have this compensatory justification, this would mean allowing trade between Member States to be affected and competition to be distorted without any justification in terms of the Community interest and would also allow undue advantages for certain Member States.

The aid system under examination does not have such a compensatory justification.

The Italian Government has not been able to furnish, nor the Commission to detect, any evidence that the aid envisaged fulfils the conditions which would justify the application of one of the derogations provided for in Article 92 (3) of the EEC Treaty.

The scheme is clearly not a measure to promote the economic development of areas where the standard of living is abnormally low or where there is serious underemployment, nor a measure to promote the execution of a project of common European interest, nor indeed a measure to remedy a serious disturbance in the economy of the Member State concerned. Consequently, neither Article 92 (3) (a) or (b) of the EEC Treaty is applicable.

[1] *Gazzetta Ufficiale* No 55, 24. 2. 1979.

The larger production for female labour constitutes a strictly conservatory operating aid for the undertakings concerned. As a general rule, the Commission has always opposed such aid, since it usually does not fulfil the conditions which would allow it to qualify for the derogation provided for in Article 92 (3) (c) of the EEC Treaty, in that it is not such as to facilitate 'development' within the meaning of that provision.

Moreover, given the adjustment difficulties which the textile, clothing, footwear and leather industries are experiencing throughout the Community and the intensity of competition within the Community in these industries, the aid is such as to adversely affect trading conditions to an extent contrary to the common interest.

In the textile industry in particular, the aid is contrary to the principles of the Community's approach on aid to the textile industry, which the Commission notified to the Member States in 1971 and 1977.

Lastly, in the services sector the aid is granted to 'commercial exporting undertakings', and from that point of view it is an export aid, a category to be regarded as incompatible with the common market when it benefits intra-Community sales.

Consequently, there is nothing to justify the Commission exempting the measure in question from the principle of the incompatibility of aids by letting it qualify for the derogation provided for in Article 92 (3) (c) of the EEC Treaty.

Although the insufficiency of budgetary resources cited by the Italian Government in its comments may be a reason for accepting that the present scheme is not yet being applied to all branches of the Italian economy, it cannot justify the distinction drawn between male and female employees as regards the rate of reduction of employers' sickness insurance contributions, since it is such as to adversely affect trading conditions to an extent contrary to the common interest.

This conclusion cannot be invalidated by the argument that in Italy there is more absenteeism among female than male employees, since the position is similar in other Member States,

HAS ADOPTED THIS DECISION:

Article 1

The Italian Republic shall within six months remove the difference provided for in Article 22 of Decree No 663 of 30 December 1979 in the rate of reduction of employers' sickness insurance contributions as between male and female employees.

Article 2

The Italian Republic shall communicate to the Commission the laws, regulations and administrative provisions adopted to comply with this Decision not later than the end of the period laid down in Article 1.

Article 3

This Decision is addressed to the Italian Republic.

Done at Brussels, 15 September 1980.

For the Commission

Raymond VOUEL

Member of the Commission